

No. 12 of 2006

VIRGIN ISLANDS

BVI BUSINESS COMPANIES (AMENDMENT) ACT, 2006

ARRANGEMENT OF SECTIONS

Section

- 1.** Short title and commencement.
- 2.** Section 15 amended.
- 3.** Section 17A inserted.
- 4.** Section 35 amended.
- 5.** Section 57 amended.
- 6.** Section 91 amended.
- 7.** Section 114 amended.
- 8.** Section 182 amended.
- 9.** Section 186 amended.
- 10.** Section 187 amended.
- 11.** Section 188 amended.
- 12.** Section 190 amended.
- 13.** Section 191 amended.
- 14.** Section 192 amended.
- 15.** Section 193A inserted.
- 16.** Section 198 amended.
- 17.** Section 204 amended.
- 18.** Section 207A amended.
- 19.** Section 241 amended.
- 20.** Companies Act amended.

2. Section 15 of the BVI Business Companies Act, 2004 (referred to in this Act as “the principal Act”) is amended

Section 15
amended.
No. 16 of 2004

- (a) in subsection (2) by inserting after the words “registered under section 13” the words “and that, under any provision of this Act, are deemed to have been made”; and
- (b) in subsection (4) by inserting after the words “registered under section 13” the words “or that, under any provision of this Act, are deemed to have been made”.

3. The principal Act is amended by inserting after section 17 the following section:

Section 17A
inserted.

“Exemption from
section 17.

17A. (1) Application may be made to the Commission in the approved form for authorisation to

- (a) incorporate a company under a name; or
- (b) change the name of a company to a name;

that, in either case, does not include an ending specified in section 17(1).

(2) On an application made under subsection (1), the Commission may authorise the registration of the company under a name that does not include an ending specified in section 17(1) if

- (a) the memorandum of the company
 - (i) limits the objects of the company to the pursuit of wholly charitable or non-commercial purposes and requires the company to apply its income solely in promoting those purposes, and
 - (ii) prohibits the company from making any distributions to its members; and

- (b) the Commission is satisfied that the activities of the company will, following authorisation, be carried out principally within the Virgin Islands.

(3) An authorisation under subsection (2) shall be subject to such conditions as the Commission may impose whether on the granting of the authorisation or subsequently.

(4) A company having the benefit of an authorisation granted under subsection (2) shall notify the Commission as soon as practicable if

- (a) its memorandum is amended such that it no longer complies with subsection (2)(a);
- (b) its activities cease to be carried on principally in the Virgin Islands;
- (c) it breaches or, for any reason, is no longer in compliance with any conditions specified by the Commission under subsection (3);
- (d) it pursues purposes that are not wholly charitable or non-commercial or applies its income other than in promoting its purposes; or
- (e) it makes any distribution to its members.

(5) If an event that requires notification by a company under subsection (4) occurs, the Commission may, whether or not the company has provided notification to the Commission as required by that subsection, by notice in writing

- (a) revoke the authorisation granted under subsection (2); and
- (b) direct the company to change its name to a name acceptable to the Registrar that includes an ending specified in section 17(1) on or before a date specified in the notice, which shall be not less than fourteen days after the date of the notice.

(6) Where the Commission issues a notice under subsection (5), section 22(2) and (3) apply as if the notice was a notice issued by the Registrar under section 22(1).

(7) A company that contravenes subsection (5) commits an offence and is liable on summary conviction to a fine of \$5,000.”.

- 4.** Section 35 of the principal Act is amended by deleting the words from “, with each share in the series having the rights” to the end of the section. Section 35 amended.
- 5.** Section 57(1) of the principal Act is amended by deleting the words “it thinks” and substituting the words “they think”. Section 57 amended.
- 6.** Section 91(3) of the principal Act is amended by repealing paragraphs (i) and (ii) and substituting the following paragraphs: Section 91 amended.
- “(a) holds a licence under the Company Management Act 1990; or
 - (b) holds a licence under the Banks and Trust Companies Act 1990 that authorizes it to provide registered agent services.”.
- 7.** Section 114(5) of the principal Act is amended by deleting the words “in subsection (3)” and substituting the words “in subsection (2)”. Section 114 amended.
- 8.** Section 182 of the principal Act is amended by inserting after subsection (2), the following subsection: Section 182 amended.
- “ (3) Notwithstanding the provisions of section 180 and this section, the Registrar may refuse to continue a foreign company under this Part if he is of the opinion that it would be contrary to the public interest to do so.”.
- 9.** Section 186 of the principal Act is amended Section 186 amended.
- (a) by inserting after subsection (1) the following subsection:

“(1A)If a foreign company is registered under this Part under an alternate name, it shall carry on business in the Virgin Islands under, or using, the alternate name under which it is registered in place of its corporate name.”;
 - (b) in subsection (2)(c), by deleting the words “nationality and address” and substituting the words “nationality, address and date of appointment”; and
 - (c) in subsection (3) by inserting after the words “contravenes subsection (1)”, the words “or subsection (1A)”.

Section 187
amended.

10. Section 187 of the principal Act is amended

- (a) by designating the existing provision as subsection (1);
- (b) in the existing provisions, by deleting the words “Where the Registrar” and substituting the words “Subject to subsection (2), where the Registrar”; and
- (c) by inserting after the existing provision the following subsections:

“(2) If he considers that the corporate name of a foreign company is undesirable, the Registrar shall not register the company under subsection (1) unless the company applies to be registered under an alternate name that is acceptable to him.”,

Section 188
amended.

11. Section 188 of the principal Act is amended

- (a) in subsection (1)
 - (i) in paragraph (d), by deleting the word “or” after the semi colon,
 - (ii) in paragraph (e), by deleting the full stop and substituting “; or”, and
 - (iii) by inserting after paragraph (e) the following paragraph:

“(f) such other particulars as may be prescribed.”; and

- (b) by inserting after subsection (3) the following subsection:

“(3A)Where the Registrar receives a notice of change in particulars under subsection (3) that complies with this section, he shall register the change in the Register of Foreign Companies.”.

Section 190
amended.

12. Section 190 of the principal Act is amended

- (a) in subsection (1), by inserting after the words “corporate name of,” the words “or where the company is registered under an alternate name, the alternate name of,”;

- (b) by repealing subsection (4) and substituting the following:

“(4) Where a notice under subsection (1) relates to the corporate name of a foreign company, or where it is registered under an alternate name, to its alternate name, the company shall, within thirty days after the date of service of the notice, apply to the Registrar to be registered under an alternate name that is acceptable to the Registrar.

(4A) If he is of the opinion that the alternate name with which a foreign company is applying to be registered under subsection (4) is acceptable to him, the Registrar shall register the foreign company under the alternate name.”; and

- (c) in subsection (5), by inserting after the words “subsection (3)” the words “or subsection (4)”.

13. Section 191 of the principal Act is amended

Section 191
amended.

- (a) in subsection (1),
- (i) by deleting the words “subsection (3)” and substituting the words “subsections (2), (3) and (4)”, and
- (ii) by inserting after the words “full corporate name”, the words “, or where it is registered under this Part under an alternate name, that alternate name,”; and
- (b) by inserting after subsection (2), the following subsections:

“(3) Where a foreign company is registered under this Part under an alternate name, the company shall state in every communication and document specified in subsection (1)(a) and (b) that the alternate name under which it is registered is not the corporate name under which the company is registered in the country of its incorporation.

(4) The Regulations may provide for circumstances in which a company may, or shall, set out its full corporate name in a communication or document specified in subsection (1)(a) or (b) in addition to, or in place of, the alternate name under which it is registered.

(5) A foreign company that contravenes subsections (1) or (3) commits an offence and is liable on summary conviction to a fine of \$5,000.”.

Section 192 amended.

14. Section 192 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) A foreign company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000.”.

Section 193A inserted.

15. The principal Act is amended by inserting after section 193 the following section:

“Strike off by Registrar.

193A. (1) Where the Registrar has reasonable cause to believe that a foreign company registered under this Part is not carrying on business in the Virgin Islands, he may

(a) send the company a notice in the approved form stating

(i) his belief that the company is not carrying on business in the Virgin Islands, and

(ii) if no answer showing cause to the contrary is received within three months from the date of the notice, the company will be removed from the Register of Foreign Companies; and

(b) advertise the notice in the *Gazette*.

(2) If the foreign company does not show cause to the contrary within the time specified in subsection (1), the Registrar may remove the company from the Register of Foreign Companies and shall

(a) send the company a notice of its removal in the approved form; and

(b) publish the removal in the *Gazette*.

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

Section 198 amended.

16. Section 198(2) of the principal Act is amended

- (a) by deleting the words “A declaration of solvency has no effect for the purposes of section 203(1)(d)” and substituting the words “Subject to section 204(2), a declaration of solvency has no effect for the purposes of this Division”;
- (b) in subparagraph (b), by deleting the words “it includes”, and substituting the words “it has attached to it”; and
- (c) by inserting after subsection (2) the following subsection:

“(2A)A statement of the company’s assets and liabilities shall be in the approved form.”.

17. Section 204 of the principal Act is amended

Section 204 amended.

- (a) by designating the existing provision as subsection (1);
- (b) in subparagraph (a)(i) of the existing provision, by deleting the words “the his appointment” and substituting the words “his appointment in the approved form”; and
- (c) by inserting after the existing provision the following subsection:

“(2) Subsection (1)(a)(ii) does not require the liquidator to file the statement of the company’s assets and liabilities required under section 198(2) to be attached to the declaration of solvency, although the statement may be filed.

(3) A copy of the declaration of solvency, with the statement of the company’s assets and liabilities attached, must be kept at the office of the registered agent of the company.

(4) A company that contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of \$5,000.”.

18. Section 207A of the principal Act is amended

Section 207A amended.

- (a) in subsection (2), by deleting the words “application under” and substituting the words “application for an order under”;
- (b) in subsection (3), by deleting “subsection (2)” and substituting “subsection (1)”;
- (c) by inserting after subsection (3), the following subsection:

“(3A)An application for an order under subsection (1), if made by a person other than the voluntary liquidator, must be served on

the voluntary liquidator who shall be entitled to be heard on the hearing of the application.”; and

(d) by inserting after subsection (5) the following subsections:

“(6) Where the Court makes an order under subsection (1), the person who applied for the order shall, within five days of the date of the order

(a) if that person is not the voluntary liquidator, serve a sealed copy of the order on the voluntary liquidator; and

(b) file a sealed copy of the order.

(7) A person who contravenes subsection (6) commits an offence and is liable on summary conviction to a fine of \$1,000.”.

Section 241
amended.

19. Section 241 of the principal Act is repealed and the following section substituted:

“Approval of
forms by
Commission.

241. (1) Where this Act or the Regulations require a document to be in “the approved form”, the Commission shall, by publication in the prescribed manner, approve a form to be used for the document.

(2) The Commission may, with respect to any other document required or permitted to be filed, issued or produced under this Act or the Regulations, approve a form to be used for the document.

(3) Where, pursuant to subsection (1) or (2), the Commission has published an approved form with respect to a document to be filed, issued or produced under this Act or the Regulations, the document shall

(a) be in the form of, and contain the information specified in, the approved form; and

(b) have attached to it such documents as may be specified by the approved form.”.

20. The Companies Act is amended in section 239, in the table of annual licence fees

Companies Act
amended.
Cap. 285

- (a) in respect of the annual licence fee payable by non-resident companies, by deleting \$250 and substituting \$350; and
- (b) by deleting the rows in the table from “do not exceed \$10,000” to “exceed \$200,000 but do not exceed \$300,000” including the monetary figure for each row and substituting:

“do not exceed \$300,000 \$350”.

Passed by the Legislative Council this 22nd day of September, 2006.

(Sgd.) V. INEZ ARCHIBALD,
Speaker.

(Sgd.) ALVA MC CALL,
Acting Clerk of the Legislative Council.

