



VIRGIN ISLANDS

## **COMPANY MANAGEMENT ACT**

### **Revised Edition**

showing the law as at 1 January 2020

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014.

This edition contains a consolidation of the following laws—

#### **COMPANY MANAGEMENT ACT**

Act 8 of 1990 .. in force 15 June 1991

Amended by Acts: 3 of 1995 .. in force 12 January 1996

12 of 2001 .. in force 1 January 2002 (S.I. 51/2001)

13 of 2006 .. in force 16 October 2006

9 of 2010 .. in force 18 November 2010

6 of 2018 .. in force 1 October 2018

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**SEE STATUTORY INSTRUMENTS BOOKLET**





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## COMPANY MANAGEMENT ACT

*(Acts 8 of 1990, 3 of 1995, 12 of 2001,  
13 of 2006, 9 of 2010 and 6 of 2018)*

AN ACT TO PROVIDE FOR THE LICENSING AND CONTROL OF THE BUSINESS OF COMPANY MANAGEMENT AND RELATED MATTERS.

### Commencement

*[15 June 1991]*

### Short title

1. This Act may be cited as the Company Management Act.

## PART I

### PRELIMINARY

### Interpretation

2. (1) In this Act—

“approved form” means a form approved by the Commission in accordance with section 41B of the Financial Services Commission Act; *(Inserted by Act 13 of 2006 and amended by Act 9 of 2010)*

“auditor” means a person who—

- (a) is qualified to act as an auditor of a licensee in accordance with section 56 of the Regulatory Code; and
- (b) is in good standing with respect to that qualification;  
*(Substituted by Act 9 of 2010)*

“Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act; *(Inserted by Act 12 of 2001)*

“company management” means—

- (a) the formation of Virgin Islands companies, including the continuation of companies as Virgin Islands companies;
- (b) the provision of registered agent services;
- (c) the provision of registered office services;
- (d) the provision of directors or officers for companies, whether such companies are Virgin Islands companies or companies incorporated or registered in a jurisdiction outside the Virgin Islands; and
- (e) the provision of nominee shareholders in companies, whether such companies are Virgin Islands companies or companies

incorporated or registered in a jurisdiction outside the Virgin Islands; *(Substituted by Act 13 of 2006)*

“company management business” means the provision of company management services for profit or reward; *(Inserted by Act 13 of 2006)*

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

- (a) more than 50% of the voting rights of the licensee; or
- (b) a significant interest in the licensee which, although not constituting more than 50% of the voting rights of the licensee (in aggregate or otherwise), gives the person a considerable advantage in the voting rights of the licensee if the remaining votes in the licensee are not voted on;  
*(Inserted by Act 9 of 2010)*

“financial year” means, in relation to a licensee under this Act—

- (a) the period not exceeding 53 weeks at the end of which the balance of the licensee’s account is struck; or
- (b) if no such balance is struck, or if a period in excess of 53 weeks is used, then, a calendar year;

“licence” means a licence granted under subsection (3) of section 4;

“licensee” means a person holding a licence under this Act;

“prescribed” means prescribed in a Regulatory Code; *(Inserted by Act 13 of 2006)*

“registered agent” means a person who provides registered agent services;  
*(Inserted by Act 6 of 2018)*

“registered agent services” had the meaning specified in section 9B; *(Inserted by Act 13 of 2006 and amended by Act 6 of 2018)*

“registered office services” has the meaning specified in subsection (1B);  
*(Inserted by Act 13 of 2006)*

“Regulatory Code” means a Regulatory Code issued under the Financial Services Commission Act; *(Inserted by Act 13 of 2006)*

“senior officer” means a person appointed to perform such supervisory or managerial functions with respect to a licensee as may be prescribed;  
*(Inserted by Act 13 of 2006)*

“significant interest”, in respect of a licensee, means a holding or interest in the licensee or in any holding company of the licensee held or owned by a person, either alone or with any other person and whether legally or equitably, that entitles or enables the person, directly or indirectly—

- (a) to control 10% or more of the voting rights of the licensee;
- (b) to a share of 10% or more in any distribution made by the licensee; or
- (c) to a share of 10% or more in any distribution of the surplus assets of the licensee; *(Inserted by Act 13 of 2006 and amended by Act 9 of 2010)*



“Virgin Islands company” means a company that is incorporated, continued or re-registered under the BVI Business Companies Act. *(Substituted by Act 9 of 2010)*

(1A) *(Repealed by Act 6 of 2018)*

(1B) *(Repealed by Act 6 of 2018)*

(2) For the purposes of this Act and subject to subsection (5), a company is deemed to be a subsidiary of another if—

(a) that other, either—

(i) is a member of it and controls the composition of its board of directors; or

(ii) holds more than half in nominal value of its equity share capital; or

(b) the first-mentioned company is a subsidiary of any company that is the other’s subsidiary.

(3) For the purposes of subsection (2), the composition of a company’s board of directors is deemed to be controlled by another company if that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships.

(4) For the purposes of subsection (3), the other company is deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied—

(a) that a person cannot be appointed to it without the exercise in his or her favour by the other company of such a power as is mentioned in subsection (3);

(b) that a person’s appointment to the directorship follows necessarily from his or her appointment as a director of the other company; or

(c) that the directorship is held by the other company itself or by a subsidiary of it.

(5) In determining whether one company is a subsidiary of another—

(a) any shares held or power exercisable by the other in a fiduciary capacity are to be treated as not held or exercisable by it;

(b) subject to paragraphs (c) and (d), any shares held or power exercisable—

(i) by any person as nominee for the other except where the other is concerned only in a fiduciary capacity; or

(ii) by, or by a nominee for, a subsidiary of the other not being a subsidiary which is concerned only in a fiduciary capacity, are to be treated as held or exercisable by the other;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed securing any issue of such debentures are to be disregarded; and

- (d) any shares held or power exercisable by, or by a nominee for, the other or its subsidiary, not being held or exercisable as mentioned in paragraph (c), are to be treated as not held or exercisable by the other if the ordinary business of the other or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable as above-mentioned by way of security only for the purposes of a transaction entered into in the ordinary course of that business.
- (6) For purposes of this Act—
- (a) a company is deemed to be another's holding company if the other is its subsidiary; and
- (b) a body corporate is deemed the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.

## PART II

### LICENCES

#### **Prohibition on unauthorised company management business**

3. (1) No person shall carry on the business of company management business in or from within the Virgin Islands unless that person holds a valid licence issued under this Act or under the Banks and Trust Companies Act authorising him or her to carry on that kind of business.

(2) For the purposes of subsection (1), a Virgin Islands company that carries on company management business outside the Virgin Islands is deemed to be carrying on company management business from within the Virgin Islands.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

*(Substituted by Act 13 of 2006)*

#### **Application for licence**

4. (1) A licence is obtainable by making written application to the Commission in the approved form. *(Amended by Acts 12 of 2001 and 13 of 2006)*

(2) *(Repealed by Act 13 of 2006)*

(3) The Commission may issue a licence to an applicant if it is satisfied that—

- (a) the applicant satisfies the requirements of this Act and the Regulatory Codes in respect of the application and will, upon issuance of the licence, be in compliance with this Act and the Regulatory Codes;
- (b) the applicant satisfies the fit and proper criteria prescribed;  
*(Amended by Act 9 of 2010)*

(c) the organisation, management and financial resources of the applicant are adequate for the carrying on of the business in respect of which a licence is sought; and

(d) issuing the licence is not against the public interest.

*(Substituted by Act 13 of 2006)*

(3A) *(Repealed by Act 6 of 2018)*

(3B) *(Repealed by Act 6 of 2018)*

(4) Any decision to refuse to grant a licence, other than a licence in respect of a business in existence at the date of the commencement of this Act, is final and is not subject to any appeal.

(5) The Commission shall cause notice of the grant of a licence under this Act to be published in such manner as shall be specified in regulations made under section 26. *(Amended by Act 13 of 2006)*

(6) Where prior to the coming into force of this Act (hereinafter referred to as “the 2018 Amendment Act”), a company engaged or approved to engage in company management business was listed in a schedule of the licence of a licensee as a subsidiary of the licensee, that company shall, no later than 30th June, 2019, submit a written application to the Commission to be separately licensed. *(Inserted by Act 6 of 2018)*

(7) Where a company referred to in subsection (6) fails to comply with the requirement of that subsection by the stipulated deadline—

(a) the company shall, after the stipulated deadline, be deemed to have ceased to be listed in the schedule of the licence of the licensee;

(b) the licensee on whose licence the company was listed shall no later than 31st July, 2019 surrender its licence to the Commission; and

(c) the Commission shall re-issue the licensee’s licence without a list of any subsidiary included on the licence.

*(Inserted by Act 6 of 2018)*

(8) Upon the coming into force of the 2018 Amendment Act—

(a) a licensee cannot merge into a company that is listed as a subsidiary on the licensee’s licence unless the company had applied for and obtained a separate licence under this Act; and

(b) a company that is listed as a subsidiary on the licensee’s licence may, before the end of the deadline stipulated in subsection (6), merge into the licensee.

*(Inserted by Act 6 of 2018)*

(9) A company that is listed in the schedule of a licensee’s licence that engages in company management business after the deadline stipulated in subsection (6) without obtaining a separate licence commits an offence and is liable on conviction to a fine not exceeding \$50,000. *(Inserted by Act 6 of 2018)*

**Fees**

**4A.** Regulations made under section 62 of the Financial Services Commission Act may provide for the fees chargeable and payable under the Act. *(Substituted by Act 9 of 2010)*

**5.** *(Repealed by Act 13 of 2006)*

**Validity of licence**

**6.** A licence is valid until it is suspended, cancelled or revoked by the Commission in accordance with the Financial Services Commission Act. *(Substituted by Act 13 of 2006 and amended by Acts 9 of 2010 and 6 of 2018)*

**Exemptions from Licences**

**7.** (1) A person who is licensed under this Act is not required to be licensed under the Business, Professions and Trade Licences Act to carry on company management business. *(Amended by Act 13 of 2006)*

(2) This Act does not apply to a company licensed as a Class I or Class III or Class V licensee under the Banks and Trust Companies Act. *(Amended by Acts 9 of 2010 and 6 of 2018)*

**Existing businesses**

**8.** A person who at the date of commencement of this Act is carrying on the business of company management has a period of 3 months from that date within which to comply with the provisions of this Act.

**Notification of change in particulars of licensee**

**9.** (1) Where a change occurs in the particulars of a licensee as set out in the application for the licence, the licensee shall, within 14 days, inform the Commission of the change. *(Amended by Acts 12 of 2001 and 13 of 2006)*

(2) A licensee who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000. *(Inserted by Act 13 of 2006)*

**Principal office and authorised agent**

**9A.** (1) A licence shall not be granted to any person unless the person designates, and notifies to the Commission—

- (a) a principal office in the Virgin Islands; and
- (b) by name, 2 individuals resident in the Virgin Islands approved by the Commission to be that person's authorised agents.

(2) The functions of an authorised agent are to—

- (a) act as an intermediary between the licensee and the Commission, except that in the absence or inability of one authorised agent to act, the other authorised agent may carry out the functions of both authorised agents; and

(b) accept, on behalf of the licensee, service of legal and other process, including any other documents.

*(Substituted by Act 6 of 2018)*

(3) A licensee shall obtain the prior written approval of the Commission for any change of—

(a) its principal office in the Virgin Islands; and

(b) any of the persons designated as an authorised agent pursuant to subsection(1)(b).

(4) Where the Commission has approved a person under subsection (1)(b) or (3)(b) as an authorised agent, it may in writing revoke the approval.

(5) A licensee who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

*(Inserted by Act 9 of 2010)*

### **Registered agent, and registered agent and registered office services**

**9B.** (1) A person provides registered agent services if he or she—

(a) is licensed under this Act or the Banks and Trust Companies Act but excludes a person licensed to provide banking business under that Act;

(b) acts as the registered agent of—

(i) a company incorporated under the BVI Business Companies Act;

(ii) a corporation incorporated under or pursuant to an enactment;

(iii) a foreign company registered under the BVI Business Companies Act; or

(iv) a limited partnership registered under the Partnership Act; and

(c) provides registered office services or carries on other company management services under this Act.

(2) A person provides registered office services if he or she provides the registered office for any of the entities listed in subsection (1)(b).

(3) The Commission may, by an Order published on the Internet site, restrict a registered agent or any class of registered agents from acting as a registered agent of any of the entities listed in subsection (1)(b) unless the person or class of persons meets such conditions as the Commission may specify in the Regulatory Code.

(4) The Commission may specify in the Regulatory Code additional registered agent services and registered office services or specify the details of any registered agent services or registered office services as it may consider necessary.

*(Inserted by Act 6 of 2018)*

**Capital resources requirements**

10. (1) A company holding a licence shall at all times maintain capital resources of not less than the prescribed minimum or such greater capital resources as the Commission may require the licensee to maintain.

(2) For the purposes of this section, the definition of “capital resources” and acceptable forms of capital may be specified in a Regulatory Code.

*(Substituted by Act 13 of 2006)*

**Display of licence**

11. A licence issued under this Act shall be prominently displayed on the premises where company management business is carried on, including at the head office and every branch of the licensee. *(Amended by Acts 13 of 2006 and 9 of 2010)*

12. *(Repealed by Act 13 of 2006)*

**PART III****TRANSFERABILITY OF SIGNIFICANT INTERESTS****Disposing of or acquiring significant interest in licensee**

13. (1) A person owning or holding a significant interest or controlling interest in a licensee shall not sell, transfer, merge, charge or otherwise dispose of his or her interest in the licensee, or any part of his or her interest, unless the prior written approval of the Commission has been obtained. *(Substituted by Act 13 of 2006 and amended by Acts 9 of 2010 and 6 of 2018)*

(2) A person shall not, whether directly or indirectly, acquire a significant interest in a licensee unless the prior written approval of the Commission has been obtained. *(Substituted by Act 13 of 2006)*

(3) A licensee shall not, unless the prior written approval of the Commission has been obtained—

- (a) cause, permit or acquiesce in a sale, transfer, merger, charge or other disposition referred to in subsection (1);
- (b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation of its share capital that results in—
  - (i) a person acquiring a significant interest or controlling interest in the licensee; or
  - (ii) a person who already owns or holds a significant interest or controlling interest in the licensee, increasing or decreasing the size of his or her interest.

*(Substituted by Act 13 of 2006 and amended by Act 6 of 2018)*

(4) An application to the Commission for approval under subsection (1), (2) or (3) shall be made by the licensee. *(Substituted by Act 13 of 2006)*

(5) The Commission shall not grant approval under subsection (1), (2) or (3) unless it is satisfied that following the acquisition or disposal—

- (a) the licensee will continue to meet the criteria for licensing specified in section 4(4); and
- (b) any person who will acquire a significant interest or controlling interest in the licensee satisfies fit and proper criteria prescribed.  
*(Amended by Acts 9 of 2010 and 6 of 2018)*  
*(Substituted by Act 13 of 2006)*

(5A) In the case of a merger where the licensee is not the surviving company and the surviving company is not or will not be licensed under this Act, the reference in subsection (5)(a) to “the licensee” shall be restricted to the licensee that is licensed under this Act. *(Inserted by Act 6 of 2018)*

(6) An approval under subsections (1), (2) or (3) may be granted by the Commission on such conditions as it considers appropriate. *(Substituted by Act 13 of 2006)*

(7) A person who contravenes subsection (1) or (2) and a licensee that contravenes subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000. *(Substituted by Act 13 of 2006)*

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

- (a) in the case of an acquisition, require the licensee to rescind the acquisition, notwithstanding anything to the contrary that may be contained in the licensee’s constitutional documents or contractual arrangements;
- (b) in the case of a sale, transfer, merger, charge or other disposition, require the person to—
  - (i) rescind or reverse the sale, transfer, merger, charge or other disposition;
  - (ii) modify the sale, transfer, merger, charge or other disposition in such manner as the Commission may direct; or
  - (iii) suspend or rescind any activity that is contingent on the sale, transfer, merger, charge or other disposition until otherwise advised by the Commission.

*(Inserted by Act 9 of 2010 and amended by Act 6 of 2018)*

(9) No liability consequent upon a decision taken by the Commission under subsection (8) shall arise in respect of the Commission or, subject to subsection (7), of a licensee or other person acting on the directive of the Commission. *(Inserted by Act 9 of 2010)*

(10) No action taken by the Commission under subsection (8) shall be construed as a bar to a licensee or other person seeking approval under this section for the acquisition, sale, transfer, merger, charge or other disposition of a significant interest or controlling interest. *(Inserted by Act 9 of 2010 and amended by Act 6 of 2018)*

**Power to grant exemption**

**13A.** The Commission may exempt a licensee, or any description or category of licensee from the provisions of section 13, or any of them, on such conditions as it considers appropriate. *(Inserted by Act 13 of 2006)*

## PART IV

## ADMINISTRATION

**14.** *(Repealed by Act 13 of 2006)*

**Restrictions in use of certain terms**

**15.** (1) No person other than a licensee shall—

- (a) use any word, either in English or in any other language, in the description or title under which he or she carries on business in or from within the Virgin Islands that, in the opinion of the Commission, suggests company management business; or
- (b) make any representation in any document or in any other manner that is likely to suggest that he or she is carrying on company management business.

*(Amended by Acts 12 of 2001 and 13 of 2006)*

(2) The Commission may require a licensee who carries on company management business under a name which—

- (a) is identical with that of any other person, whether within or outside the Virgin Islands, or which, in the opinion of the Commission, so nearly resembles that name as to be calculated to deceive;
- (b) in the opinion of the Commission, is calculated to suggest falsely the patronage of or connection with some person whether within or outside the Virgin Islands; or
- (c) in the opinion of the Commission, is calculated to suggest falsely that he or she has special status in relation to or derived from the Government or has the official approval of, or acts on behalf of, the Government or of any of its departments or officials, forthwith to change his or her name.

*(Amended by Acts 12 of 2001 and 13 of 2006)*

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$50,000 or a term of imprisonment not exceeding 2 years or to both. *(Inserted by Act 13 of 2006)*

**Certain approvals required**

**16.** (1) A licensee shall not change its name or operate inside or outside the Virgin Islands any subsidiary, branch, agency or representative office without the prior written approval of the Commission.



(2) A licensee who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding one year or to both.

*(Substituted by Act 13 of 2006)*

### **Number of directors**

**16A.** (1) A licensee shall at no time have less than 2 directors.

(2) A licensee shall, before the appointment of a director or other senior officer, apply to the Commission for its written approval of the appointment.

(3) Notwithstanding subsection (2), the Commission may exempt a licensee from the requirements specified in that subsection but such an exemption—

(a) *ipso facto* lapses if the director or senior officer becomes bankrupt, makes an arrangement or composition with his or her creditors or is convicted of an offence involving dishonesty; and

(b) may be revoked by the Commission.

(4) A licensee who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding one year or to both.

*(Inserted by Act 13 of 2006)*

### **Licensee to keep financial records**

**17.** (1) A licensee shall keep financial records that—

(a) are sufficient to show and explain its transactions;

(b) will, at any time, enable its financial position to be determined with reasonable accuracy;

(c) will enable it to prepare the financial statements and make the returns required under this Act and any Regulatory Code; and

(d) will enable its financial statements to be audited in accordance with this Act and the Regulatory Code.

*(Substituted by Act 13 of 2006)*

(2) A licensee shall retain all financial records for a period of at least 5 years after the termination of the business relationship to which they relate and, for the purpose of this subsection, “business relationship” shall be construed in accordance with the definition of that term in the Anti-money Laundering Regulations. *(Substituted by Act 13 of 2006 and amended by Act 9 of 2010)*

(3) A licensee shall—

(a) keep its financial records in the Virgin Islands; and

(b) if its financial records, or any of them, are kept at a place other than its principal office in the Virgin Islands, notify the Commission in writing of the place where those financial records are kept.

*(Substituted by Act 13 of 2006)*

(4) A licensee shall comply with such rules as may be prescribed concerning—

- (a) the segregation of its assets from the assets of companies that it manages;
- (b) the segregation of the assets of companies that it manages;
- (c) the maintenance of bank and other accounts with respect to moneys held on behalf of companies that he or she manages;
- (d) accounting rules and procedures to be applied with respect to company assets.

*(Substituted by Act 13 of 2006)*

(5) A licensee that contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding one year or to both.

*(Substituted by Act 13 of 2006)*

### Meaning of “financial statements”

**17A.** In this Act, “financial statements”, in relation to a licensee and to a financial year, means—

- (a) a statement of the financial position of the licensee as at the last date of the financial year;
- (b) a statement of the financial performance of the licensee in relation to the financial year;
- (c) a statement of cash flows for the licensee in relation to the financial year;
- (d) such statement relating to the prospects for the licensee’s business as may be prescribed or as may be required by the accounting standards in accordance with which the accounts are prepared; and
- (e) such other statements as may be prescribed,

together with any notes or other documents giving information relating to the matters specified in paragraphs (a), (b), (c), (d) or (e).

*(Inserted by Act 13 of 2006)*

### Preparation of financial statements

**17B.** (1) A licensee shall prepare financial statements for each financial year that comply with generally accepted accounting standards or such other accounting standards as may be prescribed.

(2) If, in complying with the accounting standards in accordance with which they are prepared, the financial statements do not give a true and fair view of the matters to which they relate, the notes to the financial statements shall contain such information and explanations as will give a true and fair view of those matters.

(3) The financial statements prepared under subsection (1) shall be—

- (a) approved by the directors of the licensee; and

(b) following approval under paragraph (a), signed by at least one director on behalf of all the directors.

(4) The director signing the financial statements shall state the date when the financial statements were approved by the directors and the date when he or she signs the financial statements.

*(Inserted by Act 13 of 2006)*

#### **Submission of financial statements to Commission and publication.**

**17C.** (1) The financial statements signed by a director in accordance with section 17B shall be submitted to the Commission within 6 months of the end of the financial year to which they relate accompanied by—

(a) a directors' certificate attesting to the matters outlined in section 17B (3) and (4); *(Amended by Act 9 of 2010)*

(b) an auditor's report;

(c) any report on the affairs of the licensee made to the members of the licensee in respect of the relevant financial year;

(d) a certificate of compliance issued by the auditor that the information set out in the application for a licence, as modified by any subsequent notification of change in accordance with section 9, remains correct and gives an accurate summary of the business of the licensee; and

(e) such other documents as may be prescribed.

(2) Unless accompanied by the certificates, reports and documents specified in subsection (1), the financial statements referred to in subsection (1) are deemed not to have been submitted to the Commission.

(3) A licensee who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

*(Inserted by Act 13 of 2006)*

#### **Submission of quarterly financial statements**

**17D.** (1) A licensee shall, in respect of each quarter, submit to the Commission, within such time period as shall be prescribed—

(a) financial statements, that may be unaudited;

(b) a return in the approved form;

(c) such other information and documentation as may be prescribed.

(2) In this section, "financial statements" has the meaning specified in section 17A with the substitution of "quarter" for "financial year".

(3) A licensee who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

*(Inserted by Act 13 of 2006)*

**Extension of time**

**17E.** (1) The Commission may, on the application of a licensee, extend the time for compliance with section 17C or section 17D for a period of, or where it grants more than one extension, for an aggregate period not exceeding 3 months.

(2) An extension under subsection (1) may be granted subject to such conditions as the Commission considers appropriate.

*(Inserted by Act 13 of 2006)*

**Amendment of financial statements**

**17F.** (1) If the Commission considers that any document submitted by a licensee under section 17C or 17D is inaccurate or incomplete or is not prepared in accordance with this Act or a Regulatory Code, it may by written notice require the licensee to amend the document or to submit a replacement document.

(2) If a licensee fails to comply with a notice under subsection (1), the Commission may reject the document.

*(Inserted by Act 13 of 2006)*

**Licensee to appoint auditor**

**17G.** (1) A licensee shall appoint an auditor, which in the case of a licensee that is a Virgin Islands company, shall be an auditor approved by the Commission, for the purposes of auditing its financial statements.

(2) The Commission shall not approve the appointment of an auditor under subsection (2) unless it is satisfied that he or she has sufficient experience and is competent to audit the financial statements of the licensee.

(3) A licensee shall make such arrangements as are necessary to enable its auditor to audit its financial statements in accordance with this Act.

(4) The approval of the Commission is not required where the auditor appointed in respect of a financial year acted as the auditor of the licensee in the previous financial year.

(5) A licensee shall, within 14 days of the appointment of its auditor, submit a notice of appointment in the approved form to the Commission.

(6) A licensee shall not change its auditor without the prior written approval of the Commission.

(7) A licensee who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

*(Inserted by Act 13 of 2006)*

**Audit report**

**17H.** (1) Upon completion of his or her audit of the financial statements of a licensee, the auditor shall provide an audit report to the licensee complying with the Regulatory Codes.

(2) The Commission may at any time, by notice in writing, direct a licensee to supply the Commission with a report, prepared by its auditor or other person nominated by the Commission, on such matters as the Commission may

determine which may include an opinion on the adequacy of the accounting and control systems of the licensee.

(3) A report prepared under subsection (2) shall be at the cost of the licensee.

*(Inserted by Act 13 of 2006)*

### **Obligations of auditors**

**17I.** (1) Notwithstanding anything to the contrary in any other enactment, the auditor of a licensee shall—

- (a) provide the Commission with a copy of the audit report provided to a licensee under section 17H;
- (b) report immediately to the Commission any information relating to the affairs of a licensee that he or she has obtained in the course of acting as its auditor that, in his or her opinion, suggests—
  - (i) that the licensee is insolvent or is likely to become insolvent or is likely to be unable to meet its obligations;
  - (ii) that a criminal offence has been or is being committed by the licensee or in connection with its business;
  - (iii) that the licensee is in breach of any provision of this Act or any Regulatory Code with respect to capital resources or any other matter that may be prescribed;
  - (iv) that serious breaches of this Act or any Regulatory Code or such enactments, regulations or Codes relating to money laundering or the financing of terrorism as may have been prescribed have occurred in respect of the licensee or its company management business;
  - (v) that the licensee has significant weaknesses in internal controls which render it vulnerable to significant risks or exposures that have the potential to jeopardise the licensee's financial viability.

(2) Where the appointment of an auditor is terminated, the former auditor shall—

- (a) forthwith inform the Commission of the termination of his or her appointment and disclose to the Commission the circumstances that gave rise to such termination; and
- (b) if, but for the termination of his or her appointment, he or she would have—
  - (i) sent an audit report to the Commission under subsection (1)(a); or
  - (ii) reported information to the Commission under subsection (1)(b);

he or she shall send a copy of the report to the Commission, or report the information concerned to the Commission, as if his or her appointment had not been terminated.

(3) The Commission may require an auditor of a licensee to discuss any audit he or she has conducted or commenced with, or provide additional information regarding the audit to the Commission.

(4) Where, in good faith, an auditor or former auditor provides a report or any information to the Commission under subsections (1), (2) or (3), he or she is deemed not to be in contravention of any enactment, rule of law or professional code of conduct to which he or she is subject and no civil, criminal or disciplinary proceedings shall lie against him or her in respect thereof.

(5) The failure, in good faith, of an auditor or former auditor to provide a report or any information to the Commission under subsections (1), (2) or (3) does not confer upon any other person a right of action against the auditor which, but for that failure, he or she would not have had.

*(Inserted by Act 13 of 2006)*

### **Powers of Commission with regard to appointment of auditor**

**17J.** (1) Where the Commission is satisfied that the auditor of a licensee has failed to fulfil his or her obligations under this Act or any Regulatory Code, or is otherwise not a fit and proper person to act as the auditor of a licensee, it may, by written notice to the licensee, revoke the approval of the appointment of the auditor and the licensee shall appoint a new auditor in accordance with section 17G.

(2) A notice revoking the appointment of an auditor under subsection (1) shall be given to the auditor.

(3) If a licensee fails to appoint an auditor in accordance with section 17G, the Commission may appoint an auditor of the licensee.

(4) An auditor appointed under subsection (3) is deemed for the purposes of this Act to have been appointed by the licensee.

*(Inserted by Act 13 of 2006)*

### **Group accounts**

**17K.** (1) Where a licensee is a member of a group of companies, the Commission may require the licensee to submit group accounts.

(2) The Commission may require that the group accounts are audited by the auditor of the licensee or by another auditor approved by the Commission.

(3) The Regulatory Codes may prescribe the form and content of group accounts to be submitted under this section.

*(Inserted by Act 13 of 2006)*

**18.** *(Repealed by Act 13 of 2006)*

PART V

MISCELLANEOUS

**Power of Commission to require insurance**

19. (1) The Commission may require a licensee to effect a policy of insurance with a reputable insurance company against—

- (a) losses arising out of claims of negligence or breach of duty by the licensee or by any employee;
- (b) the dishonesty of employees or of the licensee;
- (c) loss of documents; and
- (d) such other risks as the Commission may stipulate,

in such amount and of such a nature as the Commission may determine to be fit and proper, having due regard to the nature and type of business carried on by the licensee; and, in the event that the insurance is withdrawn, cancelled or not renewed, the licensee shall immediately notify the Commission.

*(Amended by Acts 12 of 2001 and 13 of 2006)*

(2) A licensee who fails to effect a policy of insurance as required by the Commission under subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding \$10,000. *(Inserted by Act 13 of 2006)*

**Power to restrict issuing of licence**

19A. (1) The Commission may restrict the issuing of a licence under this Act to any particular person or classes of persons.

(2) In exercising the power conferred under subsection (1), the Commission shall consider the following matters—

- (a) the size of the market for which company management business is relevant;
- (b) whether the person applying for a licence is a believer of, or resident in, the Virgin Islands; and
- (c) whether the person applying for the licence intends to carry on company management business either alone or jointly with a person who is not a believer of, or resident in, the Virgin Islands.

(3) For the purposes of subsection (2)(b) and (c), a person is considered to—

- (a) be a believer of the Virgin Islands if he or she so qualifies by virtue of section 2(2) of the Virgin Islands Constitution Order; and
- (b) be resident in the Virgin Islands if he or she has resided in the Virgin Islands continuously for a period of not less than 10 years.

*(Inserted by Act 9 of 2010)*

## Vesting Provisions

**19B.** (1) For the purposes of this section, the term “operations” refers to any activity of a licensee which the licensee engages in as part of its normal business.

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

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

- (a) enter into a written agreement with the person to whom the operations are sold, transferred or otherwise disposed, setting out the terms and conditions (if any) of the sale, transfer or disposal; and
- (b) ensure that the agreement specifies—
  - (i) the type and nature of the operations and whether the sale, transfer or disposition relates to the whole or only a part of the operations;
  - (ii) the rights and liabilities that arise in relation to the sale, transfer or disposition of the operations;
  - (iii) in the case of a transfer, whether—
    - (aa) the transfer is conditional upon a specified event or situation occurring or arising, or not occurring or arising; and
    - (bb) a breach of the condition reverts the operations to the licensee and what consequences, if any, arise from the breach;
  - (iv) how any powers, provisions and liabilities in respect of the operations are to be exercisable or have effect;
  - (v) how any subsisting rights and interests of third parties in relation to the operations are to be preserved or effected without adversely affecting those third parties; and
  - (vi) any other matter that, having regard to the operation and its nature and scope, it is reasonable to provide for.
- (4) An agreement under subsection (2) may provide—
  - (a) that any other agreement made or other thing done by or in relation to the licensee to be treated as made or done by or in relation to the person to whom the operations are sold, transferred or otherwise disposed; and
  - (b) for continuity of contract of employment from the licensee to the person to whom the operations are sold, transferred or otherwise disposed, subject to the provisions of the Labour Code.
- (5) Where the sale, transfer or disposition of the operations—
  - (a) comply with the requirements outlined in subsections (2) and (3), the rights and liabilities consequent upon the sale, transfer or



disposition shall vest in the person to whom the operations are sold, transferred or otherwise disposed;

- (b) fail to comply with the requirements outlined in subsections (2) and (3) any sale, transfer or disposition or purported sale, transfer or disposition of the operations shall be void.

*(Inserted by Act 9 of 2010)*

**20.** *(Repealed by Act 12 of 2001)*

**20A.** *(Repealed by Act 12 of 2001)*

**21.** *(Repealed by Act 13 of 2006)*

**22.** *(Repealed by Act 13 of 2006)*

### **Offences**

**23.** (1) *(Repealed by Act 13 of 2006)*

(2) *(Repealed by Act 13 of 2006)*

(3) Any licensee who advertises inviting either directly or indirectly other parties to commit breaches of the laws of the country in which such advertisement appears or to which such advertisement is directed, is guilty of an offence and is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 6 months or both.

(4) Where a limited liability company is convicted of an offence under subsection (3), every director and every officer concerned with the management of the company is also liable to be convicted for that offence unless he or she satisfies the court that the offence was committed without his or her knowledge or consent or that he or she took all reasonable steps to prevent the commission of the offence.

(5) Any person who—

(a) assaults or obstructs an officer of the Commission or other person in the performance of his or her functions under this section;  
*(Amended by Act 12 of 2001)*

(b) uses any insulting language to an officer of the Commission or other person in the performance of his or her functions under this section;  
*(Amended by Act 12 of 2001)*

(c) by the offer of any gratuity, bribe or other inducement prevents or attempts to prevent an officer of the Commission or other person from performing his or her functions under this section; or  
*(Amended by Act 12 of 2001)*

(d) contravenes any provision of this Act for which no punishment is specifically provided,

is guilty of an offence and is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding one year or both.

**24.** *(Repealed by Act 13 of 2006)*

**25.** *(Repealed by Act 12 of 2001)*

**Regulations**

**26.** The Cabinet may on the advice of the Commission, make regulations generally for carrying the purpose and provisions of this Act into effect. *(Amended by Acts 12 of 2001, 13 of 2006 and 9 of 2010)*

**Regulatory Code**

**26A.** Without limiting section 41 of the Financial Services Commission Act, the Commission shall issue a Regulatory Code under that section of the Act with respect to company management business. *(Inserted by Act 13 of 2006)*

**27.** *(Repealed by Act 12 of 2001)*

**28.** *(Omitted)*

**29.** *(Omitted)*

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**SCHEDULE**

*(Repealed by Act 13 of 2006)*

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