

VIRGIN ISLANDS

BVI BUSINESS COMPANIES REGULATIONS, 2012

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VIRGIN ISLANDS

STATUTORY INSTRUMENT 2012 NO. 23

**BVI BUSINESS COMPANIES ACT, 2004
(No. 16 of 2004)**

BVI Business Companies Regulations, 2012

[Gazetted 10th May, 2012]

The Cabinet, in exercise of the powers conferred under section 240 of the BVI Business Companies Act, 2004 (No. 16 of 2004) and with the advice of the Financial Services Commission, makes these Regulations:

PART I

PRELIMINARY

1. (1) These Regulations may be cited as the BVI Business Companies Regulations, 2012. Citation and commencement.

(2) The provisions of these Regulations come into force on such date or dates as may be appointed by the Governor by proclamation published in the Gazette and different dates may be appointed for different provisions and different purposes.

2. (1) In these Regulations, unless the context otherwise requires, Interpretation.

“Act” means the BVI Business Companies Act, 2004; No. 16 of 2004

“affiliated company” has the meaning specified in sub-regulation (2);

“close family member”, in relation to a person, means the person’s

- (a) spouse;
- (b) child, including an adopted child;
- (c) parent, including a step parent;
- (d) brother or sister, including a step brother or step sister; or
- (e) grandchild;

“country” includes a territory;

“disqualified person” has the meaning specified in section 260(4) of the Insolvency Act, 2003;

“group”, in relation to a company (the “first company”), means the first company and any other company that is

- (a) a parent of the first company;
- (b) a subsidiary of the first company;
- (c) a subsidiary of a parent of the first company; or
- (d) a parent of a subsidiary of the first company;

“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;

“parent”, in relation to a company (the “first company”), means another company that, whether acting alone or under an agreement with one or more other persons,

- (a) holds, whether legally or equitably, a majority of the issued shares of the first company;
- (b) has the power, directly or indirectly, to exercise, or control the exercise of, a majority of the voting rights in the first company;
- (c) has the right to appoint or remove the majority of the directors of the first company;
- (d) has the right to exercise a dominant influence over the management and control of the first company pursuant to a provision in the constitutional documents of the first company; or
- (e) is a parent of a parent of the first company;

“permitted character” means a character, sign or symbol specified in Schedule 1, and includes a blank space between two other permitted characters;

Schedule 1

“restricted person” has the meaning specified in section 409 of the Insolvency Act, 2003;

“restricted word, phrase or abbreviation” means a word, phrase or abbreviation specified by the Commission as such in a notice issued under section 18(2) of the Act;

“subsidiary”, in relation to a company (the “first company”), means a company of which the first company is a parent; and

“undischarged bankrupt” means an individual

- (a) against whom a bankruptcy order has been made under the Insolvency Act, 2003 that has not been discharged; or
- (b) who has equivalent status under the insolvency legislation of a country other than the Virgin Islands;

No. 5 of 2003

(2) For the purposes of sub-regulation (1) and section 223(4) of the Act, a company is affiliated with another company if it is in the same group as the other company.

(3) For the purposes of sub-regulation (2) and the definitions of “group”, “parent” and “subsidiary” in sub-regulation (1), “company” includes a foreign company and any other body corporate.

PART II

COMPANY NAMES

General

3. (1) The name of a company shall be

Requirements for company name.

- (a) its company number name, within the meaning of section 19 of the Act; or
- (b) a name that comprises no more than one hundred permitted characters.

(2) A company name, other than a company number name, may only contain one or more numerals if the Registrar is satisfied that it is clear from the context that the name is not a company number name.

Company name in foreign language.

4. Where the proposed name for a company or the name or alternate name of a foreign company applying to be registered under Part XI of the Act or filing notice of a change in its corporate name under section 188(1)(a) of the Act has a meaning in a language other than English, the application to register the company under that name, whether on incorporation, continuation or a change of name, or to register the foreign company under that name, shall be accompanied by a translation of the name or proposed name that has been certified, in accordance with regulation **29**, by the person who translated the name.

Company name includes restricted words, phrases or abbreviations.

5. Where the proposed name for a company, whether on incorporation, continuation or a change of name, is to include a restricted word, phrase or abbreviation, the application shall be accompanied by the written approval of the Commission to use the restricted word, phrase or abbreviation.

Foreign character names

Company may be registered with additional foreign character name.

6. (1) Subject to regulation **8**, on an application made under regulation **7**, the Registrar may register a company with an additional foreign character name.

(2) Where a company is registered with an additional foreign character name,

(a) the memorandum shall contain a statement that the company has a foreign character name in addition to its name and shall state the foreign character name; and

(b) wherever the name of the company appears in the memorandum or articles, there shall also be a reference to the foreign character name.

(3) A company shall not be registered with a foreign character name that is

(a) identical to a foreign character name that is registered, or has been registered, to another company under the Act; or

(b) so similar to a foreign character name that is registered, or has been registered, to another company under the Act that the use of the name would, in the opinion of the Registrar, be likely to confuse or mislead.

(4) Notwithstanding sub-regulation (3)(b), the Registrar may register a company with an additional foreign character name that is similar to the foreign character name of another company if both companies are affiliates.

7. (1) An application to the Registrar for the approval and registration of a foreign character name may be made together with the application to incorporate or continue the company or at any time thereafter.

Application for approval and registration of foreign character name.

(2) An application under sub-regulation (1) shall be in the approved form and shall be accompanied by

(a) a statement certified by a person who has the necessary competence

(i) confirming whether or not the foreign character name is a translation of, or has a meaning equivalent to, the name or proposed name of the company; and

(ii) specifying the meaning or, where it has more than one possible meaning, the meanings of the foreign character name; and

(b) where the application is in relation to an existing company, a notice of amendment of its memorandum and articles to incorporate the matters required under regulation 6(2) or a restated memorandum and articles complying with regulation 6(2).

8. (1) The Registrar shall not approve a foreign character name if

Approval of foreign character name.

(a) the name does not comply with the Act or these Regulations; or

(b) he considers that

(i) the name is offensive or objectionable; or

(ii) it would be contrary to public policy or the public interest to register the name.

(2) The Registrar may refuse to approve a foreign character name if

(a) he is not satisfied that he understands the full or true meaning of the name, whether by reason of the accuracy of the translation, the context in which the name will, or may be, used or otherwise; or

- (b) it is not, whether for technical or other reasons, practicable to register the name.

(3) On approving a foreign character name, whether on incorporation, continuation, change of name or otherwise, the Registrar shall

- (a) register the foreign character company name against the company in the Register of Companies; and
- (b) issue a certificate of incorporation, continuation or registration of additional foreign character name, as appropriate, which shall
 - (i) indicate that the company has a foreign character name in addition to its name; and
 - (ii) state both its name and the foreign character name.

Change of name where company has foreign character name.

9. (1) If a company that has a foreign character name applies to change its foreign character name, it shall file with the application for a change of name, the documents specified in regulation 7(2).

(2) Where a company applies to change its foreign character name, regulation 8 applies, with suitable modifications.

Deregistration of foreign character name.

10. (1) A company that is registered with a foreign character name may apply to the Registrar for the deregistration of its foreign character name.

(2) An application under sub-regulation (1) shall be in the approved form and shall be accompanied by

- (a) a notice of amendment of its memorandum and articles removing all references to the foreign character name; or
- (b) a restated memorandum and articles which contains no references to a foreign character name.

(3) On an application under sub-regulation (1), the Registrar may deregister the foreign character name and remove it from the Register.

(4) If the Registrar deregisters the foreign character name of a company, he shall issue a certificate of deregistration of the foreign character name.

11. (1) The Registrar may issue a notice under sub-regulation (2) to a company if

Powers of Registrar in relation to foreign character names.

- (a) he considers that
 - (i) the company's foreign character name does not comply with the Act or these Regulations or is offensive or objectionable; or
 - (ii) it is contrary to public policy or to the public interest for the foreign character name to remain on the Register, or
- (b) he forms the opinion that he does not understand the full or true meaning of the name.

(2) Where sub-regulation (1) applies, the Registrar may issue a notice to the company directing it to apply to change its foreign character name to a foreign character name approved by the Registrar on or before a date specified in the notice, which shall be not less than fourteen days after the date of the notice.

(3) If a company that has received a notice under sub-regulation (2) fails to file an application to change its foreign character name to a foreign character name approved by the Registrar on or before the date specified in the notice, the Registrar may deregister the name.

(4) Where the Registrar deregisters a foreign character name under this regulation, he shall issue a certificate of change of name to the company.

(5) Where a company's foreign character name has been deregistered under this regulation it shall, within fourteen days of the date of the certificate of change of name, file

- (a) a notice of amendment of its memorandum and articles removing all references to the foreign character name; or
- (b) a restated memorandum and articles which contains no references to a foreign character name.

Re-use of company names

12. (1) For the purposes of regulations **13** to **18**,

“change date” means the date on which the first company changed its name;

Interpretation for regulations **13** to **18**.

“discontinued company” means a company in respect of which the Registrar has issued a certificate of discontinuance under section 184(4) of the Act;

“dissolved company” means a company that has been dissolved under the Act or a former Act;

“first company” means

- (a) the company or former Act company that has, as the case may be,
 - (i) changed its name;
 - (ii) been dissolved under the Act or a former Act; or
- (b) the discontinued company;

“insolvent company” means, subject to subsection (2), a company that is

- (a) in liquidation under the Insolvency Act, 2003 or has been dissolved following the termination of its liquidation under that Act; or
- (b) in administrative receivership, within the meaning of the Insolvency Act, 2003 or has been dissolved within two years after the termination of its administrative receivership, without entering into liquidation; and

“second company” means the company that seeks to use the name of the first company, whether on incorporation, continuation or through a change of name.

(2) A company that has been dissolved for seven years or more ceases to be an “insolvent company” for the purposes of regulations **13** to **18**.

Registrar may permit re-use of company names.

13. (1) Where permitted under regulation **14** or **15**, the Registrar may incorporate or continue a company under, or register a change of name of a company to, a name that is identical or similar to the name of

- (a) a company or former Act company that has
 - (i) changed its name; or

- (ii) been dissolved under the Act or a former Act;
or

(b) a discontinued company.

(2) Regulations **14** and **15** are subject to regulations **17** and **18**.

(3) Nothing in regulations **14** to **18** is intended to give a company, whether the first company or the second company, any entitlement to the transfer of the name from the first company to the second company.

14. (1) Where the first company is a company that has changed its name, the Registrar may permit the previous name of the first company, or a name similar to the previous name of the first company, to be registered to a second company

Use of changed name.

(a) at any time after the expiry of a period of seven years from the date that the first company changed its name; or

(b) if the first company provides its written consent,

(i) where the Registrar is satisfied that the change of name is part of a genuine sale of the business or undertaking, or a substantial part of the business or undertaking, of the first company to the second company, at any time after the first company has changed its name;

(ii) where the Registrar is satisfied that the first company and the second company are affiliates, at any time after the first company has changed its name; or

(iii) in any other case, after the expiry of a period of three years from the date that the first company changed its name.

(2) Where a company has changed its name, and the name, or a similar name, has not been registered to a second company, the Registrar may permit the company to change its name to its previous name, or a similar name.

15. Where the first company is a dissolved company, the Registrar may permit the name of the first company, or a name similar to the name of the first company, to be registered to a second company at any time after the date that the first company was dissolved.

Use of name of dissolved company.

Use of name of discontinued company.

16. (1) Where the first company is a discontinued company, the Registrar may permit the name of the first company, or a name similar to the name of the first company, to be registered to a second company at any time after the expiry of a period of seven years from the date of the certificate of discontinuance issued in respect of the first company.

(2) If a discontinued company is subsequently continued under the Act, the Registrar may permit the company to be continued under its previous name, as stated in the certificate of discontinuance, unless the name has been reused in accordance with these Regulations.

Restrictions on multiple uses of same or similar name.

17. The Registrar shall not permit a name, including a similar name, to be registered to

- (a) more than two different companies, or
- (b) more than twice to the same company,

in any period of seven years.

Restrictions on re-use of names of insolvent companies.
No. 5 of 2003

18. (1) Regulations **13** to **16** do not apply where the first company is an insolvent company.

(2) If the first company is an insolvent company, the name of the first company, or a name similar to the name of the first company, may only be registered to a second company

- (a) if the liquidator or administrative receiver has sold the business or undertaking, or a substantial part of the business or undertaking, of the first company to the second company; or
- (b) with the leave of the Court.

PART III

MISCELLANEOUS

Voluntary liquidation

Individuals eligible to be appointed, or act, as voluntary liquidator.

19. (1) For the purposes of section 199(5) of the Act, an individual is eligible to be appointed and to act as the voluntary liquidator of a company if the individual is not disqualified from acting as the voluntary liquidator of a company under sub-regulation (2).

(2) The following individuals are disqualified from being appointed, or acting, as the voluntary liquidator of a company:

- (a) a disqualified person or an individual subject to an equivalent disqualification under the laws of a country outside the Virgin Islands;
- (b) a restricted person or an individual subject to an equivalent restriction under the laws of a country outside the Virgin Islands;
- (c) a minor;
- (d) an undischarged bankrupt;
- (e) an individual who is, or at any time in the previous two years has been, a director of the company or an affiliated company;
- (f) an individual who acts, or at any time in the previous two years has acted, in a senior management position in relation to the company or an affiliated company and whose functions or responsibilities have included functions or responsibilities in relation to the financial management of the company or an affiliated company; and
- (g) an individual who is a close family member of an individual specified in paragraph (e) or (f).

20. For the purposes of section 200(3A) of the Act, the voluntary liquidator, or where there are joint voluntary liquidators, at least one of the voluntary liquidators, of a company that is a regulated person shall be a licensed insolvency practitioner if the company holds, or has at any time held,

Voluntary liquidator to be licensed insolvency practitioner. No. 9 of 1990

- (a) a banking licence issued under the Banks and Trust Companies Act, 1990;
- (b) a Class I, Class II or Class III trust licence (not being a restricted trust licence), issued under the Banks and Trust Companies Act, 1990;
- (c) a company management licence issued under the

No. 8 of 1990

No. 1 of 2008

- (d) a category A or a category C insurer's licence issued under the Insurance Act, 2008;
- (e) an insurance intermediary's licence issued under the Insurance Act, 2008;
- (f) an insurance manager's licence issued under the Insurance Act, 2008; or
- (g) a money services licence issued under the Financing and Money Services Act, 2009.

No. 9 of 2009

Extract of declaration of solvency.

21. An extract of the declaration of solvency filed under section 204(1)(a)(ii) shall

- (a) set out the entire statutory declaration of solvency, except for the names and signatures of the directors;
- (b) state that the names and signatures of the directors are omitted; and
- (c) be certified by the registered agent of the company as an accurate extract of the declaration of solvency that is complete, except for the names and signatures of the directors.

Advertisement by voluntary liquidator of notice of appointment.

22. For the purposes of section 204(1)(b) and section 205C(3)(b) of the Act, the voluntary liquidator of a company shall advertise notice of his appointment

- (a) in at least one issue of a newspaper published and circulating in the Virgin Islands; and
- (b) unless the company's principal place of business is in the Virgin Islands,
 - (i) in at least one issue of a newspaper circulating in the place outside the Virgin Islands in which its place of business, or if it has more than one, its principal place of business, is situated; or
 - (ii) if the company does not have a place of business, or the voluntary liquidator does not know where its place of business is situated, in such manner as the liquidator considers is

most likely to come to the attention of any creditors of the company.

Registrar and Commission

23. The Commission shall publish on its Internet site, and keep up to date, a list of persons who are approved to provide registered agent services. Publication of approved agents.

24. The Register of Registered Charges maintained under section 163 of the Act in respect of a company shall contain the following information in respect of each charge registered: Register of charges.

- (a) the company number and name of the company that has created the charge;
- (b) the date and time of registration of the charge;
- (c) if the charge is a charge created by the company, the date of its creation or, if the charge is a charge existing on property acquired by the company, the date on which the property was acquired;
- (d) a short description of the liability secured by the charge;
- (e) a short description of the property charged;
- (f) the name and address of the agent or trustee for the security or, if there is no such agent or trustee, the name and address of the chargee;
- (g) unless the charge is a security to bearer, the name and address of the holder of the charge;
- (h) details of any prohibition or restriction, if any, contained in the instrument creating the charge on the power of the company to create any future charge ranking in priority to or equally with the charge;
- (i) the name and address of the person who filed the charge for registration and the person's entitlement to file the charge;
- (j) details of any variation of the charge registered under section 164 of the Act;

- (k) the date and time of registration of any variation of the charge registered under section 164 of the Act;
- (l) the name and address of the person who filed the variation of the charge for registration and the person's entitlement to file the variation;
- (m) where a notice of satisfaction or release is registered under section 165 of the Act, details of the satisfaction of any charge registered under section 163 of the Act or, where a charge has ceased to affect the property, or any part of the property of the company, details of the property that has ceased to be affected by the charge, stating whether this is the whole or part of the company's property; and
- (n) the date and time of registration of the notice of satisfaction or release registered under section 165 of the Act.

Certificate of good standing.

25. A certificate of good standing issued under section 235 of the Act shall contain a statement

- (a) that, at the date of the certificate, the company
 - (i) is on the Register of Companies; and
 - (ii) has paid all fees and penalties due under the Act; and
- (b) as to whether, at the date of the certificate,
 - (i) the company has filed articles of merger or consolidation that have not yet become effective;
 - (ii) the company has filed articles of arrangement that have not yet become effective;
 - (iii) the company is in voluntary liquidation;
 - (iv) the company is in liquidation or receivership under the Insolvency Act, 2003 and where, appropriate, stating that it is in administrative receivership; or

- (v) any proceedings to strike the name of the company off the Register of Companies have been instituted.

26. For the purposes of section 241(1) of the Act, the Commission publishes an approved form in the prescribed manner by publishing the form on its Internet site. Publication of approved forms.

Company Law Review Advisory Committee

27. Schedule 2 has effect with respect to the proceedings of the Company Law Review Advisory Committee. Rules of procedure. Schedule 2

General

28. For the purposes of section 73(2)(a) of the Act, the prescribed period is the period of five years from the date on which the authorised custodian transfers possession of the bearer share to which the copy of the notices to be retained relates. Prescribed period, section 73(2)(a) of the Act.

29. (1) This regulation applies where a translation into the English language of any document required to be filed, submitted or provided to the Registrar, is required by the Act to be certified as accurate. Certificates of translation.

(2) The person who made the translation shall certify, or verify, before a person authorised to act as a Notary Public or to administer oaths that

- (a) the translation is an accurate translation of the document concerned; and
- (b) he has the necessary competence to translate the document into English.

(3) Where a translation is certified or verified in a country outside the Virgin Islands, the translation shall be certified or verified before a person authorised under the law of the country concerned

- (a) to act as a Notary Public, or equivalent; or
- (b) administer oaths, or their equivalent.

(4) This regulation applies to the certified statement required under regulation 7(2)(a) of these Regulations, with appropriate modifications.

30. (1) The transitional provisions set out in Schedule 3 apply. Transitional provisions. Schedule 3

SCHEDULE 1

[Regulation 2(1)]

PERMITTED CHARACTERS

1. The letters A to Z, in lower and upper case.
2. Subject to regulation 3(2), the numerals 0 to 9.
3. Any roman numerals.
4. The following punctuation marks:

Full stop	.
Comma	,
Dash	-
Underscore	—
Apostrophe	‘ ’ ’
Brackets	[] () { }
Exclamation mark	!
Question mark	?
Inverted commas	“ ” ”
5. The following symbols:

@ & * / \ < > + = # %
6. The Registrar may, generally or on a case-by-case basis, permit the use of
 - (a) accents with one or more letters; and
 - (b) symbols that indicate a particular currency.

SCHEDULE 2

[Regulation 27]

RULES OF PROCEDURE FOR THE COMPANY LAW REVIEW ADVISORY COMMITTEE

Chairmanship of the Committee

1. Pursuant to section 228A(4) of the Act, the chairman of the Committee is the Managing Director of the Commission, or such other person as the Managing Director may designate.

Meetings of the Committee

2. (1) Meetings of the Committee shall be called by the Chairman sending, or causing to be sent, to each member of the Committee a notice setting out the date, time and place of the meeting and including an agenda of the matters to be considered at the meeting.

(2) On the written request of a member of the Committee, the Chairman may, but is not obliged to, call a meeting of the Committee. A member making a request under this paragraph shall indicate in writing the reasons for his request and the matters that he wishes to be considered at the meeting.

(3) A notice calling a meeting of the Committee shall be sent at least four business days prior to the date of the meeting.

(4) The Committee shall meet at such intervals as the Chairman considers necessary to enable it to discharge its functions.

(5) Members of the Committee may, by written notice to the Chairman given at least two business days prior to the date of the meeting, suggest additional matters for inclusion in the agenda for the meeting.

(6) The Chairman shall not be obliged to add any matters suggested under sub-paragraph (5) to the agenda, but if he agrees to do so, he shall cause a revised agenda to be circulated to each committee member no later than the day before the date of the meeting.

(7) The Chairman shall preside at every meeting of the Committee at which he is present and, in his absence, the meeting shall be presided over by

(a) such person as the Chairman has designated to preside at the meeting; or

- (b) if the Chairman has not designated any person to preside over the meeting, the Deputy Managing Director (Regulation) of the Commission or such other senior officer of the Commission present at the meeting.

Quorum

- 3. (1) The quorum of the Committee is 5 members of which
 - (a) at least two shall be officers of the Commission;
and
 - (b) at least two shall be non-Commission members of the Committee.
- (2) If during the course of a meeting of the Committee, the quorum is not met, the meeting shall either be adjourned until the required quorum is met or to another date.
- (3) No meeting shall be convened or proceeded with in the absence of the required quorum.

Persons co-opted to assist Committee

- 4. (1) The Chairman may, in his discretion, co-opt persons to assist the Committee. Such persons may be co-opted for the purposes of a particular meeting of the Committee, or generally.
- (2) A person co-opted to assist the Committee may speak at any meetings of the Committee which that person attends, but is not entitled to vote.

Voting

- 5. (1) The Committee shall, as far as possible, take its decisions by consensus.
- (2) Where for whatever reason a vote is required, only those members of the Committee present at the meeting are entitled to vote.
- (3) Each member of the Committee is entitled to one vote.
- (4) Decisions at meetings of the Committee are determined by a majority of the votes cast by members present and entitled to vote and, in the event of an equality of votes, the Chairman or other person presiding at the meeting shall have a casting vote.

Status of Committee decisions

6. The Committee is an advisory committee and neither the Commission nor the Government has any obligation to act in accordance with the advice or a decision of the Committee or to take any advice or decision of the Committee into account.

Secretary

7. (1) An officer of the Commission delegated by the Chairman shall serve as secretary at each meeting.

(2) The Secretary shall take minutes of each meeting and shall circulate the minutes, or cause them to be circulated, no more than 14 days after the date of the meeting.

(3) The requirement in sub-paragraph (2) to circulate the minutes or cause them to be circulated no more than 14 days after the date of the meeting does not apply where a meeting of the Committee is convened within three weeks after the conclusion of the immediately preceding meeting.

SCHEDULE 3

[Regulation 30]

TRANSITIONAL PROVISIONS

Interpretation. 1. In this Schedule, “commencement date”, in relation to a provision in these Regulations, means the date that the provision comes into force.

Regulation 19. 2. (1) Regulation 19 does not apply to an individual appointed as voluntary liquidator of a company prior to the commencement date.

(2) Prior to the commencement date, an individual is eligible to be appointed as the voluntary liquidator of a company unless the individual is a disqualified person or a restricted person.

Made by the Cabinet this 26th day of April, 2012.

(Sgd.) Sandra Ward,
Cabinet Secretary.