

No. 16 of 2022

VIRGIN ISLANDS
INSOLVENCY (AMENDMENT) ACT, 2022
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I ASSENT
(Sgd.) John Rankin CMG,
Governor.
23rd December, 2022

VIRGIN ISLANDS
No. 16 of 2022

AN ACT TO AMEND THE INSOLVENCY ACT, REVISED EDITION 2020.

[Gazetted 29th December, 2022]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement

1. (1) This Act may be cited as the Insolvency (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 Insolvency Act, Revised Edition 2020 (hereinafter referred to as the “principal Act”) is amended in subsection (1)
 - (a) by inserting in their appropriate alphabetical order, the following new definitions:
 - “bank” means a regulated person that is licensed under the Banks and Trust Companies Act, Revised Edition 2020, to carry on banking business as defined in section 2(1) of that Act;
 - “International Tax Authority” means the International Tax Authority established under section 3(1) of the International Tax Authority Act, Revised Edition 2020;
 - “VIDIC” means the Virgin Islands Deposit Insurance Corporation established under section 3(1) of the Virgin Islands Deposit Insurance Act, 2016, No. 7 of 2016;” and

- (b) in the definition of “Official Receiver”, by deleting the words “by the Commission”.

Section 159 amended

3. Section 159 of the principal Act is amended by deleting subsection (5) and substituting the following subsection:

“(5) The members of a company that is a regulated person may not appoint a liquidator under subsection (2) unless at least 5 business days written notice of the resolution, or such shorter period of notice as

- (a) the VIDIC, in the case of a regulated person that is a bank;
or

- (b) the Commission, in the case of any other regulated person,
may agree to accept in writing, has been given to the VIDIC or the Commission, as the case may be.”.

Section 161 amended

4. Section 161 of the principal Act is amended in subsection (3A) by deleting the words “section 161(1)(a)” and substituting the words “subsection (1)(a)”.

Section 162 amended

5. Section 162 of the principal Act is amended

- (a) in subsection (2)

- (i) in the opening paragraph, by deleting the words “Subject to subsections (3), (4) and (5)” and substituting the words “Subject to subsections (3), (4), (5), (5A) and (5B)”; and

- (ii) by deleting paragraphs (ea) and (f) and substituting the following paragraphs:

- “(f) the International Tax Authority;

- (g) the VIDIC; and

- (h) the Attorney General.”;

- (b) in subsection (4) by inserting after the words “International Tax Authority”, the words “, the VIDIC”;

- (c) by deleting the figure subsection “(5a)” and substituting the figure subsection “(5A)”;

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

“(5B) The VIDIC shall only make an application to appoint a liquidator under subsection (1)(c) if the company that is a bank is in financial distress or is placed into resolution and the VIDIC is empowered, in accordance with rules prescribed under section 7(2)(c) of the Virgin Islands Deposit Insurance Act, to act as liquidator of a member institution or such member institution’s holding company or subsidiary which becomes insolvent.”; and

(e) by inserting after subsection (8), the following new subsection:

- “(9) For the purposes of subsection (5B)
 - (a) “financial distress” and “member institution” shall be construed in accordance with section 2 of the Virgin Islands Deposit Insurance Act; and
 - (b) “resolution” shall be construed in accordance with section 2(1) of the Banks and Trust Companies Act.”.

Section 163 amended

6. Section 163 of the principal Act is amended

- (a) in subsection (3A) by inserting after the words “International Tax Authority”, the words “, the VIDIC”;
- (b) by inserting after subsection (3C), the following new subsection:

“(3D) The VIDIC shall only make an application to appoint a liquidator under subsection (1) (c) if the company that is a bank is in financial distress or is placed into resolution and the VIDIC is empowered, in accordance with rules prescribed under section 7(2)(c) of the Virgin Islands Deposit Insurance Corporation Act, to act as liquidator of a member institution or such member institution’s holding company or subsidiary which becomes insolvent.”; and

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

- “(5) For the purposes of subsection (3D)
 - (a) “financial distress” and “member institution” shall be construed in accordance with section 2 of the Virgin Islands Deposit Insurance Act; and
 - (b) “resolution” shall be construed in accordance with section 2(1) of the Banks and Trust Companies Act.”.

Section 170 amended

7. Section 170 of the principal Act is amended in subsection (2) by deleting paragraphs (ea) and (f) and substituting the following paragraphs:

- “(f) the International Tax Authority;
- (g) the VIDIC; and
- (h) the Attorney General.”.

Section 187 amended

8. Section 187 of the principal Act is amended in subsection (2)

- (a) in paragraph (b), by deleting the word “or” at the end of the paragraph;
- (b) by deleting paragraph (c) and substituting the following paragraphs:

- “(c) the International Tax Authority, if the appointment was made on its application;
- (d) the VIDIC, if the appointment was made on its application; or
- (e) the Official Receiver.”.

Section 226 amended

9. Section 226 of the principal Act is amended in subsection (2)

- (a) in paragraph (a), by deleting the word “and” at the end of the paragraph;
- (b) in paragraph (b), by deleting the full-stop at the end of the paragraph and substituting a semi-colon; and
- (c) by adding after paragraph (b), the following new paragraphs:
 - “(c) to the Commission, if the company is a regulated person; and
 - (d) to the International Tax Authority or the VIDIC, if the application for the appointment of the liquidator under section 162 was made by the International Tax Authority or the VIDIC, as the case may be.”.

Section 233 amended

10. Section 233 of the principal Act is amended in subsection (2) by inserting after the words “a member of the company”, the words “, the International Tax Authority, the VIDIC”.

Section 234 amended

11. Section 234 of the principal Act is amended in subsection (2)

- (a) in paragraph (a)(ii), by deleting the word “and” at the end of the paragraph;
- (b) in paragraph (b), by deleting the full-stop at the end of the paragraph and substituting the word “; and”; and
- (c) by adding after paragraph (b), the following new paragraphs:
 - “(c) if the liquidation relates to a company that is a regulated person, send to the Commission a copy of the final report and the statement of realisations and distributions sent to the creditors and members of the company; and
 - (d) if the liquidator was appointed on the application of the International Tax Authority or the VIDIC under section 162, send to the Authority or the VIDIC, as the case may be, a copy of the final report and the statement of realisations and distributions sent to the creditors and members of the company.”.

Section 271 amended

12. Section 271 of the principal Act is amended in subsection (1) by adding at the end of the subsection before the full-stop, the words “and, if the company is a regulated person, to the Commission as well”.

Section 476 amended

13. Section 476 of the principal Act is amended by revoking subsection (3).

Section 479 amended

14. Section 479 of the principal Act is amended

- (a) in subsection (3), by deleting the word “revoke” and substituting the word “cancel”; and
- (b) by inserting after subsection (8), the following new subsection

“(9) For purposes of subsection (1) (c), a licensee is considered to be no longer resident in the Virgin Islands if he or she no longer meets the residency requirement contained in paragraph 1 of Chapter III of the Insolvency Code of Practice.”.

Section 487A amended

15. Section 487A of the principal Act is amended

- (a) by repealing subsection (1) and substituting it by the following subsection:

“(1) The Government shall open and maintain a separate account called the Insolvency Surplus Account.”;
- (b) in subsection (2), by deleting the word “Commission” and substituting the word “Government”; and
- (c) in subsection (3), by deleting the word “Commission” and substituting the word “Government”.

Section 488 amended

16. Section 488 of the principal Act is amended

- (a) in subsection (1), by deleting the word “Commission” and substituting the word “Government”; and
- (b) in subsection (2), by deleting the word “Commission” and substituting the word “Government”.

Section 489 amended

17. Section 489 of the principal Act is amended by deleting the words “The Commission shall appoint one of its officers as” and substituting the words “The Government shall appoint a”.

Section 490 amended

18. Section 490 of the principal Act is amended in the opening paragraph by deleting the words “him or her” and substituting the words “he or she”.

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

Corine N. George-Massicote,
Speaker.

Phyllis Evans,
Clerk of the House of Assembly.