No. of 2015

VIRGIN ISLANDS

BVI BUSINESS COMPANIES (AMENDMENT) ACT, 2015

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No. of 2015 **BVI Business Companies (Amendment) Act, 2015** **Virgin Islands**

I Assent

Governor

, 2015

VIRGIN ISLANDS

No. of 2015

A Bill for

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

[Gazetted , 2015]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement

1. This Act may be cited as the BVI Business Companies (Amendment) Act, 2015 and shall come into force on such date as the Governor may, by Proclamation published in the Gazette, appoint.

2. Section 2 of the BVI Business Companies Act, 2004 (hereinafter referred to as "the principal Act") is amended

(a) by inserting in their alphabetical order, the following new definitions:

"financial services legislation" bears the same meaning prescribed in section 2 (1) of the Financial Services Commission Act, 2001;

"Internet site", in relation to the Commission, means the principal public access Internet site for the time being maintained by, or on behalf of, the Commission;"; and

(b) by deleting the definition of "register" and substituting the following definition:

"register", in relation to an act done by the Registrar, means to register in the Register of Companies, the Register of Foreign Companies, the Register of Charges or any other Register created pursuant to this Act or the Regulations;".

Section 38 amended

3. Section 38 of the principal Act is amended in subsection (4) by deleting the figure "$10,000" and substituting the figure "$75,000".

Section 41 amended

4. Section 41 of the principal Act is amended

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

"(1A) Where a company is listed on a recognised exchange, the company's shares may be registered and kept in a separate register of members containing the information referred to in subsection (1) or such other information as the company's articles permit or as may be approved by a resolution of members."; and

(b) in subsection (5) by deleting the figure "$1,000" and substituting the figure "$50,000".

New section 43A inserted

5. The principal Act is amended by inserting after section 43, the following new section:

"**Optional Registration of register of members**

43A. (1) A company may elect to file for registration by the Registrar a copy of its register of members.

(2) A company that has elected to file a copy of a register of its members under subsection (1)

(a) shall, until such time as it may file a notice under paragraph (b), file any changes in the register by filing a copy of the register containing the changes; and

(b) may elect to cease registration of changes in the register by filing a notice in the approved form.

(3) If a company elects to file a copy of a register of its members under subsection (1), the company is bound by the contents of the copy register filed then until such time as it may file a notice under subsection (2) (b).

(4) Subsection (5) applies where a company

(a) had elected to cease registration of changes in a register of its members under subsection (2) (b); and

(b) subsequently elects under subsection (1) to file changes in the same register for registration.

(5) 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 (2) (b) and ending on the date that it makes a subsequent filing under subsection (1); and

(b) subsection (3) applies in relation to any period specified in paragraph (a).”

Section 47 amended

6. Section 47 of the principal Act is amended in subsection (1) by inserting after the words “any form” before the comma, the words “or a combination of forms”.

New Section 47A inserted

7. The principal Act is amended by inserting after section 47, the following new section:

“**Bonus shares**

47A. Subject to the memorandum and articles of a company, a bonus share issued by the company shall be deemed to have been fully paid for on issue.”.

Section 48 amended

8. Section 48 of the principal Act is amended

(a) in the opening paragraph by inserting after the words “other than money,”, the words “whether in whole or in part,”; and

(b) in paragraph (b) by deleting the word “determination” and substituting the word “opinion”; and

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(c) in paragraph (c) by deleting the words "for the issue" and substituting the words "and money consideration, if any,".

Section 54A inserted

9. The principal Act is amended by inserting after section 54, the following new section:

"**Transfer of registered shares listed on recognised exchange**

54A. (1) Where registered shares are listed on a recognised exchange, the registered shares may be transferred without the need for a written instrument of transfer if the transfer is carried out in accordance with the laws, rules, procedures and other requirements applicable to shares registered on the recognised exchange and subject to the company's memorandum and articles and the Listed Companies and Funds Regulations.

(2) The Listed Companies and Funds Regulations may modify subsection (1) in such form and manner as may be considered fit.

(3) For the avoidance of doubt, it is declared that section 54 does not apply to the transfer of registered shares that are listed on a recognised exchange.".

Section 59 amended

10. Section 59 of the principal Act is amended by inserting after subsection (1), the following new subsection:

"(1A) A company may acquire its own fully paid share or shares for no consideration by way of surrender of the share or shares to the company by the person holding the share or shares.".

Section 63 amended

11. Section 63 of the principal Act is amended

(a) in paragraph (b) by deleting the word "or" at the end of the paragraph;

(b) in paragraph (c) by deleting the full-stop at the end of the paragraph and substituting "; or"; and

(c) by adding after paragraph (c), the following new paragraph:

"(d) the company acquires its own fully paid share or shares pursuant to section 59 (1A).".

Section 69 amended

12. Section 69 of the principal Act is amended by adding after subsection (3), the following new subsection:

"(4) Where a company acts contrary to subsection (1) or (2), it commits an offence and is liable on summary conviction to a fine of $75,000.".

Section 73 amended

13. Section 73 of the principal Act is amended by adding after subsection (8), the following new subsection:

"(9) Where a person acts contrary to subsection (1), (4) or (7), he or she commits an offence and is liable on summary conviction to a fine of $40,000."

New section 73A inserted

14. The principal Act is amended by inserting after section 73, the following new section:

"**Power to revoke appointment of authorised or recognised custodian**

73A. (1) Where the Commission is satisfied that an authorised custodian or a recognised custodian has acted contrary to its obligation or to a prohibition under this Act or in relation to any agreement entered into with the Commission in relation to a bearer share, the Commission may,

(a) in the case of an authorised custodian, revoke the approval of the custodian; and

(b) in the case of a recognised custodian, cease to recognise the custodian.

(2) Subsection (1) applies in addition to any penalty an authorised custodian or a recognised custodian may be liable to under this Act or any other enactment.".

Section 74 amended

15. Section 74 of the principal Act is amended in subsection (8) by deleting the figure "10,000" and substituting the figure "$75,000".

Section 77 amended

16. Section 77 of the principal Act is amended in paragraph (b)

(a) by deleting the colon and substituting a comma; and

(b) by placing the rest of the words after the comma as substituted, in a closing paragraph that serves both paragraphs (a) and (b).

Section 86 amended

17. Section 86 of the principal Act is amended in subsection (1)

(a) by deleting the word "or" at the end of paragraph (a);

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

"(b) where directors are required to call a meeting of members pursuant to section 82 (2) , the directors have failed to do so; or"; and

(c) by renumbering the existing paragraph (b) as paragraph (c).

New section 91B inserted

18. The principal Act is amended by inserting after section 91A, the following new section:

"**Registered agent acting on resolution of members or directors**

91B. Subject to the memorandum and articles of a company, a registered agent may act on the instructions of members or directors of the company if those instructions are contained in a resolution passed by the members or the directors and a copy of the resolution is made available to the registered agent.".

Section 92 amended

19. Section 92 of the principal Act is amended by inserting after subsection (4A), the following new subsection:

"(4B) Where a legal practitioner files a notice of change of registered office or registered agent under subsection (4), he or she may pay a fee (including any outstanding fee the company may be liable to) in relation to the filing of the notice.".

Section 93 amended

20. Section 93 of the principal Act is amended by repealing subsection (2A).

Section 94 amended

21. Section 94 of the principal Act is amended

(a) by repealing subsection (2) and substituting the following subsection:

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

(a) advising the company that he or she is no longer eligible to be its registered agent;

(b) advising the company that it must appoint a new registered agent within 90 days of the date of the notice;

(c) specifying that, on the expiration of the period specified in paragraph (b), he or she will cease to be the registered agent of the company, if the company had not previously changed its registered agent; and

(d) advising the company that the list of all approved registered agents in the Virgin Islands with their names and addresses may be found on the Internet site. ; and

(b) in subsection (3) by deleting the words "and a list of approved registered agents"".

New section 95A inserted

22. The principal Act is amended by inserting after section 95 before Division 2, the following new section:

"**Code of conduct or other compliance document for registered agents**

95A. (1) The Commission may, subject to subsection (2), develop and approve a code of conduct or other compliance document to regulate the conduct of registered agents with respect to the performance of their duties as registered agents.

(2) In developing and approving a code of conduct under subsection (1), the Commission shall,

(a) consult any association of registered agents formed or registered in the Virgin Islands; or

(b) where there is no association of registered agents as referred to in paragraph (a), consult the registered agents licensed by the Commission in such form and manner as the Commission considers fit.

(3) The Commission may prescribe in the code of conduct or other compliance document such penalties for breaches of any provisions of the code as the Commission considers fit but, where a fine is prescribed for a breach, it shall not exceed $50,000.

(4) An fine paid to the Commission shall be retained by the Commission and applied for the effective administration of the code of conduct or other compliance document or for such other purposes as the Commission considers fit.

(5) The Commission may, in considering whether a registered agent continues to be fit and proper under Schedule 1A of the Regulatory Code, take into account any penalty imposed on the registered agent pursuant to this section.

(6) A registered agent on whom a penalty is imposed under a code of conduct or other compliance document is entitled to appeal to the Financial Services Appeal Board pursuant to Part VI of the Financial Services Commission Act, 2001 and the provisions of that Part shall apply accordingly.

(7) For the avoidance of doubt, a code of conduct or other compliance document developed and approved by the Commission under this section qualifies as financial services legislation.

Section 97 amended

23. Section 97 of the principal Act is amended in subsection (4) by deleting the figure "$10,000" and substituting the figure "75,000".

Section 98 repealed and substituted

24. Section 98 of the principal Act is repealed and substituted with the following section:

"**Records and underlying documentation**

98. (1) A company shall

(a) keep at the office of its registered agent or at such other place or places, within or outside the Virgin Islands, as the directors may determine, the records and underlying documentation of the company; and

(b) retain the records and underlying documentation for a period of at least five years from the date

(i) of completion of the transaction to which the records and underlying documentation relate; or

(ii) the company terminates the business relationship to which the records and underlying documentation relate.

(2) The records and underlying documentation of the company shall be in such form as

(a) are sufficient to show and explain the company's transactions; and

(b) will, at any time, enable the financial position of the company to be determined with reasonable accuracy.

(3) Where the records and underlying documentation of a company are kept at a place or places other than at the office of the company's registered agent, the company shall provide the registered agent with a written

(a) record of the physical address of the place at which the records and underlying documentation are kept;
(b) record of the name of the person who owns or controls the place or places at which the company's records and underlying documentation are kept; and

(c) undertaking advising that the registered agent shall, at any time it so requests, have access to and be provided with the company's records and underlying documentation without delay.

(4) Where the place or places at which the records and underlying documentation of the company, or the name of the person who owns or controls such place or places, change, the company shall provide its registered agent with the physical address of the new location of the records and underlying documentation or the name of the new owner or controller of the new location, as the case may be, within 14 days of the change of the place or places.

(5) The registered agent shall keep and maintain a record of the place or places outside the Virgin Islands at which the company keeps its records and underlying documentation and such record shall comprise

(a) the name of the company;

(b) the address or addresses of the place or places at which the company's records and underlying documentation are kept;

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(c) the date the written undertaking under subsection (3) (b) was given to the registered agent; and

(d) the name of the person who owns or controls the place or places at which the company's records and underlying documentation are kept.

(6) Whenever required to do so by the Commission or any other competent authority in the Virgin Islands, the registered agent shall request and obtain from the company, records and underlying documentation in respect of the company.

(7) For the purposes of this section,

(a) "business relationship" means a continuing arrangement between a company and one or more persons with whom the company engages in business, whether on a one-off, regular or habitual basis; and

(b) "records and underlying documentation" includes accounts and records (such as invoices, contracts and similar documents) in relation to

(i) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(ii) all sales and purchases of goods by the company; and

(iii) the assets and liabilities of the company.

(8) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of $75,000.".

Section 99 amended.

25. Section 99 of the principal Act is amended by inserting after the word "records" in the opening paragraph, the words "and underlying documentation".

Section 103 amended

26. Section 103 of the principal Act is amended

(a) by repealing subsection (3) and substituting it with the following subsection:

"(3) Without affecting subsection (1) (a), an instrument executed by or on behalf of a company by a director or an authorised agent of the company is not

invalid by reason only of the fact that the common seal of the company is not affixed to the instrument.";

(b) in subsection (4)

(i) by deleting in the opening paragraph, the words "a deed or"; and

(ii) by deleting in paragraph (b), the words "a deed" and substituting the words "an instrument";

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

"(4A) An instrument under seal to be governed by the laws of the Virgin Islands is validly executed by a foreign company if the instrument is executed in a manner permitted by the laws of the territory in which the foreign company is incorporated, registered or organised.

(4B) The execution of an instrument under seal in accordance with subsection (4A) meets the requirements of the laws of the Virgin Islands and shall be treated as an instrument executed under seal in relation to such execution.

(4C) An instrument under seal that is executed in accordance with this section is validly executed as an instrument under seal if it is executed in a manner contemplated by the parties to the instrument, and that includes, without limitation,

(a) where the complete instrument is executed;

(b) where any signature or execution page of the instrument is executed, whether or not at the time of execution of the signature or execution page the remainder of the instrument is in a final form, and is attached to, added to, or compiled with, the remainder of the instrument by or on behalf of the party executing it or otherwise with the executing party's express or implied authority."; and

(d) by adding after subsection (5), the following new subsection:

"(6) For the purposes of this section, "instrument" includes a contract, an agreement, a deed, a will, an order, a warrant, a scheme, letters patent, rules or other document denoting a person's or persons' intention to make a formal arrangement of any matter.".

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New section 118A inserted

27. The principal Act is amended

(a) by re-designating the existing section 118A as section 118B; and

(b) by inserting after section 118, the following new section:

"**Registration of register of directors**

118A. (1) A company shall file for registration by the Registrar a copy of its register of directors.

(2) A company that has filed for registration by the Registrar a copy of its register of directors shall, within 14 days of any changes occurring, file the changes in the register by filing a copy of the register containing the changes.

(3) A copy of a company's register of directors filed pursuant to subsection (1) (including any changes to the register) shall be maintained by the Registrar and shall not, subject to subsection (4), be made available to any person except on an order of the Court, or on a written request

(a) by a competent authority in the Virgin Islands

(i) acting in the exercise of its powers as a regulator of financial services business, tax administrator or law enforcement agency; or

(ii) for the purposes of dealing with a matter for which it has authority under an enactment, including pursuant to its obligations to a mutual legal assistance request received or made or to be made by it;

(b) by a foreign competent authority outside the Virgin Islands acting in the exercise of powers or for the purposes of dealing with a matter corresponding to those outlined in paragraph (a).

(4) A company or a registered agent, or any other person acting pursuant to a legal or contractual obligation in relation to a company, shall have access to the register of directors filed with the Registrar that relates to it.

(5) For the purposes of subsection (3) (a), the term "financial services business" bears the same meaning outlined in section 2 (1) of the Financial Services Commission Act, 2001.".

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Section 129 amended

28. Section 129 of the principal Act is amended by repealing subsection (2) and substituting the following subsection:

"(2) Subject to the memorandum and articles,

(a) 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; and
(b) each director shall have one vote.".

Section 162 amended

29. Section 162 of the principal Act is amended by inserting after subsection (2), the following new subsection:

"(2A) Where a change occurs in the company's register of charges which is kept at the office of its registered agent, the company shall, within 14 days of the change occurring, transmit a copy of the register containing the change to the registered agent.".

Section 180 amended

30. Section 180 of the principal Act is amended by adding after subsection (2), the following new subsections:

"(3) For purposes of satisfying himself or herself that the requirements of subsection (1) have been met and none of the disqualifications mentioned in subsection (2) applies, the Registrar may rely on a certificate issued by a director of the foreign company attesting to the foreign company's compliance with the requirements and the non-application of the disqualifications, if the certificate is duly signed by the director and notarized.

(4) The certificate referred to in subsection (3) shall be in the approved form and shall be accompanied by an extract of the law relied upon for the purposes of subsection (1).".

Section 184 amended

31. Section 184 of the principal Act is amended

(a) in subsection (1) by inserting after the words "Subject to", the words "subsection (2) and";

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

"(1A) Where a company that wishes to continue as a company incorporated under the laws of a jurisdiction outside the Virgin Islands has a charge registered in respect of the property of the company under section 163, it shall, before continuing, provide a written declaration addressed to the Registrar specifying that,

(a) a notice of satisfaction or release in respect of the charge has been filed and registered under section 165;

(b) where paragraph (a) has not been complied with, the chargee to whom the registered charge relates has been notified in writing of the intention to continue the company as a company incorporated under the laws of a jurisdiction outside the Virgin Islands and the chargee has given his or her consent or has no objection to the continuation; or

(c) where paragraph (a) has not been satisfied and the chargee, after notification under paragraph (b), has not given his or her consent or expressed non-objection to the continuation, the chargee's interest secured by the registered charge shall not be diminished or in any way compromised by the continuation and the charge shall operate as a liability to which subsection (5) (a) applies."; and

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

"(2) A company that continues as a company incorporated under the laws of a jurisdiction outside the Virgin Islands does not cease to be a company incorporated under this Act, unless

(a) the laws of the jurisdiction outside the Virgin Islands permit the continuation and the company has complied with those laws;

(b) the registered agent of the company has filed with the Registrar the required notice of continuance under subsection (3); and

(b) the Registrar has issued a certificate of discontinuance of the company under subsection (4).";

(d) by inserting after subsection (2), the following new subsections:

"(2A) For the purposes of establishing compliance with subsection (2) (a), the registered agent of the company shall file a declaration in the approved form confirming

(a) that the laws of the jurisdiction outside the Virgin Islands permit the continuation of the company; and

(b) the company has complied with those laws.

(2B) A declaration under subsection (2A) shall be accompanied by an affidavit duly sworn to by a director or registered agent of the company attesting to the matters specified in that subsection and an extract of the laws shall be attached to the affidavit.

(2C) Subject to subsections (2), (2A) and (2B), where the continuation of a company under the laws of a jurisdiction outside the Virgin Islands is dependent upon the issuing of a certificate of discontinuance under subsection (4) (a), the Registrar may rely upon a provisional certificate of continuance (however described) issued in respect of that company under the laws of that jurisdiction as a basis to issue the certificate of discontinuance.".

(c) by adding after subsection (5), the following new subsection:

"(6) Nothing contained in or done pursuant to subsection (1A) shall operate as a bar to any legal action a chargee may be entitled to in law or equity against the company.".

Section 187 amended

32. Section 187 of the principal Act is amended in subsection (1) by deleting the words "section 186 (1A)" and substituting the words "section 186 (2)".

Section 196A amended

33. Section 196A of the principal Act is amended in subsection (2) by inserting after the words "if it has", the word "not".

Section 197 amended

34. Section 197 of the principal Act is amended

(a) by re-designating the current section as subsection (1); and

(b) by adding after subsection (1) as re-designated, the following new subsection:

"(2) A company may be liquidated notwithstanding that there is a charge registered in respect of the company's property under section 163.".

Section 198 amended

35. Section 198 of the principal Act is amended in subsection (1) (b)

(a) by deleting the word "and" at the end of sub-paragraph (iv);

(b) by deleting the full-stop at the end of sub-paragraph (v) and substituting "; and"; and

(c) by adding after sub-paragraph (v), the following new sub-paragraphs:

"(vi) that, where there is a charge registered in respect of the company's property under section 163, a notice of satisfaction or release has been filed and registered under section 165;

(vii) that, where sub-paragraph (vi) has not been complied with, the chargee to whom the registered charge relates has been notified in writing of the intention to liquidate the company and has given his or her consent or has no objection to the liquidation; or

(viii) that, where sub-paragraph (vi) has not been satisfied and the chargee, after notification under sub-paragraph (vii), has not given his or her consent or expressed non-objection to the liquidation, the liquidation shall take into account and appropriately settle any interest in relation to the registered charge.".

Section 203 amended

36. Section 203 of the principal Act is amended in subsection (1) (e) by deleting the words "section 198 (1) (b) (ii)" and substituting the words "section 198 (1) (b)".

Section 213 amended

37. Section 213 of the principal Act is amended in subsection (1)

(a) by deleting the word "or" at the end of paragraph (b) (ii);

(b) by deleting the full-stop at the end of paragraph (c) and substituting "; or"; and

(c) by adding after paragraph (c), the following new paragraph:

"(d) the company, being a company licensed under a financial services legislation, has its licence cancelled or revoked by the Commission.".

Section 217 amended

38. Section 217 of the principal Act is amended

(a) in subsection (1) by deleting the words "and issue a certificate of restoration to the Register";

(b) in subsection (3) by deleting the figure "10" and substituting the figure "7"; and

(c) by inserting after subsection (5), the following new subsection:

"(5A) Where the Registrar restores a company to the Register under subsection (1) or pursuant to a direction of the Court under subsection (4), he or she shall issue a certificate of restoration to the Register.".

Section 218B amended

39. Section 218B of the principal Act is amended by adding at the end of subsection (2) before the full-stop, the words "and issue a certificate of restoration to the Register"."

Section 220 amended

40. Section 220 of the principal Act is amended by repealing subsection (3).

Section 231 repealed

41. Section 231 of the principal Act is repealed.

Section 232 amended

42. Section 232 of the principal Act is amended by repealing subsection (2) and substituting the following subsection:

"(2) The Commission may, by notice published in the Gazette and the Internet site, provide for the filing, registration and issuing of documents, or certain specified types of documents, on a non-business day.".

Section 233 amended

43. Section 233 of the principal Act is amended in subsection (1) (c) by inserting after the word "incorporation" in the two places it occurs, the word "restoration,".

Schedule 2 amended

44. Schedule 2 of the principal Act is amended

(a) in paragraph 16 by inserting after the words "section 40A", the words "section "47A,";

(b) in paragraph 25,

(i) by inserting after sub-paragraph (1), the following new sub-paragraph:
"(1A) A company may acquire its own fully paid share or shares for no consideration by way of surrender of the share or shares to the company by the person holding the share or shares."; and

(ii) in sub-paragraph (4)

(aa) by deleting the word "and" at the end of sub-sub-paragraph (c);

(bb) by deleting the full-stop at the end of sub-sub-paragraph (d) and substituting "; and"; and

(cc) by adding after sub-sub-paragraph (d), the following new sub-sub-paragraph:

"(e) by virtue of the provisions of sub-paragraph (1A).".

Passed by the House of Assembly this day of , 2015.

Speaker

Clerk of the House of Assembly

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OBJECTS AND REASONS

[To be Completed]

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