

No. of 2012

**VIRGIN ISLANDS**

**BVI BUSINESS COMPANIES (AMENDMENT) ACT, 2012**

**ARRANGEMENT OF SECTIONS**

*Section*

- 1...Short title and commencement.
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- 3...Section 2 amended.
- 4...Section 4 repealed.
- 5...Section 8 amended.
- 6...Section 13 amended.
- 7...Section 18 amended.
- 8...Section 20 amended.
- 9...Section 24 repealed and substituted.
- 10...Section 26A inserted.
- 11...Section 28 amended.
- 12...Section 32 amended.
- 13...Section 36 amended.
- 14...Section 38 amended.
- 15...Section 40A amended.
- 16...Section 61 amended.
- 17...Section 63 amended.
- 18...Section 66 amended.
- 19...Section 67 amended.
- 20...Section 69 amended.
- 21...Section 71 amended.
- 22...Section 72 amended.
- 23...Section 76A inserted.
- 24...Section 83 amended.
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- 26...Section 89 amended.
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- 30...Section 93 amended.
- 31...Section 94 amended.
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56. Section 197 amended.
57. Section 198 amended.
58. Section 199 amended.
59. Section 200 amended.
60. Section 201 amended.
61. Section 202 amended.
62. Section 203 amended.
63. Section 204 amended.
64. Sections 205A, 205B, 205C and 205D inserted.
65. Section 207A amended.
66. Section 209 amended.
67. Section 211A inserted.
68. Section 213 amended.
69. Section 216 amended.
70. Section 217 amended.
71. Section 218 repealed and substituted.
72. Sections 218A and 218B inserted.
73. Section 228A amended.
74. Section 230 amended.
75. Section 231 amended.
76. Section 232 amended.
77. Section 233 amended.
78. Section 235 amended.
79. Section 235A inserted.
80. Section 240A inserted.

- 81. Section 244 repealed.
- 82. Schedule 1 amended.
- 83. Schedule 2 amended.
- 84. Transitional provisions.

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**BVI Business Companies  
(Amendment) Act, 2012**

**Virgin  
Islands**

**I Assent**

**Governor**

, 2012

**VIRGIN ISLANDS**

**No. of 2012**

A Bill for

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

[Gazetted , 2012]

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, 2012.

(2) The provisions of this Act come into force on such date or dates as may be appointed by the Governor by proclamation published in the Gazette and different dates may be appointed for different provisions and different purposes.

**2.** The BVI Business Companies Act, 2004 (hereinafter referred to as “the principal Act”) is amended

General  
amendment.  
No. 16 of 2004

(a) by replacing the words “Executive Council” wherever they occur in the principal Act, with the word “Cabinet”; and

(b) by replacing the words “Legislative Council” wherever they occur

in the principal Act, with the words “House of Assembly”.

3. Section 2 of the principal Act is amended

Section 2  
amended.

- (a) by inserting the following definitions in the appropriate alphabetical order:

““affiliate”, in relation to a company, has the meaning specified in the Regulations;

“business day” means any day other than a Saturday, Sunday or public holiday in the Virgin Islands;

“Cabinet” means the Cabinet of the Virgin Islands established under section 47 of the Virgin Islands Constitution Order 2007;

UK S.I. 2007  
No. 1678

“foreign character name” means a foreign character name approved by the Registrar under section 20;

“listed company” means a company, any securities of which are approved for listing on a recognised exchange;

“Listed Companies and Funds Regulations” means the Regulations made under section 240A;

“name”, in relation to a company, means the name of the company, but excludes its foreign character name;

“parent”, in relation to a company, foreign company or other body corporate, has the meaning specified in the Regulations;

“recognised exchange” has the meaning specified in section 2(1) of the Securities and Investment Business Act, 2010;

No. 2 of 2010

“subsidiary”, in relation to a company, foreign company or other body corporate, has the meaning specified in the Regulations;

“unlimited member” has the meaning specified in section 78;”;

- (b) in the definition of “restricted purposes company”, by inserting after the words “on its incorporation”, the words “or continuation”;

- (c) by deleting the definition of “regulated person”;

- (d) by deleting the word “and” after the definition of “unlimited company”;
- (e) by inserting the word “and” after the inserted definition of “unlimited member”; and
- (f) in the definition of “voluntary liquidator”, by inserting after the words “section 199”, the words “and, unless the context otherwise requires, includes two or more joint voluntary liquidators”.

Section 4 repealed. **4.** Section 4 of the principal Act is repealed.

Section 8 amended. **5.** Section 8 of the principal Act is amended

- (a) in subsection (1)
  - (i) by inserting after the words “under section 6”, the words “or section 181”;
  - (ii) in paragraph (a), by inserting after the words “on incorporation”, the words “or continuation”; and
  - (iii) in paragraph (b), by inserting after the words “certificate of incorporation”, the words “or continuation”; and
- (b) in subsection (2), by inserting after the words “on its incorporation”, the words “or continuation”.

Section 13 amended. **6.** Section 13 of the principal Act is amended by adding the following subsection after subsection (5):

“(6) If a notice of amendment or restated memorandum or articles is not filed within the period specified in a Court order made under subsection (5), the order ceases to have effect and subsection (2) applies as if the order had never been made.”.

Section 18 amended. **7.** Section 18 of the principal Act is amended

- (a) in subsection (1)
  - (i) in paragraph (a), by inserting before the words “the use of”, the words “subject to section 26A,”

- (ii) in paragraph (d), by deleting the words “word or phrase” in both places the words occur and substituting the words “word, phrase or abbreviation” in each place; and
- (iii) in paragraph (e), by deleting the words “is offensive or, for any other reason, objectionable” and substituting the words “is offensive, objectionable or contrary to public policy or to the public interest”;
- (b) in subsection (2), by deleting the words “words or phrases” in both places the words occur and substituting the words “words, phrases or abbreviations” in each place; and
- (c) by adding the following subsection after subsection (2):

“(3) Notwithstanding subsection 1(b)(ii), the Registrar may register a company under a name that is similar to the name of another company if both companies are affiliates.”.

**8. Section 20 of the principal Act is amended**

Section 20 amended.

- (a) in subsection (1), by deleting the words “have an” and substituting the words “be registered with an”
- (b) by deleting subsection (2), and substituting the following subsection:

“(2) The Regulations may provide for

- (a) the approval, registration, change and use of foreign character names;
- (b) the deregistration of foreign character names by the Registrar for cause or on application by companies that have registered them; and
- (c) the Registrar to direct a company to change its foreign character name.”.

**9. Section 24 of the principal Act is repealed and the following section substituted:**

Section 24 repealed and substituted.

“Reuse of company names.

**24.** The Regulations may provide for the reuse of names previously used by companies that

- (a) are or have been registered under this Act or a former Act, or by former Act companies, that have
  - (i) changed their name;
  - (ii) been struck off the Register, or off a register maintained under a former Act, but not dissolved; or
  - (iii) been dissolved under this Act or a former Act; or
- (b) have been registered under this Act but, in respect of which, the Registrar has issued a certificate of discontinuance under section 184(4)(a).”.

Section 26A inserted.

**10.** The principal Act is amended by inserting the following section after section 26 and before Division 4:

“Rights and interest in names.

**26A.** (1) Nothing in this Division requires the Registrar, when determining whether to incorporate or continue a company under a name, to register a change of name or to direct a change of name, to

- (a) make a determination of any person’s interest in a name, or the rights of any person concerning a name or the use of a name, whether the interest or rights are alleged to arise under a Virgin Islands enactment or rule of law or an enactment or rule of law in a jurisdiction other than the Virgin Islands; or
- (b) to take account of any trade or service mark, or equivalent right, whether registered in the Virgin Islands or in a jurisdiction other than the Virgin Islands.

(2) Subsection (1) does not prevent the Registrar taking into account any matter specified in that subsection when determining whether, in his opinion, the registration of a company name is, or would be, objectionable or contrary to public policy or to the public interest.



- (3) The registration of a company under this Act with a company name does not give the company any interest in, or rights over, the name that it would not have, apart from this Division.”.
- 11.** Section 28 of the principal Act is amended in subsection (2) (c) by deleting the words “any of its obligations” and substituting the words “any obligations”. Section 28 amended.
- 12.** Section 32 of the principal Act is amended by adding the following subsection after subsection (2): Section 32 amended.
- “ (3) A person is deemed to have notice of a document specified in subsection (2), that has been registered by the Registrar under this Act, and the provisions and contents of any such document.”.
- 13.** Section 36 of the principal Act is amended in subsection (1) Section 36 amended.
- (a) in paragraph (e), by deleting the full stop and substituting a semicolon; and
- (b) by adding the following paragraph after paragraph (e):
- “(f) where issued in, or converted to, one class or series, be convertible to another class or series, in the manner specified in the memorandum and articles of association.”
- 14.** Section 38 of the principal Act is amended in subsection (2) by inserting after the words “to the contrary”, the words “in this Act or”. Section 38 amended.
- 15.** Section 40A of the principal Act is amended in subsection (4) by inserting after the word “Where”, the words “par value”. Section 40A amended.
- 16.** Section 61 of the principal Act is amended in subsection (1) by deleting the words “section 60(1)(b)” and substituting the words “section 60(1)(b)(ii)”. Section 61 amended.
- 17.** Section 63 of the principal Act is amended in paragraph (c) by deleting the words “section 179” and substituting the words “section 176 or 179”. Section 63 amended.
- 18.** Section 66 of the principal Act is amended Section 66 amended.
- (a) in subsection (7), by deleting the words “Where the governing law” and substituting the words “Subject to subsection (7A), where the governing law”; and
- (b) by inserting the following subsection after subsection (7):

“ (7A) Where the governing law of a mortgage or charge of shares in a company is the law of the Virgin Islands, if the instrument creating the mortgage or charge so provides, the remedies referred to in subsection (5) are exercisable immediately on a default occurring.”.

Section 67  
amended.

**19.** Section 67 of the principal Act is amended by inserting the following definitions in the appropriate alphabetical order:

““BVI authorised custodian” means a custodian approved under section 50A(1) of the Financial Services Commission Act, 2001;

No. 12 of 2001

“foreign authorised custodian” means a custodian approved under section 50A(2) of the Financial Services Commission Act, 2001.”.

Section 69  
amended.

**20.** Section 69 of the principal Act is amended by adding the following subsection after subsection (2):

“(3) The delivery of a bearer share to a custodian in accordance with this Division does not constitute the custodian as a shareholder of the company, in relation to the bearer share, notwithstanding that the custodian may exercise voting and other rights on behalf of the beneficial owner of the bearer share.”.

Section 71  
amended.

**21.** Section 71 of the principal Act is amended in subsection (3) by inserting after the words “recognised custodian” in both places that the words occur, the words “or foreign authorised custodian”.

Section 72  
amended.

**22.** Section 72 of the principal Act is amended in subsection (2) (a)

(a) in subparagraph (i), by deleting the words “an authorised custodian approved under section 50A(1) of the Financial Services Commission Act” and substituting the words “a BVI authorised custodian”; and

No. 12 of 2001

(b) in subparagraph (ii), by deleting the words “an authorised custodian approved under section 50A(2) of the Financial Services Commission Act” and substituting the words “a foreign authorised custodian”.

Section 76A  
inserted.

**23.** The principal Act is amended by inserting the following section after section 76:

“Registered agent to maintain register of bearer shares.

**76A.** (1) In this section, “bearer share company” means a company which

- (a) is of a type specified in section 5(a), (c) or (e); and
- (b) is not prohibited by its memorandum from issuing bearer shares, converting registered shares to bearer shares and exchanging registered shares for bearer shares.

(2) The registered agent of a bearer share company shall maintain a register of the company’s bearer shares, specifying in relation to each bearer share

- (a) the identifying number of the bearer share certificate representing the bearer share;
- (b) the full name of the beneficial owner of the share;
- (c) the full name of any other person that has an interest in the bearer share, whether by virtue of a charge on the share or otherwise; and
- (d) the name and address of the custodian of the bearer share.”.

- 24.** Section 83 of the principal Act is amended in subsection (2) by deleting the words “lesser majority” and substituting the words “other majority”. Section 83 amended.
- 25.** The principal Act is amended in the marginal note to section 85 by inserting after the words “Voting trusts”, the words “and members’ agreements”. Section 85 amended in the marginal note.
- 26.** Section 89 of the principal Act is amended in subsection (1) (a) (ii) Section 89 amended.
  - (a) by deleting the words “or by mail” and substituting the words “, by mail”; and
  - (b) by inserting after the words “register of members”, the words “or, where the member consents, by and in accordance with such electronic means as may be permitted by the Regulations”.
- 27.** The principal Act is amended by inserting the following section after section 91: Section 91A inserted.

“Appointment of registered agent.

**91A.** (1) If at any time a company does not have a registered agent it shall forthwith, by resolution of members or directors,

appoint a registered agent.

(2) A resolution to appoint a registered agent may be passed

- (a) notwithstanding any provision to the contrary in the memorandum or articles, by the members of the company; or
- (b) if authorised by the memorandum or articles, by the directors of the company.

(3) A notice of appointment of registered agent shall be endorsed by the registered agent with his agreement to act as registered agent and filed by the registered agent.

(4) The appointment of the registered agent takes effect on the registration by the Registrar of the notice filed under subsection (3).”.

Section 92 amended.

**28.** Section 92 of the principal Act is amended by inserting the following subsection after subsection (4):

“ (4A) The Regulations may specify circumstances in which a legal practitioner is not entitled to file a notice of change of registered office or registered agent on behalf of a company.”.

Sections 92A, 92B and 92C inserted.

**29.** The principal Act is amended by inserting the following sections after section 92:

“Change of registered office where registered agent changes address.

**92A.** (1) This section applies in relation to a company where

- (a) the registered office of the company is located at the principal office of its registered agent in the Virgin Islands; and
- (b) the company’s registered agent changes the location of its principal office within the Virgin Islands.

(2) Where this section applies to a company, its registered agent may change the registered office of the company to the changed location of its principal office in the Virgin Islands by filing a notice in the approved form with the Registrar

- (a) stating that

- (i) the registered agent has moved the location of its principal office in the Virgin Islands; and
  - (ii) the company intends its registered office to continue to be the principal office of the registered agent; and
- (b) specifying the new address of its principal office in the Virgin Islands.

(3) A change of registered office under this section takes effect on the registration by the Registrar of the notice filed under subsection (2).

(4) A person who acts as the registered agent for more than one company may file a single notice which combines one or more notices specified in subsection (2).

Deemed amendment of memorandum, where registered agent changes address.

**92B.** (1) This section applies in relation to a company where

- (a) the memorandum of the company states the address of its registered agent; and
- (b) the company's registered agent changes the location of its principal office within the Virgin Islands.

(2) Where this section applies to a company, its registered agent may file a notice in the approved form

- (a) stating that
  - (i) the registered agent has moved the location of its principal office in the Virgin Islands; and
  - (ii) the memorandum of the company states the registered agent's address; and
- (b) specifying the new address of its principal office in the Virgin Islands.

(3) On the registration of a notice referred to in subsection (2), the company's memorandum is deemed to be amended to state the changed address of the registered agent's principal office

in the Virgin Islands with effect from the date of registration of the notice.

(4) A person who acts as the registered agent for more than one company may file a single notice which combines one or more notices specified in subsection (2).

Deemed amendment of memorandum, where registered agent changes company name.

**92C.** (1) This section applies in relation to a company where

- (a) the company's registered agent changes its company name; and
- (b) that registered agent is stated in the memorandum to be the registered agent of the company, whether as the first or a subsequent registered agent.

(2) Where this section applies to a company, its registered agent may file a notice in the approved form

- (a) stating that
  - (i) the registered agent has changed its registered name; and
  - (ii) the registered agent is stated in the memorandum to be the registered agent of the company, whether as the first or a subsequent registered agent; and
- (b) specifying the new company name of the registered agent.

(3) On the registration of a notice referred to in subsection (2), the company's memorandum is deemed to be amended to state the company's new name with effect from the date of registration of the notice.

(4) A person who acts as the registered agent for more than one company may file a single notice which combines one or more notices specified in subsection (2).”.

**30.** Section 93 of the principal Act is amended by adding the following subsections after subsection (5): Section 93 amended.

“(6) A registered agent wishing to rescind a notice of his intention to resign (the “resignation notice”) shall

- (a) give at least fourteen days written notice of his intention to rescind the resignation notice on the date specified in the notice to the person to whom he sent the resignation notice; and
  - (b) file the notice (the “rescission notice”).
- (7) A rescission notice may not be filed
- (a) if the company has, by the time of filing, changed its registered agent; or
  - (b) fourteen days or less prior to the date specified in subsection (2).

(8) The rescission notice takes effect on the date specified in the rescission notice unless the company has changed its registered agent before that date.”.

**31.** Section 94 of the principal Act is amended by deleting subsection (4) and substituting the following subsections: Section 94 amended.

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

(4A) A person who has ceased to be eligible to act as a registered agent ceases to be the registered agent of each company to which it has sent a notice under subsection (2), through a director or other person specified in subsection (3), on the earlier of

- (a) the date that the company changes its registered agent in accordance with subsection (4); or
- (b) the first day following the expiry of the notice period specified in subsection (4).”.

**32.** Section 96 of the principal Act is amended, by inserting after subsection (3), the following subsection: Section 96 amended.

“(3A)The Listed Companies and Funds Regulations may disapply or modify the requirements of this section in relation to listed companies, public funds, private funds and professional funds.”.

Section 102 amended.

**33.** Section 102 of the principal Act is amended by inserting the following subsection after subsection (2):

“(2A) Where a company has a foreign character name, the common seal

(a) shall contain its name; and

(b) may, in addition, contain its foreign character name.”

Section 112 amended.

**34.** Section 112 of the principal Act is amended by

(a) inserting after the words “as the director”, the words “or alternate director”; and

(b) inserting after the words “a director”, the words “or alternate director”.

Section 113 amended.

**35.** Section 113 of the principal Act is amended

(a) by inserting the following subsection after subsection (1):

“(1A) If , before a company has any members, a sole director, or all the directors, appointed under subsection (1), resign or die, or in the case of a director that is not an individual, ceases to exist, the registered agent may appoint one or more persons as directors of the company.”;

(b) in subsection (3), by deleting the words “in the resolution appointing him” and substituting the words “on his appointment”; and

(c) in subsection (5)(a), by inserting after the words “director dies”, the words “, or in the case of a director that is not an individual, ceases to exist,”.

Section 114 amended.

**36.** Section 114 of the principal Act is amended in subsection (2) (b) by deleting the words “the members” and substituting the words “the votes of the members”.

Section 120 amended.

**37.** Section 120 of the principal Act is amended by deleting the words “holding company” in each of the places that it occurs in subsections (2) and (3) and substituting the word “parent”.



**38.** The principal Act is amended by repealing section 129 and substituting the following section:

Section 129  
repealed and  
substituted.

“Directors’  
resolutions.

**129.** (1) A resolution of directors may be passed,

- (a) at a meeting of directors; or
- (b) subject to the memorandum and articles, as a written resolution.

(2) Subject to the memorandum and articles, a resolution of directors is passed at a meeting of directors by a majority of the votes cast by directors who are present at the meeting and entitled to vote on the resolution.

(3) A written resolution is a resolution consented to in writing or by telex, telegram, cable or other written electronic communication, without the need for any notice,

- (a) by such majority of the votes of the directors entitled to vote on the resolution as may be specified in the memorandum or articles; or
- (b) in the absence of any provision in the memorandum or articles, by all of the directors entitled to vote on the resolution.

(4) A written resolution may consist of several documents, including written electronic communications, in like form each signed or assented to by one or more directors.”.

**39.** The principal Act is amended by repealing section 130 and substituting the following section:

Section 130  
repealed and  
substituted.

“Appointment of  
alternate directors.

**130.** (1) Subject to the memorandum and articles of a company, a director of the company may appoint as an alternate any other director or any other person who is not disqualified for appointment as a director under section 111 to

- (a) exercise the appointing director’s powers, and
- (b) carry out the appointing director’s responsibilities,

in relation to the taking of decisions by the directors in the absence of the appointing director.

(2) The appointing director may, at any time, terminate the alternate's appointment.

(3) The appointment of an alternate director and its termination shall be in writing and written notice of the appointment and termination shall be given by the appointing director to the company

(a) within such period as may be specified in the memorandum or articles; or

(b) if no period is specified in the memorandum or articles, as soon as reasonably practicable.

(4) The termination of the appointment of an alternate director does not take effect until written notice of the termination has been given to the company.

(5) An alternate director

(a) has no power to appoint an alternate, whether of the appointing director or of the alternate director; and

(b) does not act as an agent of or for the appointing director.”.

Section 130A inserted.

**40.** The principal Act is amended by inserting the following section after section 130:

“Rights and duties of alternate directors.

**130A.** (1) An alternate director has the same rights as the appointing director in relation to any directors' meeting and any written resolution circulated for written consent.

(2) Any exercise by the alternate director of the appointing director's powers in relation to the taking of decisions by the directors, is as effective as if the powers were exercised by the appointing director.

(3) An alternate director is liable for his own acts and omissions as an alternate director and Division 3 applies to a person appointed as an alternate director, when acting as such.”.

Section 132 amended.

**41.** Section 132 of the principal Act is amended in subsection (2A) (a) by deleting the words “holding company” and substituting the word “parent”.

**42.** The principal Act is amended by inserting the following section after section 138:

Section 138A  
inserted.

“Termination and  
reinstatement of  
segregated  
portfolios.

**138A.** (1) Where a segregated portfolio has no segregated portfolio assets or liabilities of the segregated portfolio company attributable to it, the segregated portfolio company may terminate the segregated portfolio.

(2) Where a segregated portfolio company was required to obtain the approval of the Commission for the creation of a segregated portfolio under section 138(4), the segregated portfolio company shall, within seven days of its termination under subsection (1), give written notice to the Commission of the termination of the segregated portfolio.

(3) Subject to subsection (4), a segregated portfolio company may reinstate a segregated portfolio which has been terminated under subsection (1).

(4) Where a segregated portfolio company was required to obtain the approval of the Commission for the creation of a segregated portfolio that has been terminated under subsection (1), the company shall not reinstate the portfolio unless it has obtained the prior written approval of the Commission.

(5) A segregated portfolio company that contravenes subsection (2) or (4) commits an offence and is liable on summary conviction to a fine of \$10,000.”.

**43.** Section 142 of the principal Act is amended by

Section 142  
amended.

- (a) redesignating the section as subsection (1); and
- (b) adding immediately after the redesignated subsection (1), the following new subsections:

“(2) If a segregated portfolio company contravenes subsection (1), the directors shall, as soon as they become aware of the contravention

- (a) make any necessary enquiries to determine the correct segregated portfolio or segregated portfolios to which the relevant act, matter, deed, agreement, contract, instrument under seal or

other instrument or arrangement should be attributed;

- (b) make the correct attribution; and
- (c) notify in writing all persons who are party to the act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement that was executed, or which may be adversely affected by any such attribution, of that attribution and the parties' rights under subsection (3).

(3) Any person notified under subsection (2)(c), or who should have been so notified, who objects to an attribution by the directors under subsection (2) may, within thirty days of receiving written notice under that subsection in the case of persons who received such notice, apply to the Court for a re-attribution.

(4) The Court may, upon hearing an application under subsection (3), and taking account of the intention of the parties and such other factors as it considers relevant, order that the act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement is considered to be attributed to a particular segregated portfolio or portfolios or to the general assets, if applicable in particular proportions or on a particular basis, and may make such ancillary orders as it considers appropriate.”.

Section 151  
amended.

**44.** Section 151 of the principal Act is amended in subsection (2) by inserting after the words “liquidation of a segregated portfolio”, the word “company”.

Section 160  
amended.

**45.** Section 160 of the principal Act is amended in subsection (1) in the definition of “commencement date”,

(a) in paragraph (a), by deleting the words “, or” at the end of the paragraph and substituting a semicolon; and

(b) by inserting the following paragraph after paragraph (a):

“(aa) in the case of a company that is continued under this Act, the date of its continuation; or”

Section 163  
amended.

**46.** Section 163 of the principal Act is amended in subsection (1) (a), by deleting the words “a person” and substituting the words “a legal practitioner in the Virgin Islands”.

**47.** Section 164 of the principal Act is amended in subsection (1) (a), by deleting the words “a person” and substituting the words “a legal practitioner in the Virgin Islands”. Section 164 amended.

**48.** Section 165 of the principal Act is amended Section 165 amended.

- (a) by deleting the marginal note to the section and substituting the words “Satisfaction or release of charge.”;
- (b) by deleting subsections (1) and (2) and substituting the following subsections:

“(1) A notice of satisfaction or release in the approved form may be filed under this section if

- (a) all liabilities secured by the charge registered under section 163 have been paid or satisfied in full; or
- (b) a charge registered under section 163 has ceased to affect the property, or any part of the property, of a company.

(2) A notice of satisfaction or release shall

- (a) state whether the charge has been paid or satisfied in full or whether the charge has ceased to affect the property, or any part of the property, of the company; and
- (b) if the charge has ceased to affect the property, or any part of the property of the company, specify the property of the company that has ceased to be affected by the charge, stating whether this is the whole or part of the company’s property.

(2A) A notice of satisfaction or release may be filed by

- (a) the company or a legal practitioner in the Virgin Islands authorised to act on its behalf ; or
- (b) a person qualified to act as the registered agent of a company in accordance with section 91(3), or a legal practitioner in the Virgin Islands, acting on behalf of the chargee.

(2B) If the notice of satisfaction or release is filed by or on behalf of the company it shall be

- (a) signed by the chargee; or
  - (b) accompanied by a statutory declaration in the approved form verifying the matters stated in the notice.”; and
- (c) in subsection (3),
- (i) in the opening paragraph by deleting the words “and has been signed in accordance with subsection (2)” and substituting the words “, complies with subsection (2) and, if filed by or on behalf of the company, subsection (2B) has been complied with”; and
  - (ii) in paragraph (b), by inserting after the words “issue a certificate”, the words “of the satisfaction, release or partial release of the charge”.

Section 165A  
inserted.

**49.** The principal Act is amended by inserting the following section after section 165:

“Filing of  
application under  
section 163 or 164  
by or on behalf of  
chargee.

**165A.** (1) An application for the registration of a charge under section 163 or for the variation of a charge under section 164 made by the chargee, or a person authorised to act on the chargee’s behalf, may only be filed by

- (a) a person qualified to act as the registered agent of a company in accordance with section 91(3), or
- (b) a legal practitioner in the Virgin Islands,

acting on behalf of the chargee or authorised person.

(2) Subject to subsection (3), an application or notice referred to in subsection (1) shall be accompanied by a written notice in the approved form stating the full name and address of a person in the Virgin Islands who is authorised by the chargee to accept, on its behalf, documents required to be sent by the Registrar to the chargee under this Part.

(3) Subsection (2) does not apply to a chargee if the chargee is

- (a) a company incorporated or continued under this Act;
- (b) a foreign company registered under Part XI;
- (c) a limited partnership formed under the Partnership Act, 1996; or
- (d) an individual resident in the Virgin Islands.

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(4) A chargee may give the Registrar written notice in the approved form of a change in the person in the Virgin Islands authorised by the chargee to accept, on its behalf, documents required to be sent by the Registrar to the chargee under this Part.

(5) A notice under subsection (4) may be filed only by a person specified in subsection (1)(a) or (b).

(6) The Registrar complies with the requirements of this Part in relation to the sending of documents to a chargee by sending the documents to the person in the Virgin Islands most recently notified to the Registrar as the person authorised by the chargee to accept documents on its behalf.”.

**50.** Section 169 of the principal Act is amended by

Section 169 amended.

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

“(2) The definitions of “subsidiary” and “parent” specified in the Regulations do not apply to this Part.”.

**51.** Section 184B of the principal Act is amended in subsection (1) by deleting the words “or proposes to engage in,” and substituting the words “proposes to engage in or has engaged in”.

Section 184B amended.

**52.** The principal Act is amended by inserting the following sections after section 189:

Sections 189A and 189B inserted.

“Resignation of registered agent.

**189A.** (1) A person may resign as the registered agent of a foreign company only in accordance with this section.

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

- (a) give not less than thirty days written notice of his intention to resign as registered agent of the foreign company on the date specified in the notice to a person specified in subsection (3);
- (b) together with the written notice, provide the foreign company with a list of all approved registered agents in the Virgin Islands with their names and addresses; and
- (c) file a copy of the notice and the list of registered agents provided under paragraph (b).

(3) A notice under subsection (2) and a list of approved registered agents shall be sent to

- (a) the principal place of business of the foreign company in the Virgin Islands, if any; and
- (b) a director of the foreign company at the director's last known address or, if the registered agent is not aware of the identity of any director of the foreign company, to the person from whom the registered agent last received instructions concerning the foreign company.

(4) If a foreign company does not appoint a new registered agent on or before the date specified in the notice given under subsection (2), the registered agent may file a notice of resignation as the foreign company's registered agent.

(5) Unless the foreign company has previously changed its registered agent, the resignation of a registered agent is effective the day after the notice of resignation is registered by the Registrar.

Registered agent ceases to be eligible to act.

**189B.** (1) For the purposes of this section, a person ceases to be eligible to act as a registered agent if

- (a) the person ceases to hold a licence under the Company Management Act, 1990 or the Banks and Trust Companies Act 1990; or

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- (b) the Commission withdraws its approval for the person to provide registered agent services.

(2) Where a person ceases to be eligible to act as a registered agent, that person shall, with respect to each foreign company of which he was, immediately before ceasing to be eligible to act, the registered agent, send to the person specified in subsection (3)

- (a) a notice
  - (i) advising the foreign company that he is no longer eligible to be its registered agent;
  - (ii) advising the foreign company that it must appoint a new registered agent within sixty days of the date of the notice; and
  - (iii) specifying that on the expiration of the period specified in subparagraph (ii), he will cease to be the registered agent of the company, if the company has not previously changed its registered agent; and
- (b) a list of persons who are authorised by the Commission to provide registered agent services.

(3) A notice under subsection (2) and a list of approved registered agents shall be sent to

- (a) the principal place of business of the foreign company in the Virgin Islands, if any; and
- (b) a director of the foreign company at the director's last known address or, if the registered agent is not aware of the identity of any director of the foreign company, to the person from whom the registered agent last received instructions concerning the foreign company.

(4) A foreign company which is sent a notice under subsection (2) in accordance with subsection (3) shall, within sixty days of the date of the notice, change its registered agent in accordance with section 188.

(5) A person who has ceased to be eligible to act as a registered agent ceases to be the registered agent of each company to which it which has sent a notice under subsection (2) in accordance with subsection (3), on the earlier of

- (a) the date that the foreign company changes its registered agent in accordance with subsection (4); or
- (b) the first day after the expiry of the notice period specified in subsection (4).

(6) A registered agent who contravenes subsection (2) and a foreign company that contravenes subsection (4) commits an offence and is liable on summary conviction to a fine of \$10,000.

(7) A person does not commit an offence under subsection (6) by reason only of the fact that

- (a) he ceases to be eligible to act as a registered agent; and
- (b) after ceasing to be eligible to act, he continues to be the registered agent of a company during the period from the date he ceases to be eligible to act to the date that the company appoints a new registered agent.”.

Section 193A  
inserted.

**53.** The principal Act is amended by repealing section 193A and substituting the following section:

“Removal of name  
by Registrar.

**193A.** (1) The Registrar may remove a foreign company from the Register of Foreign Companies if

- (a) he has reasonable cause to believe that
  - (i) the foreign company is not carrying on business in the Virgin Islands;
  - (ii) the foreign company is carrying on business for which a licence, permit or authority is required under the laws of the Virgin Islands without having such licence, permit or authority; or

- (iii) the foreign company no longer has status as a legal entity in the jurisdiction in which it is or was incorporated, registered or formed;
- (b) the foreign company does not have a registered agent;
- (c) the foreign company fails to
  - (i) file any return, notice or document required to be filed under this Act; or
  - (ii) pay any fee or penalty payable under this Act by the due date; or
- (d) he is of the opinion that the removal of the foreign company from the Register of Foreign Companies would be in the public interest.

(2) Before removing a foreign company from the Register of Foreign Companies on the grounds specified in subsection (1), the Registrar shall

- (a) send the company a notice stating that
  - (i) he intends to remove the foreign company from the Register of Foreign Companies on one of the grounds specified in subsection (1), specifying the ground; and
  - (ii) unless the foreign company shows cause to the contrary, it will be removed from the Register of Foreign Companies on a date specified in the notice, which shall be no less than thirty days after the date of the notice; and
- (b) publish a notice of his intention to remove the foreign company from the Register of Foreign Companies in the *Gazette*.

(3) After the expiration of the time specified in the notice, unless the foreign company has shown cause to the contrary, the Registrar may remove the foreign company from the Register of Foreign Companies.

(4) The Registrar shall publish a notice of the removal of a foreign company from the Register of Foreign Companies in the *Gazette*.

(5) A foreign company is removed from the Register of Foreign Companies and the foreign company ceases to be registered under this Part on the date specified in the notice sent to the company under subsection (2)(a).

(6) The removal of a foreign company from the Register of Foreign Companies is not affected by any failure on the part of the Registrar to serve a notice on the registered agent of the foreign company or to publish a notice in the *Gazette* under subsection (2).”.

Section 193B  
inserted.

**54.** The principal Act is amended by inserting the following section after section 193A:

“Subsequent  
registration of  
foreign company.

**193B.** (1) This section applies where

- (a) a foreign company has been removed from the Register of Foreign Companies, whether under section 193 or section 193A; and
- (b) the foreign company subsequently applies under section 186 to be registered under this Part.

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

(3) Where a foreign company to which subsection (1) applies has, at any time in the period between its removal from the Register of Foreign Companies and its subsequent application to be registered under section 186, carried on business in the Virgin Islands, it shall not be entitled to be registered under section 187 unless it pays

- (a) the fees that it was or would have been liable for at the time of its removal from the Register of Foreign Companies; and

(b) the penalties that would have been payable for the non-payment of those fees.

(4) The registration of a foreign company to which subsection (1) applies takes effect from the date of its registration, not the date of its removal from the Register of Foreign Companies.”.

**55.** The principal Act is amended in Part XII by inserting the following sections immediately after section 196 and before Division 1: Sections 196A and 196B inserted.

“Interpretation for this Part.

- No. 5 of 2003      **196A.** (1) In this Part, unless the context otherwise requires, “creditor” has the meaning specified in the Insolvency Act, 2003;
- No. 5 of 2003      “liability” has the meaning specified in the Insolvency Act, 2003;
- “licensed insolvency practitioner” means a person holding a licence to act as an insolvency practitioner issued under section 476 of the Insolvency Act, 2003;
- No. 2 of 2010      “private fund” has the meaning specified in the Securities and Investment Business Act 2010;
- No. 2 of 2010      “professional fund” has the meaning specified in the Securities and Investment Business Act 2010;
- “regulated person” has the meaning specified in the Insolvency Act and, subject to subsection (2), includes a person that at any time has been a regulated person;
- “secured creditor” has the meaning specified in the Insolvency Act, 2003; and
- “unsecured creditor” has the meaning specified in the Insolvency Act, 2003;”.

(2) For the purposes of this Part, a company is not considered to be a regulated person if it has, at any time in the 12 months prior to the appointment of a voluntary liquidator under this Part, been a professional or private fund.

(3) Subsection (2) does not apply if, at any time during the period specified in that section, the company has been a public fund.

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, if the voluntary liquidator is an individual who is not resident in the Virgin Islands, the document may only be filed by

- (a) a person qualified to act as the registered agent of a company in accordance with section 91(3), or
- (b) a legal practitioner in the Virgin Islands,

acting on behalf of the voluntary liquidator.”.

Section 197 amended.

**56.** Section 197 of the principal Act is amended in paragraph (b) by inserting after the words “as they fall due”, the words “and the value of its assets equals or exceeds its liabilities”.

Section 198 amended.

**57.** Section 198 is amended in subsection (1) by deleting paragraph (a) and substituting the following paragraph:

- “(a) make a declaration of solvency in the approved form stating that, in their opinion,
  - (i) the company is and will continue to be able to discharge, pay or provide for its debts as they fall due; and
  - (ii) the value of the company’s assets equals or exceeds its liabilities; and”.

Section 199 amended.

**58.** Section 199 of the principal Act is amended

- (a) in the marginal note, by inserting the word “voluntary” before the word “liquidator”;
- (b) in subsection (1), by inserting after the words “voluntary liquidator”, the words “or two or more joint voluntary liquidators”;
- (c) in subsection (5), by deleting the words “as the voluntary liquidator of a company under this section” and substituting the words “, or act, as the voluntary liquidator of a company”; and
- (d) by inserting after subsection (4), the following subsection:

“(4A) Where two or more joint voluntary liquidators are appointed, whether under this section or as a result of an appointment under section 205A, the functions and powers of the

voluntary liquidator may be performed or exercised by any one of the voluntary liquidators or by any two or more of them together, except so far as the resolution of appointment otherwise provides.”.

**59.** Section 200 of the principal Act is amended

Section 200 amended.

- (a) in the marginal note, by deleting the words “long term insurance company or other”;
- (b) by repealing subsections (1) and (2);
- (c) in subsection (3), by deleting the words “, other than a long term insurance company,”; and
- (d) by inserting the following subsection after subsection (3):

“(3A)The Regulations may specify that, in relation to certain specified categories or descriptions of regulated person, the voluntary liquidator or, where joint voluntary liquidators are appointed, at least one of the voluntary liquidators, shall be a licensed insolvency practitioner.”.

**60.** Section 201 of the principal Act is amended by deleting subsection (3) and substituting the following subsection:

Section 201 amended.

- “(3) The voluntary liquidator of a regulated person shall
- (a) send to the Commission a copy of every document that he is required under this Division to file with the Registrar or to send to the directors or members; and
  - (b) give the Commission such further information, explanations and assistance in relation to the liquidation and to any documents sent or provided to the Commission as the Commission may require.”.

**61.** Section 202 of the principal Act is amended by deleting the words “a voluntary liquidator is appointed under section 199” and substituting the words “the notice of the voluntary liquidator’s appointment is filed”

Section 202 amended.

**62.** Section 203 of the principal Act is amended by adding the following subsection after subsection (3):

Section 203 amended.

“ (4) A resolution to appoint a voluntary liquidator is void and of no effect unless the voluntary liquidator files notice of his appointment on or before the fourteenth day following the date of the resolution.”.

Section 204 amended.

**63.** Section 204 of the principal Act is amended in subsection (1) (a)

- (a) by deleting “commencement of the liquidation” and substituting “date of his appointment”; and
- (b) in subparagraph (ii), by inserting after the words “directors”, the words “or an extract complying with the Regulations”.

Sections 205A, 205B, 205C and 205D inserted.

**64.** The principal Act is amended by inserting the following sections after section 205:

“Appointment of additional voluntary liquidator.

**205A.** (1) The members of a company may, by resolution, appoint an eligible individual as an additional voluntary liquidator to act jointly with the voluntary liquidator or voluntary liquidators already appointed.

(2) The members of a company that is a regulated person shall not pass a resolution appointing an additional liquidator unless the Commission has given its prior written consent to the appointment, and any resolution passed in contravention of this subsection is void and of no effect.

Resignation of voluntary liquidator.

**205B.** (1) A voluntary liquidator may only resign in accordance with this section.

(2) Subject to subsection (4), the voluntary liquidator shall give not less than fourteen days’ notice of his intention to resign to each member and director of the company.

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

(4) The directors and members of the company may resolve to accept less than fourteen days’ notice of the voluntary liquidator’s resignation.

(5) On the expiration of the notice period specified in the notice, or such shorter period of notice that may be accepted by the members and directors under subsection (4), the liquidator may send notice of his resignation to each member and director of the company.



(6) Where a voluntary liquidator resigns, he shall file a notice of his resignation and, subject to subsection (7), his resignation takes effect from the date of filing.

(7) The resignation of the voluntary liquidator of a regulated person does not take effect unless the Commission has approved his resignation.

Removal of  
voluntary  
liquidator.

**205C.** (1) A voluntary liquidator may only be removed in accordance with this section.

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

- (a) the voluntary liquidator
  - (i) was not eligible to be appointed, or is not eligible to act, as the voluntary liquidator of the company; or
  - (ii) fails to comply with any direction or order of the Court made in relation to the liquidation of the company; or
- (b) the Court has reasonable grounds for believing that
  - (i) the voluntary liquidator's conduct of the liquidation is below the standard that may be expected of a reasonably competent liquidator;
  - (ii) the voluntary liquidator has an interest that conflicts with his role as voluntary liquidator; or
  - (iii) for some other reason, he should be removed as voluntary liquidator.

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

- (a) a director, member or creditor of the company;

- (b) where the company is a regulated person, the Commission; or
- (c) the Official Receiver.

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

(5) The voluntary liquidator and, where the company is a regulated person, the Commission, shall be given no less than fourteen days' notice of an application under this section.

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

(7) Where the Court removes a voluntary liquidator, the applicant shall file a copy of the order with the Registrar.

Vacancy in office of liquidator.

**205D.** (1) If a vacancy occurs in the office of voluntary liquidator, whether because of the death, resignation or removal of the liquidator, unless at least one liquidator remains in office, an eligible individual shall be appointed as replacement voluntary liquidator by resolution of the members.

(2) Where the company is a regulated person, no individual may be appointed replacement voluntary liquidator under this section unless the Commission has given its prior written consent to the appointment, and any appointment made in contravention of this subsection is void and of no effect.

(3) An individual appointed as voluntary liquidator under this section shall,

- (a) within seven days of his appointment, file a notice of appointment in the approved form; and
- (b) within thirty days of his appointment, advertise notice of his appointment in the manner prescribed.”.

Section 207A amended.

**65.** Section 207A of the principal Act is amended

- (a) by deleting subsection (2) and substituting the following

subsection:

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

- (a) the voluntary liquidator of the company;
- (b) a director, member or creditor of the company;  
or
- (c) where the company is a regulated person, by the Commission.”;

(b) by deleting subsection (3A) and substituting the following subsection:

“(3A) An application for an order under subsection (1) shall be served,

- (a) if made by a person other than the voluntary liquidator, on the voluntary liquidator, and
- (b) if made in respect of a company that is a regulated person and made by a person other than the Commission, on the Commission,

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

(c) in subsection (6), by deleting paragraph (a) and substituting the following paragraph:

“(a) serve a sealed copy of the order,

- (i) if that person is not the voluntary liquidator, on the voluntary liquidator; and
- (ii) if the order is made in respect of a company that is a regulated person and that person is not the Commission, on the Commission; and”.

**66.** Section 209 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

Section 209  
amended.

“(2) If at any time the voluntary liquidator of a company in voluntary liquidation is of the opinion that the company is insolvent, he shall forthwith send a written notice in the approved form

(a) to the Official Receiver; and

(b) if the company is a regulated person, to the Commission.”.

Section 211A  
inserted.

**67.** The principal Act is amended by inserting the following section after section 211:

“Application by  
creditor, company  
insolvent.

**211A.** (1) The Court may, on the application of a creditor of a company, appoint an eligible insolvency practitioner as liquidator of the company in place of the voluntary liquidator, if the Court is satisfied that the company is insolvent.

(2) If the Court makes an order under subsection (1), it may make such other orders as it considers necessary to give effect to the liquidation of the company.

(3) Where a liquidator is appointed under subsection (1),

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(a) the Insolvency Act 2003 applies to the liquidation of the company, subject to such modifications as are appropriate; and

(b) the liquidation of the company is deemed to have commenced on the date of the appointment of the liquidator under Division 1.”.

Section 213  
amended.

**68.** Section 213 of the principal Act is amended in subsection (1) (a) by deleting subparagraph (i) and substituting the following subparagraph:

“(i) does not have a registered agent;”

Section 216  
amended.

**69.** Section 216 of the principal Act is amended by deleting the words “ten years” and substituting the words “seven years”.

Section 217  
amended.

**70.** Section 217 of the principal Act is amended

(a) in subsection (2), by inserting after the words “section 213(1)(a)(i)”, the words “or the struck off company does not have a registered agent”; and

(b) by adding the following subsection after subsection (6):

“(7) Where a company to which subsection (2) applies is restored to the register, it shall forthwith appoint a registered agent under section 91A.”.

**71.** The principal Act is amended by repealing section 218 and substituting the following section:

Section 218  
repealed and  
substituted.

“Application to  
restore dissolved  
company to  
Register.

**218.** (1) Application may be made to the Court to restore a dissolved company to the Register by

- (a) a creditor, former director, former member or former liquidator of the company; or
- (b) any person who can establish an interest in having the company restored to the Register.

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

(3) Notice of the application shall be served on

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

each of whom is entitled to appear and be heard on the hearing of the application.”.

**72.** The principal Act is amended by inserting the following sections after section 218:

Sections 218A and  
218B inserted.

“Court’s powers on  
hearing.

**218A.** (1) Subject to subsection (2), on an application under section 218, the Court may

- (a) restore the company to the Register subject to such conditions as it considers appropriate; and
- (b) give such directions or make such orders as it considers necessary or desirable for the purpose of placing the company and any other persons as nearly as possible in the same position as if the

company had not been dissolved or struck off the Register.

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(2) Where the company was dissolved following the completion or termination of its voluntary liquidation under this Act or its liquidation under the Insolvency Act, 2003, the Court shall not restore the company to the Register unless

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

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

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

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

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

Effect of restoration.

**218B.** (1) Where the Court makes an order restoring a company to the Register, a sealed copy of the Order shall be filed with the Registrar,

(a) in the case of a company to which section 218(2) applies, by the person appointed to be liquidator of the company under section 218A(4); and

(b) in any other case, by the applicant for the Order.

(2) On receiving a filed copy of a sealed order under subsection (1), the Registrar shall restore the company to the Register with effect from the date and time that the copy of the sealed order was filed.

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

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(a) the company is restored as a company in liquidation under this Act or the Insolvency Act; and

(b) the person appointed by the Court as liquidator is constituted liquidator of the company with effect from the time that the company is restored to the Register.

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

(5) If the name of a company has been reused in accordance with Regulations made under section 24(c), the company is restored to the Register with its company number name.

(6) A company that is restored to the Register is deemed to have continued in existence as if it had not been dissolved or struck off the Register.”.

**73.** Section 228A of the principal Act is amended by inserting after subsection (4), the following subsections:

Section 228A  
amended.

“(4A) Subject to subsection (4C), the membership of a member of the Committee, other than the Chairman, is automatically terminated if he is absent from three consecutive meetings of the Committee without an excuse which, in the opinion of the Chairman, is reasonable.

(4B) The automatic termination of the membership of a member takes effect on the fifteenth day following the third meeting for which he is absent.

(4C) The absence of a member from a meeting of the Committee shall be taken into account for the purposes of subsections (4A) and (4B) unless, within 14 days of the meeting, the Chairman certifies in writing that, in his opinion, the member had a reasonable excuse for not attending the meeting.”.

Section 230  
amended.

**74.** Section 230 of the principal Act is amended

- (a) by deleting subsection (3) and substituting the following subsections:

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

(3A) The Regulations may

- (a) provide that specified qualifying documents, specified types or descriptions of qualifying documents, qualifying documents filed by specified persons or by specified types or descriptions of person or all qualifying documents may only be filed by electronic means; and
- (b) specify requirements concerning
- (i) the keeping by the Registrar of the Registers, and of documents filed, in electronic or any other form;
- (ii) the filing of documents in both paper and electronic form; and
- (iii) the issuance by the Registrar of certificates and other documents in electronic form.

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



- (b) in subsection (5), by deleting the words “subsection (4)” and substituting the words “this section”.

**75.** Section 231 of the principal Act is amended by adding the following subsections after subsection (4):

Section 231  
amended.

- “(5) Subsection (6) applies where a company
  - (a) has elected to cease registration of changes in a register under subsection (3); and
  - (b) subsequently elects under subsection (1) to file changes in the same register for registration.
- (6) Where this subsection applies to a company
  - (a) the company shall file for registration all changes made to the Register during the period commencing on the date that the company filed a notice under subsection (3) and ending on the date that it files a subsequent notice under subsection (1); and
  - (b) subsection (4) applies in relation to any period specified in paragraph (a).”.

**76.** Section 232 of the principal Act is amended

Section 232  
amended.

- (a) by redesignating the section as subsection (1); and
- (b) by adding immediately after the redesignated subsection (1), the following new subsection:
  - “(2) The Regulations may provide for the filing and registration of documents, or certain specified types of document, on public holidays.”.

**77.** Section 233 of the principal Act is amended by adding the following subsections after subsection (2):

Section 233  
amended.

- “(3) Subsection (2) applies whether the copy or extract is obtained from a document filed in paper form or is a copy of, or extract from, a document filed in electronic form or is an extract from any Register maintained by the Registrar in electronic form.
- (4) An extract certified by the Registrar as containing particulars of a registered document filed in electronic form is, in the absence of proof to the

contrary, conclusive evidence of the filing and registration of those particulars.”.

Section 235 amended.

**78.** Section 235 of the principal Act is amended by

- (a) deleting subsection (2) and substituting the following subsection:

“(2) The certificate of good standing issued under subsection (1) shall contain such statements as are specified in the Regulations.”;

- (b) adding the following subsection after subsection (2):

“(3) Notwithstanding subsection (1), the Registrar may refuse to issue a certificate of good standing where, in his opinion, it would not be in the public interest to do so.”.

Section 235A inserted.

**79.** The principal Act is amended by inserting the following section after section 235:

“Issue of miscellaneous certificates.

**235A.** The Registrar may, upon request by any person, issue a certificate confirming

- (a) information recorded on the Register in relation to a company; or  
(b) the status of a company.”.

Section 240A inserted.

**80.** The principal Act is amended by inserting the following section after section 240:

“Listed Companies and Funds Regulations.  
No. 2 of 2010

**240A.** (1) In this section, “private fund”, “professional fund” and “public fund” each have the meaning specified in the Securities and Investment Business Act 2010.

(2) The Cabinet may, on the advice of the Commission, make Regulations concerning the application of this Act to listed companies, public funds, private funds and professional funds.

(3) Without limiting subsection (2), Regulations made under that subsection may provide that the provisions of this Act shall apply in relation to listed companies, public funds, private funds or professional funds, or any class or description of listed companies, public funds, private funds or professional funds, or their securities or fund interests, subject to such exceptions,

adaptations and modifications as may be specified in the Regulations.

- (4) The Regulations made under this section may
  - (a) make different provision in relation to different persons, circumstances and cases; and
  - (b) provide, subject to subsection (5), for offences and penalties for any contravention of or failure to comply with specified requirements of the regulations.

(5) A penalty provided for an offence under the Regulations made under this section shall not exceed,

- (a) in the case of a fine, the sum of twenty thousand dollars; and
- (b) in the case of a period of imprisonment, the term of two years.”.

**81.** The principal Act is amended by repealing section 244.

Section 244 repealed.

**82.** The Principal Act is amended in Part I of Schedule 1

Schedule 1 amended.

- (a) by inserting in the table in the correct numerical order, the following fees:

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>
“20	For an application to register an additional foreign character name	\$25
20	For the registration of an additional foreign character name	\$25
20	For an application to change a foreign character name	\$25
20	For the registration of a change of foreign character name	\$25
20	For an application to deregister a foreign character name	\$25
20	For the deregistration of an	\$25

	additional foreign character name	
91A	For filing a notice of appointment of a registered agent	\$50
92A	For filing notices under subsection (2) in relation to one or more companies, or a combined notice under subsection (4), for 1 – 1,000 companies 1,001 – 10,000 companies 10,001 – 50,000 companies 50,001 – 100,000 companies 100,001 companies or more	\$1,000 \$2,000 \$3,000 \$4,000 \$5,000
92B	For filing notices under subsection (2) in relation to one or more companies, or a combined notice under subsection (4), for 1 – 1,000 companies 1,001 – 10,000 companies 10,001 – 50,000 companies 50,001 – 100,000 companies 100,001 companies or more	\$1,000 \$2,000 \$3,000 \$4,000 \$5,000
92C	For filing notices under subsection (2) in relation to one or more companies, or a combined notice under subsection (4), for 1 – 1,000 companies 1,001 – 10,000 companies 10,001 – 50,000 companies 50,001 – 100,000 companies 100,001 companies or more	\$1,000 \$2,000 \$3,000 \$4,000 \$5,000
235A	For issuing a certificate confirming information on the Register in relation to a company or the status of a company	25.00

(b) in respect of the fees payable under section 233, by deleting the

text in Column 2 and the associated fees in Column 3, and substituting the following:

Column 1	Column 2
For inspecting the records on the Register of Companies relating to a company or on the Register of Foreign Companies relating to a foreign company	
(a) where the inspection takes place at the office of the Registrar, whether the inspection is of electronic or paper records	\$15.00
(b) in any other case	\$30.00
For inspecting the Register of Charges	\$15.00
For inspecting the Register of Approved Registered Agents	\$15.00

**83.** The Principal Act is amended in Part VII of Schedule 2 by deleting in paragraph 57(2)(b)(ii), the words “paragraph 54” and substituting the words “paragraph 56”.

Schedule 2 amended.

**84.** (1) In this section, “commencement date”, in relation to a provision of this Act, means the date when the provision of this Act comes into force.

Transitional provisions.

(2) The following transitional provisions apply:

- (a) section 32(3) of the principal Act (inserted by section **12** of this Act) applies in respect of a document specified in section 34(2) of the principal Act, whether it was registered by the Registrar before or after the commencement date;
- (b) section 36(1)(f) of the principal Act (inserted by section **13** of this Act), applies to a company, whether incorporated or continued before or after the commencement date;
- (c) section 66(7A) of the principal Act (inserted by section **18** of this

- Act), applies to a mortgage or charge created on or after the commencement date;
- (d) the amendment to section 202 of the principal Act made by section **61** of this Act does not have any effect in relation to a voluntary liquidator appointed before the commencement date, even if the notice of his appointment is filed after the commencement date;
  - (e) section 203(4) of the principal Act (inserted by section **62** of this Act), does not have any effect in relation to a voluntary liquidator appointed before the commencement date, even if the notice of his appointment is filed after the commencement date;
  - (f) the amendment to section 204(1)(a) of the principal Act made by section **63** of this Act does not have any effect in relation to a voluntary liquidator appointed before the commencement date, even if the notice of his appointment is filed after the commencement date; and
  - (g) the amendment to section 216 of the principal Act made by section **69** of this Act does not apply to a company that was struck off the Register six years or more prior to the commencement date.

Passed by the House of Assembly this            day of            , 2012.

Speaker

Clerk of the House of Assembly

## OBJECTS AND REASONS

This Bill amends the BVI Business Companies Act, 2004 (No. 16 of 2004) (“the Act”). While many of the amendments to the Act are relatively minor, the Bill represents the first major review of the Act since its enactment in 2004. The following are some of the more substantive changes to the Act.

Clause 3 inserts a number of new definitions into the Act. These are considered further in these Objects and Reasons, where necessary, when considering the substantive amendments to which they relate.

Clause 4 repeals section 4 of the Act which sets out the meaning of “subsidiary” and “holding company”. This is because new definitions of “subsidiary” and “parent” are specified in the Regulations. These ensure consistency with definitions used in other legislation.

Clause 6 adds a new subsection (6) to section 13 of the Act. In summary, it sets out the consequences should a notice of amendment not be filed within the times specified in a Court order made under section 13(5). A failure to file the Court order will result in the order ceasing to have effect.

Clause 7 makes a number of minor amendments to section 18 of the Act. The proposed new section 18(3) will enable the Registrar to allow companies that are affiliates, defined as being in the same group, to have similar names. It is considered that, provided companies are in the same group, the risk of confusion is low.

The principal change effected by clause 8 is to amend section 20 of the Act to specify in more detail what may be included in, and widen the scope of, the Regulations concerning foreign character names. A robust system for the registration of foreign character names should increase the attractiveness of the jurisdiction as a corporate domicile.

The principal change effected by clause 9 (repeal and substitution of section 24) is to enable the Regulations to provide for the reuse of the names of companies that have continued out of the jurisdiction.

Clause 10 inserts a new section 26A. There have been instances where the Registrar has been subject to court proceedings for registering companies with names that other persons claim to have a right or interest in. Whilst it is legitimate for companies and other persons to seek to protect their rights and interests in names, trademarks and other service marks, the Registrar cannot be expected to investigate possible rights and interests before allowing the use of names. If a person seeks to establish a right or interest in a name that a company has registered, it may seek a remedy from the Court and, if successful, it is expected that the Court would order the company to make application to change its name. The litigation should not involve the Registrar. The new section 26A protects the Registrar. New section

26A(3) provides that the registration of a company with a company name does not give the company any interest in, or rights over, the name that it would not otherwise have had.

Clauses 19, 21 and 22 make amendments to sections 67, 71 and 72 of the Act that are intended to strengthen the provisions that ensure that information on the owners of bearer shares in companies registered under the Act can be obtained by the Authorities. Clause 23 requires a registered agent to maintain a register of bearer shares of a bearer share company.

Clause 27 inserts a new section 91A which fills a lacuna in the Act. Although the Act enables a company to change its registered agent, there is no provision enabling a company to appoint a registered agent should, at any time, it not have one.

Clause 29 inserts three new sections, section 92A, 92B and 92C. The purpose of these new sections is to permit a registered agent to register bulk changes of registered agent address, registered agent name and registered office in respect of each company that the registered agent acts for in the event that the registered agent changes its name or address. Where the registered agent registers a bulk change under one of these sections, the memorandum of the company is deemed to be amended. It is unfair that a company has to pay a charge, for example, for registering a change in registered office simply because its registered agent changes its address. These sections, together with the associated amendments to Schedule 1 (fees) substitutes a fee payable by the registered agent, which is scaled depending upon the number of companies that it acts for. However, the fee charged is significantly less than would be charged on a company by company basis.

Clause 30 amends section 93 by introducing a provision that enables a registered agent to rescind a notice of intention to resign. On receipt of an intention of resignation to resign, a company may have taken steps to appoint a new registered agent. Therefore, the rescission notice does not take effect until 14 days after it is sent to the company, which provides the company with time to change its registered agent.

It is onerous and impracticable for listed companies and certain types of mutual fund to comply with the record keeping requirements in section 96 of the Act. The new subsection (3A) inserted into section 96 by clause 32 enables the Listed Companies and Funds Regulations to modify the record keeping requirements for listed companies and mutual funds.

Clause 38 repeals section 129 of the Act (consents of directors) and substitutes a new section (directors resolutions). This more closely aligns the provisions concerning resolutions of directors with those for resolutions of members.

Clause 39 repeals the existing provisions concerning the appointment of alternate directors (section 130) and substitutes a new section 130 and clause 40 inserts a new



section 130A. The two new sections contain much more comprehensive provisions. Additional matters covered include termination of appointment, the requirement for written notice of appointment and termination to be given to the company and the rights, duties and powers of alternate directors.

Clauses 46, 47 and 49 are intended to provide for greater certainty and efficiency in relation to the registration of charges. The Act currently permits charges and associated documents to be registered by the company, the chargee or by a person authorised to act on behalf of the company or chargee. This presents the Registry with significant problems as charges may be, and often are, filed by persons who are not familiar with the requirements. This not only causes the Registry significant additional work but, as it delays registration, may also prejudice the chargee. The amendments made by these clauses provide that only a BVI registered agent or a legal practitioner in the BVI may file a charge on behalf of a company or a chargee.

The new section 165A inserted by clause 49 also requires a chargee situated outside the Virgin Islands to provide the Registrar with the name and address of a person in the Virgin Islands authorised to receive documents sent by the Registrar. This will overcome the current problems facing the Registrar, where documents sent overseas are often returned undelivered.

Clause 52 inserts new sections 189A and 189B. Section 189A provides for the resignation of registered agents appointed in respect of foreign companies and section 189B sets out the requirements should the registered agent of a foreign company cease to be eligible to act. These sections mirror for foreign companies the equivalent provisions in the Act that apply in relation to companies incorporated or continued under the Act.

Clause 53 repeals section 193A and substitutes a new section and clause 54 inserts a new section 193B. Section 193A fills a lacuna in the Act by enabling the Registrar to remove a foreign company from the Register of Foreign Companies for cause. Section 193B achieves two principal purposes. First it clarifies the position should a foreign company that has been removed from the Register subsequently apply to be registered. Section 193B(4) makes it clear that the subsequent registration takes effect from the date of registration and cannot be backdated to the date of removal. The second purpose is to ensure that, if a foreign company that has been removed from the Register subsequently applies to be registered, it has to pay any fees due in relation to the period of its prior registration; this will be in addition to any penalty payable in respect of such fees.

Clause 55 inserts two new sections into the Act, sections 196A and 196B. Section 196A contains certain definitions applicable to Part XII (Liquidation, Striking-Off and Dissolution) and section 196B provides that any notices filed by voluntary liquidators not resident in the Virgin Islands, must be filed by a person qualified to act as a registered agent or a legal practitioner, in either case acting on behalf of the voluntary liquidator.

Clause 57 amends section 198 of the Act to align the declaration of solvency with the definition of “insolvent” in the Insolvency Act, 2003.

Clause 58 amends section 199 of the Act to make it clear that joint voluntary liquidators of a company may be appointed.

Clause 59 amends section 200 to remove the prohibition against long term insurance companies appointing a voluntary liquidator. All regulated entities will be able to appoint a voluntary liquidator, provided that the Commission has given its consent in writing. New section 200(3A) of the Act enables the Regulations to require that only a licensed insolvency practitioner may be appointed as voluntary liquidator of certain specified types of regulated person.

Clauses 61 makes an important amendment to section 202 of the Act in relation to the commencement of a voluntary liquidation. Under the current Act, a voluntary liquidation commences on the appointment of the voluntary liquidator. The effect of the amendment made by this clause is to provide that a voluntary liquidation commences on the date the liquidator files notice of appointment. This provides greater certainty.

In order to avoid a resolution for the appointment of a liquidator being passed but not registered for an extended period, clause 62 adds a new subsection (4) to section 203 of the Act which provides that a resolution is void if the liquidator does not file a notice of appointment within 14 days.

Clause 64 inserts new sections 205A, 205B, 205C and 205D. Section 205A enables an additional voluntary liquidator to be appointed to act jointly with the existing voluntary liquidator or liquidators, after the voluntary liquidation has commenced. Sections 205B, 205C and 205D are intended to fill lacunae in the Act by providing for the resignation of a voluntary liquidator, the removal by the Court of a voluntary liquidator and the procedures should there be a vacancy in the office of voluntary liquidator.

Clause 66 amends section 209 by requiring a voluntary liquidator who forms the opinion that the company in voluntary liquidation is insolvent to give written notice to the Official Receiver and, where the company is a regulated person, to the Commission.

Clause 67 inserts an important new section into the Act, section 211A. There is no provision under the current Act that allows a creditor to apply to the Court to convert a voluntary liquidation to an Insolvency Act liquidation. A creditor in such circumstances would have to start proceedings under the Insolvency Act. This could be time consuming and expensive. Section 211A enables a creditor to apply to the Court for an order converting a voluntary liquidation into an Insolvency Act liquidation.

Clause 69 amends section 216 of the Act to reduce the period between strike off and dissolution from ten years to seven years.

Clause 71 is intended to rationalise the provisions governing the restoration by the Court of dissolved companies. The principal change is that, where a company was in liquidation when dissolved, it must be restored into a state of liquidation.

Clause 74 enables the Regulations to provide for the filing of documents and the provision of information to the Registrar in electronic form.

Clause 79 inserts a new section 235A into the Act which provides for the issue by the Registrar of miscellaneous certificates, for which it is intended that a fee of \$25 would be charged.

Clause 80 inserts a new section 240A which enables the Cabinet, on the advice of the Commission, to make Listed Company and Funds Regulations, which may exclude or modify the provisions of the Act in relation to listed companies and funds.

Clause 82 amends Schedule 1, the fees schedule, by increasing certain fees and providing for some additional fees.

Clause 84 specifies certain transitional provisions.

Minister of Finance