No. 20 of 2023

VIRGIN ISLANDS

BVI BUSINESS COMPANIES (AMENDMENT) ACT, 2023

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Section 9 amended
3. Section 96 amended
4. Section 98A amended
5. New sections 187A and 187B inserted

I ASSENT
(Sgd.) John Rankin CMG,
Governor.
20th March, 2023

VIRGIN ISLANDS

No. 20 of 2023

AN ACT TO AMEND THE BVI BUSINESS COMPANIES ACT, REVISED EDITION 2020, AND FOR OTHER MATTERS CONNECTED THEREWITH.

[Gazetted 21st March, 2023]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement

1. (1) This Act may be cited as the BVI Business Companies (Amendment) Act, 2023.

(2) This Act shall be deemed to have come into force on 1st day of January, 2023.

Section 9 amended

2. Section 9(1)(d) of the BVI Business Companies Act, Revised Edition 2020, (hereinafter referred to as the "principal Act"), is amended by inserting after the word "name" the words "and address".

Section 96 amended

3. Section 96 of the principal Act is amended:

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

"(1A) A company shall, in addition to the requirements of subsection (1), collect, maintain and keep up to date information on the beneficial owner of the company, which it shall file with its registered agent.";

(b) by renumbering the existing subsection (3A) as subsection (3B);

(c) by inserting after subsection (3), the following subsection:

"(3A) Where the beneficial owner of, or any information in relation to a beneficial owner's interest in, a company changes,

the company shall, within 15 days of the occurrence of the change, file with its registered agent information of the change.";

(d) in subsection (3B) as renumbered, by inserting after the word "may", the words "without prejudice to subsections (1A) and (3A),";

(e) by inserting after subsection (3B) as renumbered, the following subsections:

"(3C) For purposes of subsection (1A) and (3A), the following terms mean:

" "beneficial owner" has the meaning ascribed to it in regulation 2(1) of the Anti-money Laundering Regulations, Revised Edition 2020; and

"information", as it relates to a beneficial owner, refers to the information required in respect of a beneficial owner under the Anti-money Laundering and Terrorist Financing Code of Practice, Revised Edition 2020.

(3D) The Regulations may provide for such transitional provisions as may be necessary in relation to subsection (1A).";
and

(f) in subsection (4), by deleting the words "subsection (1), (2) or (3)" and substituting the words "a provision of this section".

Section 98A amended

4. Section 98A of the principal Act is amended:

(a) in subsection (5)

(i) by deleting the word "and" at the end of paragraph (b);

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

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

"(d) a company in liquidation, subject to subsection (5A).";
and

(b) by inserting after subsection (5), the following subsection:

"(5A) Subsection (5)(d) shall not apply to a company in liquidation if the company's annual return becomes due prior to the commencement of the liquidation and, for this purpose and notwithstanding anything to the contrary contained in this Act, the company's liquidation (if proceeded with) shall not be complete until the company files the annual return that had become due.".

New sections 187A and 187B inserted

5. The principal Act is amended by inserting after section 187, the following sections:

"Register of members

187A. (1) Subject to subsection (2), a foreign company shall, upon registration by the Registrar under section 187(1), keep a register of members containing, as appropriate for the foreign company

(a) the names and addresses of the persons who hold registered shares in the foreign company;

(b) the number of each class and series of registered shares held by each shareholder including, subject to subsection (3), the nature of associated voting rights;

(c) the names and addresses of the persons who are guarantee members of the company;

(d) the names and addresses of the persons who are unlimited members;

(e) the date on which the name of each member was entered in the register of members; and

(f) the date on which any person ceased to be a member.

(2) Where a foreign company is listed on a recognised exchange, the foreign company may keep a register of members containing the information referred to in subsection (1) or such other information as the foreign company's articles permit or as may be approved by a resolution of members.

(3) Where a foreign company's memorandum or articles provide the nature of associated voting rights as outlined in subsection (1)(b), the foreign company's register of members need not contain that information.

(4) The register of members may be in such form as the directors may approve but if it is in magnetic, electronic or other data storage form, the foreign company must be able to produce legible evidence of its contents.

(5) The Regulations may provide for

(a) the circumstances in which information relating to persons who are no longer members of a foreign company may be deleted from the register of members; and

(b) such transitional provisions as may be necessary in relation to subsection (1).

(6) A company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of $30,000.

Documents to be kept at office of registered agent

187B. (1) A foreign company shall keep the following documents at the office of its registered agent:

(a) the memorandum and articles of the company;

(b) the register of members maintained in accordance with section 187A or a copy of the register of members;

(c) a list of its directors; and

(d) copies of all notices and other documents filed by the company in the previous 10 years.

(2) A foreign company shall, in addition to the requirements of subsection (1), collect and file with its registered agent information on the beneficial owner of the company.

(3) Where a foreign company keeps a copy of the register of members or the list of directors at the office of its registered agent, it shall

(a) within 15 days of any change in the register, notify the registered agent, in writing, of the change; and

(b) provide the registered agent with a written record of the physical address of the place or places at which the original register of members or the original list of directors is kept.

(4) Where the place at which the original register of members or the original list of directors is changed, the foreign company shall provide the registered agent with the physical address of the new location of the records within 14 days of the change of location.

(5) Where the beneficial owner of, or any information in relation to a beneficial owner's interest in, a foreign company changes, the company shall, within 15 days of the occurrence of the change, file with its registered agent information of the change.

(6) The Listed Companies and Funds Regulations may, without prejudice to subsections (2), (5) and (7), disapply or modify the requirements of this section in relation to listed companies, public funds, private funds and professional funds and, for the purpose of this subsection, public funds, private funds and professional funds have the respective meanings specified in the Securities and Investment Business Act, Revised Edition 2020.

(7) For purposes of subsections (2) and (5), the following terms mean:

" "beneficial owner" has the meaning ascribed to it in regulation 2 (1) of the Anti-money Laundering Regulations, Revised Edition 2020; and

"information", as it relates to a beneficial owner, refers to the information required in respect of a beneficial owner under the Anti-money Laundering and Terrorist Financing Code of Practice, Revised Edition 2020.

(8) The Regulations may provide for such transitional provisions as may be necessary in relation to subsection (2).

(9) A foreign company that contravenes a provision of this section commits an offence and is liable on summary conviction to a fine of $10,000.".

Passed by the House of Assembly this 10th day of March, 2023.

(Sgd.) Corine N. George-Massicote,
Speaker.

(Sgd.) Phyllis Evans,
Clerk of the House of Assembly.