

VIRGIN ISLANDS
MICRO BUSINESS COMPANIES ACT, 2017

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SCHEDULE 1

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I Assent
(Sgd.) Augustus J. U. Jaspert,
Governor.
13th March, 2018

VIRGIN ISLANDS

No. 26 of 2017

An Act to provide for the incorporation, management and operation of micro business companies, for the relationships between micro business companies and principals thereof and to provide for other matters connected therewith.

[Gazetted 16th March, 2018]

ENACTED by the Legislature of the Virgin Islands as follows:

PART I

PRELIMINARY PROVISIONS

Short title and commencement.

1. (1) This Act may be cited as the Micro Business Companies Act, 2017.

(2) This Act shall come into operation on such date as the Minister may, by Notice published in the *Gazette*, appoint.

Interpretation.

2. (1) In this Act, unless the context otherwise requires

“annual return” means the return in the approved form that is required to be made by a micro business company on an annual basis in accordance with section 64;

“approved form” means a form approved by the Commission in accordance with section 117;

“asset” includes money, goods, things in action, land and every description of property wherever situated and obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

“business day” means any day other than a Saturday, Sunday or public holiday in the Virgin Islands;

“BVIBCA” means the BVI Business Companies Act, 2004;

No. 16 of 2004

“BVI business company” means a company incorporated or registered under the BVIBCA;

“charter” means the constitutive document of a micro business company registered by the Registrar;

“Commission” means the Financial Services Commission established under the Financial Services Commission Act, 2001;

No. 12 of 2001

“country” means any country that has been allocated an ISO 3166 country code;

“Court” means the High Court;

“distribution” has the meaning specified in section 31;

“document” means a document in any form, and includes

- (a) any writing or printing on any material,
- (b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium or device, including discs and tapes,
- (c) books and drawings, and
- (d) a photograph, film, tape, negative, facsimile or other medium in which one or more visual images is or are embodied so as to be capable (with or without the aid of equipment) of being reproduced,

and without limiting the generality of the foregoing, includes any court application, order and other legal process and any notice;

“file”, in relation to a document, means to file the document with the Registrar;

“financial services legislation” means an enactment that is listed in Part 1 of Schedule 2 of the Financial Services Commission Act, 2001;

“Insolvency Act liquidator” means a liquidator appointed under the Insolvency Act, 2003;

No. 5 of 2003

“insolvency event” has the meaning specified in section 30;

“interim return” means a return, other than an annual return, in the approved form that is required to be made by a micro business company in accordance with section 65;

“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;

“micro business company” means a micro business company formed under section 5 or transformed under section 66 or 68, but excludes a micro business company that has been dissolved;

“Minister” means the Minister responsible for the administration of this Act;

“Official Receiver” means the Official Receiver appointed under section 488 of the Insolvency Act;

“participant” means a natural individual shareholder stated in the charter as being a participant of a micro business company;

“participant share” has the meaning specified in section 23;

“prescribed” means prescribed by or under this Act or by or under any regulations made pursuant to section 125;

“principal” means the natural individual shareholder stated in the charter as being the principal of a micro business company;

“principal share” has the meaning specified in section 22;

“Register” means the Register of Micro Business Companies maintained by the Registrar in accordance with section 107;

“registered agent” means a person who is approved by the Commission under the Banks and Trust Companies Act, 1990 or Company Management Act, 1990 to act as registered agent of a micro business company;

“registered office” has the meaning specified in section 36 (2);

“Registrar” means the Registrar of Corporate Affairs appointed under section 229 of the BVIBCA, and “Deputy Registrar” and “Assistant Registrar” shall be construed accordingly;

No. 9 of 1990
No. 8 of 1990

“shareholder” means the principal and participant stated in the charter; and

“voluntary liquidator” means a liquidator appointed under section 72, but does not include an Insolvency Act liquidator.

(2) Where in this Act reference is made to

- (a) a principal being mentally incapacitated, this shall be construed to refer to the principal being certified by a medical practitioner in the Virgin Islands qualified in accordance with the provisions of the Medical Act, 2000 or a medical practitioner qualified under the relevant legislation of any other jurisdiction; and
- (b) the name of a micro business company, this shall be construed in accordance with section 10;
- (c) any document or matter being filed, registered or otherwise required to be provided in writing, that document or matter may, without prejudice to section 107 (2), (3) and (4), be dealt with accordingly in an electronic form and may be in such specified form as the Commission may approve; and
- (d) a currency or the symbol of a currency, the reference shall be construed to refer to the currency or symbol of the currency of the United States of America.

No. 4 of 2000

(3) For the purposes of subsection (2) (c), where any document or matter that is required to be filed, or otherwise provided in writing as between a principal or a micro business company and a registered agent for which a form is not specified by the Commission, that document or matter may be filed or provided in an electronic form in such manner and form as the parties may agree.

(4) The application of subsections (2) (c) and (3) is without prejudice to section 47.

PART II

INCORPORATION, CAPACITY AND POWERS

Division 1 – Incorporation

3. A micro business company incorporated under this Act is a company limited by shares.

Micro business company to be limited by shares.

Application to incorporate a micro business company.

4. (1) Subject to subsection (2), a person may apply to the Registrar for the incorporation of a micro business company by filing the application in the approved form which must contain

- (a) the required information for the charter;
- (b) the confirmation by the proposed registered agent of its consent to act as registered agent of the company; and
- (c) such other information as may be prescribed in the approved form.

(2) An application for the incorporation of a micro business company may be filed only by the proposed registered agent and the Registrar shall not accept an application for the incorporation of a micro business company filed by any other person.

(3) For the purposes of this section, the “proposed registered agent” means the person named in the charter as the first registered agent of the micro business company to be incorporated.

Incorporation of a micro business company.

5. (1) The Registrar shall, if he or she is satisfied that the requirements of this Act in respect of incorporation have been complied with, upon receipt of the information filed under section 4 (1)

- (a) allot a unique registration number to the micro business company; and
- (b) register the micro business company on the Register.

(2) The registration of a micro business company and under subsection (1) is conclusive evidence that

- (a) all the requirements of this Act in relation to incorporation have been complied with; and
- (b) the micro business company is incorporated on the date of filing of the application under section 4 (1) for incorporation of the company.

(3) Upon registration of the micro business company under subsection (1)

- (a) the principal share of the company is automatically issued and registered in the name of the principal;

- (b) if applicable, the participant share of the company is automatically issued and registered in the name of the participant; and
- (c) the principal is obligated to direct and manage the business affairs of the company.

Division 2 – Charter

6. (1) The charter shall be in the approved form and shall state the following Charter.

- (a) the registered name of the micro business company and that the company is a company limited by shares;
- (b) if the micro business company uses a trading name of “doing business as” [*name*] or a domain name as outlined in section 12 (2), the trading name or domain name of the company;
- (c) the name of the registered agent of the micro business company and the address of the registered office of the company;
- (d) the specific business purpose of the micro business company and the country in which the primary place of business operation of the company is located;
- (e) the name and nationality of the principal and that the principal is the registered holder of the principal share and is not disqualified under section 55 (1);
- (f) if applicable, the name and nationality of each participant and that the participant is the registered holder of the participant share and, subject to subsection (2), a description of the rights, privileges, restrictions and conditions attached or related to the participant share;
- (g) that the
 - (i) principal share is transferrable but shall not be encumbered under any form of security interest or held on trust or as a nominee of any other person or jointly held; and
 - (ii) participant shares are not transferrable and shall not be disposed of in any other manner, encumbered

under any form of security interest or held on trust or as a nominee for any other person or jointly held;

- (h) that the business and affairs of the micro business company shall be managed by, or under the direction or supervision of, the principal who has express corporate authority (without the need for any further action or authorisation) under the charter and this Act to exercise powers and to act for and on behalf of the company and to legally and validly bind the company; and
- (i) that the charter and the micro business company shall at all times be fully subject to, and compliant with, the provisions of this Act and any regulations made thereunder.

(2) The description of the rights, privileges, restrictions and conditions attached or related to the participant share referred to in subsection (1) (g), shall be provided in a form approved by the Registrar and different forms may be approved in respect of different micro business companies.

Effect of charter.

7. (1) The charter is binding on the micro business company, the principal and the participants (if any).

(2) The micro business company, the principal and the participants (if any) have the rights, powers, duties and obligations set out in this Act and any regulations made thereunder.

Amendment of charter.

8. (1) A micro business company may amend its charter by filing updated information in relation to the matters specified in section 6 (1) (b), (c), (d), (e), (f) or (g)(i).

(2) Where the Registrar is satisfied that an amendment to a charter filed under subsection (1) is in order, he or she shall register the amendment by updating the charter, and the amendment shall take effect from the date of its filing.

(3) The matters specified in section 6 (1) (a), (g), (h) or (i) may not be amended after the micro business company has been registered under section 5 (1).

Language of charter and availability.

9. (1) The charter of a micro business company shall be in the English language.

(2) Without prejudice to subsection (1) but subject to subsection (4), a charter may be translated into any other language and posted at the micro business

company's principal place of business and made available on any Internet site and to such persons as it considers appropriate.

(3) In addition to subsection (2), the charter of a micro business company shall be placed on the Internet site and made available to users in the English language and any other language that the company has translated the charter into.

(4) If in any particular case, where the charter of a micro business company is translated into another language and an issue arises regarding the meaning or application of a provision of the charter, the English language version of the charter shall have precedence.

(5) Where the charter of a micro business company is translated into another language, the principal shall take all necessary steps to ensure that the translated version of the charter is an accurate and authentic representation of the charter in the English language and is not designed to mislead.

(6) A principal who fails to comply with subsection (5) commits an offence.

Division 3 – Micro Business Company Name

10. (1) The registered name of a micro business company shall comprise the expression “Micro Business Company” or “MBC” followed by its unique registration number allotted under section 5 (1).

Required part of a micro business company name.

(2) Every micro business company shall include after its registered name the ISO 3166 country code, being the country where the micro business company's primary business operation is located.

(3) For the avoidance of doubt, the ISO 3166 country code included after the name of a micro business company shall not be construed to form part of the registered name of the company.

11. (1) A micro business company is not permitted to change its name.

Prohibition against change of name.

(2) Where the location of a micro business company's primary business operation changes, it shall amend its ISO 3166 country code to reflect its new ISO 3166 country code.

12. (1) A micro business company shall ensure that its registered name is

Use of micro business company name.

(a) clearly stated in every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company; and

- (b) clearly and visibly displayed in a prominent area of the location of its primary business operation.

(2) A micro business company may, in addition to the use of its registered name, carry on business under a trading name of “doing business as [name]”, or under a domain name, provided that doing so does not

- (a) contravene the laws of the Virgin Islands or the laws of any jurisdiction in which the company carries on its business operation; or
- (b) confuse or mislead regarding the type, nature or character of the business of the company.

Re-use of micro business company name.

13. (1) Where a micro business company is dissolved or struck off the Register, the name of the company may not be re-used except as provided in subsection (2).

(2) Where a micro business company that has been struck off the Register or dissolved is restored to the Register by the Registrar pursuant to section 91 (1) or 94 (2), as the case may be, the company shall be restored under the registered name it used prior to its dissolution or striking off.

Rights and interest in name.

14. The registration of a micro business company under this Act does not give the company any interest in, or rights over, its name that it would not have had apart from this Act.

Division 4 – Capacity and Powers

Separate legal personality.

15. A micro business company is a legal entity in its own right separate from its shareholders and continues in existence until it is dissolved.

Capacity and powers.

16. (1) Subject to this Act, any other enactment and the charter, a micro business company has, irrespective of corporate benefit

- (a) full capacity to lawfully carry on or undertake any activity, do any act or enter into any transaction in connection with its specified business purpose; and
- (b) for the purposes of paragraph (a), full rights, powers and privileges in connection with the company’s specified business purpose.

(2) Without limiting subsection (1), the powers of a micro business company include the power to

- (a) incur debt obligations;
- (b) grant security over its assets; and
- (c) protect the assets of the company for the benefit of the company, the company's creditors and shareholders.

17. (1) A micro business company is not permitted and has no capacity to Business restrictions.

- (a) carry on any business that is regulated under a financial services legislation;
- (b) have an annual turnover of more than \$2,000,000 or its equivalent in any other currency and not more than ten employees; or
- (c) have gross asset value of more than \$2,000,000 or its equivalent in any other currency and not more than ten employees.

(2) Where the principal becomes aware that the micro business company is not compliant with the restrictions provided in subsection (1) (b) or (c), he or she shall, within 60 days of becoming so aware,

- (a) file an interim return with the company's registered agent; and
- (b) cause the company to be transformed into a BVI business company in accordance with the provisions of this Act and the BVIBCA.

(3) Subject to subsection (4), the Commission may, where it considers it necessary and consistent with the nature and intent of the operation of a micro business company or class of micro business company, impose additional restrictions under subsection (1) prohibiting a micro business company or class of micro business company from engaging in a particular type of business activity.

(4) Any additional restriction imposed by the Commission under subsection (3) shall be in the form of an Order published in the *Gazette* and on the Internet site, and

- (a) the Order shall not take effect earlier than 60 days from the date of publication of the Order; and

- (b) the publication of the Order shall serve as notice to the micro business company or class of micro business company to which the Order relates.

Personal liability.

18. (1) Subject to subsection (2), the principal, agent or voluntary liquidator of a micro business company is not liable for any debt, obligation or default of the company, unless otherwise specifically provided in this Act or in any other enactment.

(2) Subsection (1) does not apply in circumstances where the principal, agent or voluntary liquidator may be personally liable for his or her own conduct not connected to the performance of his or her function as a principal, agent or voluntary liquidator of the micro business company.

Dealings between micro business company and other persons.

19. (1) A micro business company or a guarantor of an obligation of a micro business company may not assert against a person dealing with the company or with a person who has acquired assets, rights or interests in or from the company that

- (a) this Act or the charter has not been complied with,
- (b) the person named as the principal in the charter
 - (i) is not the person obligated to manage, direct or supervise the business and affairs of the company, or
 - (ii) does not have express corporate authority (without the need for any further action or authorisation) under this Act or the charter to exercise powers and to act for and on behalf of the company and to legally and validly bind the company,
- (c) a person held out by the company as its employee or agent
 - (i) has not been duly appointed, or
 - (ii) does not have authority to exercise a power which the employee or agent of a company carrying on business of the kind carried on by the company has authority to exercise,
- (d) a person held out by the company as the employee or agent of the company with authority to exercise a power which the employee or agent of a company carrying on business of the kind carried on by the company does not have

authority to exercise, does not have authority to exercise that power, or

- (e) a document issued on behalf of a company by its principal, employee or agent of the company with actual or usual authority to issue the document is not valid or not genuine,

unless the person has, or ought to have, by virtue of his or her relationship to the company, knowledge of the matters referred to in any of paragraphs (a) to (e).

(2) Subsection (1) applies even though a person of the kind specified in paragraphs (b) to (e) of that subsection acts fraudulently or forges a document that appears to have been signed on behalf of the micro business company, unless the person dealing with the company who has acquired assets, rights or interests in or from the company has actual knowledge of the fraud or forgery.

20. A person is deemed to have notice or knowledge of any document relating to a micro business company, including the charter, or of the provisions or contents of any such document, that has been registered by the Registrar or issued by the Commission under this Act and is publicly available in the *Gazette* or on the Internet site.

Constructive notice.

PART III

SHARES AND SHAREHOLDERS

Division 1 – General

21. (1) Each share in a micro business company is personal property.

Shares.

(2) A micro business company is authorised to issue a maximum of 6 shares (in registered form only) as follows

- (a) a principal share, which may only be issued to the principal; and
- (b) five participant shares, which may be issued 1 share per participant.

22. (1) The principal share confers on the principal

Principal share.

- (a) the obligation to manage, direct and supervise the business and affairs of the micro business company with the right of express corporate authority (without the need for any further action or authorisation) under the charter and this Act and the right to exercise powers and to act for and on

behalf of the company and to legally and validly bind the company;

- (b) the right to any dividend paid on the principal share in accordance with this Act; and
- (c) the right to any distribution of the surplus assets of the micro business company.

(2) The principal share is deemed to be fully paid up upon its issue, and no consideration is payable in respect thereof.

Participant shares.

23. (1) The participant shares may confer on, or state in relation to, the participants any of the following elective rights which must be stated in the charter

- (a) no right to any dividend paid in accordance with this Act;
- (b) no right to any distribution of the surplus assets of the micro business company;
- (c) the right to any dividend paid on the participant shares in accordance with this Act;
- (d) the right to a specified share on the distribution of the surplus assets of the micro business company; and
- (e) such other rights, restrictions, privileges and conditions as may be identified.

(2) The participant shares are deemed fully paid up upon issue, and no consideration is payable in respect thereof.

No share certificates issued.

24. (1) A micro business company may not issue share certificates.

(2) The name of the principal and, if applicable, the participants, stated in the charter confirms that legal title in the principal share vests in the principal and the participant shares vest in the participants.

Evidence of legal title.

25. A micro business company may treat the persons named as the principal and, if applicable, the participants, in its charter as the only persons entitled to any rights, powers and benefits attaching to the principal share or the participant share or shares, as the case may be.

Division 2 – Disposition of Shares

- 26. (1)** Subject to sections 27 (1) (b), 28 (1) (b) and (2), 29 and 55 (1) Non-transferability of shares, etc.
- (a) a principal share may be transferred but shall not be encumbered under any form of security interest or held on trust or as a nominee for any other person or jointly held; and
 - (b) no participant share or any right attached to a participant share shall be transferred or disposed of in any manner, encumbered under any form of security interest or held on trust or as a nominee for any other person or jointly held.
- (2) The following applies in relation to a transfer of a principle share:
- (a) the micro business company shall cause its charter to be amended in accordance with section 8 to include the name and nationality of the transferee as the principal;
 - (b) the transfer of the principal share is effective when the charter amendment referred to in subsection (2) (a) is registered in accordance with section 8 (2).
- (3) Any purported transfer or disposition of a share (including any right attached to such share) or any purported security interest over a share (including any right attached to such share) contrary to subsection (1) shall be void and of no effect.
- 27. (1)** Subject to section 29, if the principal dies or is declared mentally incapacitated Death or mental incapacity of principal.
- (a) the personal representative of the deceased or mentally incapacitated principal shall, as soon as reasonably practicable, notify the registered agent of the micro business company of such death or mental incapacity;
 - (b) the personal representative of the deceased or mentally incapacitated principal may, to the extent necessary to the probate or incapacitation process, exercise the rights and powers attached to the principal share and shall, in that regard, be treated as if he or she were the principal;
 - (c) the surplus assets of the micro business company shall be distributed according to the probate or mental

incapacitation laws of the jurisdiction of residence of the principal;

- (d) the personal representative of the deceased or mentally incapacitated principal shall promptly confirm to the registered agent of the micro business company that the distribution of the surplus assets has been completed; and
- (e) the registered agent of the micro business company shall, within 7 days of receipt of confirmation of the completion of the distribution of the surplus assets, notify the Registrar of that fact.

(2) Where the Registrar receives notification under subsection (1) (e), he or she shall dissolve the micro business company and strike the name of the company off the Register.

(3) When the Registrar dissolves a micro business company and strikes its name off the Register under subsection (2), the shares of the company shall be deemed to be redeemed and cancelled as part of the dissolution of the company.

(4) For the purposes of subsection (1) (c), the reference to “the jurisdiction of residence” of a principal shall be construed as the jurisdiction or place where the principal normally resides for the greater part of each year or, if the principal had left instructions (whether through a will or otherwise) nominating a specific jurisdiction as representing his or her jurisdiction of residence, that nominated specific jurisdiction.

Death or mental incapacity of participant.

28. (1) If a participant dies or is declared mentally incapacitated

- (a) the personal representative of the deceased or mentally incapacitated participant shall notify the principal of the micro business company of such death or mental incapacity;
- (b) the personal representative of the deceased or mentally incapacitated participant may, to the extent necessary to the probate or incapacitation process, exercise the rights and powers attached to the participant share and shall, in that regard, be treated as if he or she were the participant; and
- (c) any elective right conferred on the participant shall be deemed to be transferred to the personal representative of the deceased or mentally incapacitated participant in

accordance with the probate or mental incapacitation laws of the jurisdiction of residence of the participant.

(2) The principal may, on the death or mental incapacitation of a participant

- (a) terminate the business relationship the principal had with the deceased or mentally incapacitated participant prior to such death or incapacitation, but this shall be without prejudice to any right or benefit that accrues to the personal representative of the deceased or mentally incapacitated participant; or
- (b) elect to permit the personal representative of the deceased or mentally incapacitated participant to continue to be a participant of the micro business company and exercise or benefit from any elective rights which would have transferred to the personal representative by virtue of subsection (1) (c).

(3) For the purposes of subsection (1) (c), the reference to “the jurisdiction of residence” of a participant shall be construed as the jurisdiction or place where the participant normally resides for the greater part of each year, or if the participant had left instructions (whether through a will or otherwise) nominating a specific jurisdiction as representing his or her jurisdiction of residence, that nominated specific jurisdiction.

29. (1) Subject to this Act and any agreement between the principal and the participant or participants, the death or mental incapacitation of the principal may not result in the dissolution of the micro business company or in any restriction on the personal representative of the deceased or mentally incapacitated principal continuing to perform the functions or exercise the powers of a principal under this Act if the personal representative elects to continue with the micro business company as an ongoing concern.

Business continuity of micro business company.

(2) The death or mental incapacitation of a participant shall not affect the continued operation of a micro business company, but this shall be without prejudice to any elective rights that the deceased or mentally incapacitated participant may be entitled to pursuant to section 23.

Division 3 – Distributions

30. For the purposes of this Division

- (a) an “insolvency event” means

Meaning of “insolvency event” and “distribution”.

- (i) a situation where the value of a micro business company's liabilities exceeds its assets; and
 - (ii) the company is not able to pay its debts as they fall due; and
- (b) "distribution", in relation to a distribution by a micro business company to its principal or participant, means
- (i) the direct or indirect transfer of an asset to, or for the benefit of, the principal or participant, or
 - (ii) the incurring of a debt to, or for the benefit of, the principal or participant,

in relation to the principal share held by the principal or, if applicable, the participant share held by the participant, and whether by means of the purchase of an asset, a transfer of indebtedness or otherwise, and includes a dividend.

Distribution.

31. Subject to this Part, the principal may, in relation to his or her micro business company, cause the company to make a distribution to the principal and, if applicable, to the participant,

- (a) at such time and in such amount, as the principal considers fit; and
- (b) in accordance with any profit sharing agreement between the principal and the participant,

if the distribution will not cause an insolvency event.

Recovery of distribution made when causing an insolvency event.

32. (1) Subject to subsection (2), any distribution made that causes an insolvency event

- (a) may be recovered by the micro business company from the principal or participant, or both, as the case may be; and
- (b) shall render the principal personally liable for the repayment of the amount of any such distribution.

(2) If, in an action brought under this section against the principal or participant, as the case may be, the Court determines that the micro business company, by making a distribution of a lesser amount, would not have caused an insolvency event, the Court may

- (a) permit the principal or participant, as the case may be, to retain an amount equal to the value of any distribution that could properly have been made; and
- (b) reduce the personal liability of the principal or participant connected with the distribution to the amount of the distribution less the amount permitted to be retained under paragraph (a).

Division 4 – Shareholders

33. (1) A micro business company may have a maximum of 6 shareholders, comprising one principal and five participants. Number of shareholders.

(2) A micro business company shall at all times have a principal, save for the period between the death or mental incapacitation of the principal and the subsequent dissolution of the company and the striking off of its name from the Register.

(3) A micro business company may, but is not required to, have a participant.

34. (1) Subject to subsection (2), a shareholder of a micro business company has no liability, as a shareholder, for the liabilities of the company. Liability of shareholders.

(2) The liability of a shareholder to the micro business company is limited to liability to repay a distribution under section 32 (1).

35. The exercise by a shareholder of a power granted under this Act or the charter is expressly authorised as a matter of law and shall not require any form of resolution to be passed either in writing or otherwise. No resolutions.

PART IV

ADMINISTRATION

Division 1 - Registered Office and Registered Agent

36. (1) A micro business company shall at all times have a registered office in the Virgin Islands. Registered office.

(2) The registered office of a micro business company shall be the physical address of its registered agent in the Virgin Islands.

Registered agent.
No. 9 of 1990
No. 8 of 1990

37. (1) Subject to subsection (5), and the Banks and Trust Companies Act, 1990 and Company Management Act, 1990, a micro business company shall at all times have a registered agent in the Virgin Islands.

(2) No person shall be, or agree to be, the registered agent of a micro business company unless that person is approved by the Commission under the Banks and Trust Companies Act, 1990 or Company Management Act, 1990 to act as a registered agent of a micro business company.

(3) The registered agent of the micro business company is the person so specified in the company's charter registered under section 5 (1) (b).

(4) The registered agent of the micro business company shall remain in such office until it resigns or ceases to be eligible to serve in that capacity.

No. 5 of 2003

(5) A micro business company does not require a registered agent if it is in liquidation within the meaning of section 160 of the Insolvency Act, 2003.

Registered office
and registered
agent fees.

38. (1) The Commission may, by an Order published in the *Gazette* and on the Internet site, prescribe the fees payable for the provision of registered office and registered agent services to a micro business company.

(2) No registered agent shall charge a micro business company a fee for registered office or registered agent services that is higher than the fee prescribed in the Order made pursuant to subsection (1).

(3) The Order published under subsection (1) may require each registered agent to provide the Commission with a list of other fees it intends to charge for each service rendered pursuant to this Act or any regulations made thereunder, including any changes or additions to fees.

(4) Where the Order requires the provision of a list of other fees, including changes and additions to such fees, chargeable by a registered agent, the Commission shall publish the list other fees on the Internet site in respect of the registered agent.

(5) A registered agent commits an offence if

(a) it contravenes subsection (2); or

(b) it fails to provide the Commission with a list of its fees pursuant to an Order published in accordance with subsection (2).

39. (1) Save for the fees prescribed by the Commission under subsection (1), a registered agent of a micro business company may charge such other fees for its services at such rates as it considers appropriate.

Other fees chargeable by registered agent.

(2) Every registered agent of a micro business company shall publish on its website the fees it charges for its services pursuant to subsection (1), including any changes or additions to such fees.

(3) For purposes of subsection (2), the website of a registered agent refers to the principal public access internet site maintained by or on behalf of the registered agent.

(4) A registered agent that fails to comply with subsection (2) commits an offence.

40. (1) If at any time after its incorporation a micro business company does not have a registered agent or anticipates losing its registered agent in accordance with section 42, the company shall, through its principal, appoint a new registered agent.

Appointment of registered agent.

(2) The micro business company shall at the same time as appointing the new registered agent file an interim return with the registered agent who shall then act in accordance with section 8.

41. (1) A registered agent is an agent of the micro business company and shall act

Directions to registered agent.

(a) in accordance with the lawful written directions of the principal; and

(b) to the extent the principal is deceased or declared mentally incapacitated, on the lawful written directions of the personal representative of the deceased or mentally incapacitated principal.

(2) Subject to subsection (3), a registered agent who fails to comply with a lawful written direction of a principal or the personal representative of a deceased or mentally incapacitated principal commits an offence.

(3) A registered agent does not commit an offence under subsection (2), if it proves to the satisfaction of the Court that it has good reasons for not complying with a direction under subsection (1).

42. (1) A micro business company may terminate its business relationship with its registered agent in accordance with the contractual terms agreed between the parties.

Change of registered agent.

(2) A registered agent may terminate its business relationship with a micro business company in accordance with the contractual terms agreed between the parties.

(3) In addition to terminating their contractual relationship under subsection (1) or (2), the micro business company or the registered agent, as the case may be, may terminate its business relationship with the other party if the registered agent has ceased to be qualified, or has notified the company that it shall cease to be qualified as of a specified date, to act as a registered agent pursuant to the Banks and Trust Companies Act, 1990, Company Management Act, 1990 or other enactment, or pursuant to a power exercised by the Commission in relation to the registered agent.

No. 9 of 1990
No. 8 of 1990

(4) Where the business relationship between a registered agent and a micro business company is terminated in accordance with subsection (1), (2) or (3)

- (a) the registered agent shall file with the Registrar a notice of termination; and
- (b) the micro business company shall act in accordance with section 36, and section 8 shall apply accordingly.

(5) For purposes of this section, the termination by a registered agent of its business relationship with a micro business company shall be construed to include a resignation of the registered agent in accordance with its contractual terms with the company.

(6) If for any reason a registered agent of a micro business company refuses or is unable to file a notice of termination under subsection (4), the registered agent appointed by the company pursuant to section 40 may file the notice of termination.

(7) Subsection (6) is without to prejudice to any lien that the registered agent mentioned in subsections (1) to (5) may have against the micro business company.

(8) A registered agent does not commit an offence under section 120 by reason only that

- (a) the registered agent has ceased to be qualified to act as a registered agent of a micro business company; and

- (b) after ceasing to be qualified to act as such, it has continued to be the registered agent of the company before a new registered agent is appointed to replace it.

43. (1) This section applies in relation to a micro business company where the company's registered agent changes the location of its office.

Change of registered office where registered agent changes address.

(2) A registered agent may change the registered office of its micro business company to the changed location of the registered agent's office by filing a notice in the approved form

- (a) stating that
 - (i) the registered agent has moved the location of its office; and
 - (ii) the micro business company intends its registered office to continue to be the office of the registered agent in compliance with section 36 (2); and
- (b) specifying the new address of the registered agent's office.

(3) A person who acts as the registered agent for more than one micro business company may file a single notice under subsection (2) which combines all the micro business companies it acts for as registered agent.

(4) A change of registered office under this section takes effect on the date of the filing of the notice referred to in subsection (2).

44. (1) This section applies in relation to a micro business company where a registered agent of the company changes its name.

Change of registered agent where registered agent changes its name.

(2) Where a registered agent of a micro business company changes its name, the registered agent shall file a notice in the approved form

- (a) stating that
 - (i) the registered agent has changed its name; and
 - (ii) the registered agent is specified in the charter of micro business companies as the registered agent of those companies; and
- (b) specifying the new name of the registered agent.

(3) A person who acts as the registered agent for more than one micro business company may file a single notice which combines one or more notices specified in subsection (2).

(4) A change of registered agent under this section takes effect on the date of the filing of the notice referred to in subsection (2).

Division 2 – Micro Business Company Records and Operational Address

Documents to be kept at office of the registered agent.

45. (1) A micro business company shall keep at the office of its registered agent copies of all notices and other documents filed by the company in the previous 5 years.

(2) A registered agent shall keep and maintain all notices and other documents filed by the micro business company for the period specified in subsection (1).

Records and underlying documentation.

46. (1) A micro business company shall

- (a) keep at its registered office in the Virgin Islands or operational address (being the address of its primary place of business) the records and underlying documentation of the company;
- (b) retain the records and underlying documentation for a period of at least 5 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; and
- (c) provide its registered agent without delay any records and underlying documentation in respect of the company that the registered agent requests pursuant to subsection (3).

(2) The records and underlying documentation of the micro business 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 the micro business company are kept at its operational office located outside the Virgin Islands, the company shall provide the registered agent with the physical address of the operational office located outside the Virgin Islands.

(4) Where the physical address of the operational office of the micro business company referred to in subsection (3) changes, the company shall immediately provide the registered agent with the new physical address of the operational office of the company.

(5) Whenever required to do so by the Commission or any other competent authority in the Virgin Islands acting pursuant to the exercise of a power under an enactment, the registered agent shall request from the micro business company records and underlying documentation in respect of the company.

(6) For the purposes of this section

- (a) “business relationship” means a continuing arrangement between a micro business 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 micro business company and the matters in respect of which the receipt and expenditure takes place;
 - (ii) all sales and purchases of goods by the micro business company; and
 - (iii) the assets and liabilities of the micro business company.

47. The records and underlying documentation required to be kept by a micro business company under section 46 shall be kept Form of records.

- (a) in written form; or
- (b) either wholly or partly as electronic records complying with the requirements of the Electronic Transactions Act, 2001. No. 5 of 2001

Inspection of records.

48. The records of a micro business company shall be fully accessible to the principal and, to the extent such a right is expressly stated in the charter, the participants.

Service of process, etc. on micro business company.

49. (1) The service of legal process may be effected on a micro business company by addressing the document to the company at its registered address in the Virgin Islands or to the address of its primary place of business operation as stated in its charter.

(2) The service of a document on a micro business company may be proved by any of the following methods

- (a) by properly addressing, preparing and posting an envelope containing the document to the address for service;
- (b) by personal service;
- (c) by direct delivery to the secretary, clerk or other employee of the company's registered agent; and
- (d) by email attaching the document.

(3) Where a document is served

- (a) by post, the document shall, unless the contrary is proved, be deemed to have been served at the time when the document would have been received in the ordinary course of post;
- (b) by personal service, the document is considered served at the time when the document is received by the person on whom it is served, whether or not receipt of the document has been signed for;
- (c) by direct delivery, the document is considered served on the registered agent at the time when the secretary, clerk or other employee of the registered agent received it, whether or not receipt of the document has been signed for; and
- (d) by email, the document is considered served at the time at which it is shown to have been sent electronically if sent to the correct address, and it shall not matter whether the document was served in a scanned or other form so long as it is legible and in the form of the original document.

Division 3 - General Provisions

50. (1) The principal has express authority by virtue of this section to act for and on behalf of the micro business company and to negotiate, conclude, agree and enter into contracts (including any instrument or deed) in the name and on behalf of the company, which he or she may vary or discharge as he or she considers appropriate .

Contracts generally.

(2) A contract (including any instrument or deed) entered into in accordance with this section is valid and binding on the micro business company and its successors and all other parties to the contract, instrument or deed.

(3) For the purposes of this section and sections 51 and 52, “instrument” includes a contract, an agreement, a will, an order, a warrant, a scheme, letters patent, a promissory note or bill of exchange, rules or other document denoting a person’s or persons’ intention to make a formal arrangement of any matter.

51. A micro business company may not enter into a contract (including any instrument or deed) pursuant to section 50 before it has been registered on the Register.

No contracts before incorporation.

52. (1) Subject to subsection (2), a micro business company may, by instrument in writing, appoint any suitably qualified person through a power of attorney either generally or in relation to a specific matter.

Power of attorney.

(2) A power of attorney issued pursuant to subsection (1) that purports to empower a suitably qualified person to complete an annual return or interim return in relation to a micro business company shall be invalid.

(3) Subject to subsection (2), an act of a person who is appointed through a power of attorney under subsection (1), exercised or performed in accordance with the terms of the power of attorney, binds the micro business company.

(4) An instrument appointing a person under a power of attorney under subsection (1) may either be

(a) executed as a deed by the principal; or

(b) signed by the principal.

53. A document requiring authentication or attestation by a micro business company may be signed by the principal to signify its authentication or attestation.

Authentication or attestation.

PART V

MANAGEMENT OF THE MICRO BUSINESS COMPANY

Division 1 - Management by the Principal

Management by principal.

54. (1) The business and affairs of a micro business company shall be managed by, or under the direction or supervision of, the principal in his or her capacity as the sole director of the company.

(2) The principal has express corporate authority (without the need for any further action or authorisation) under this Act and the charter to exercise powers and to act for and on behalf of the micro business company and to legally and validly bind the company.

(3) The principal has all the powers necessary for managing, and for directing and supervising, the business and affairs of the micro business company.

(4) The exercise by the principal of a power granted under this Act or the charter is expressly authorised as a matter of law and shall not require any form of resolution to be passed either in writing or otherwise.

(5) The management, duties, responsibilities and obligations of the principal commence from the time of registration of the charter by the Registrar.

(6) Subject to section 27, the management responsibilities and obligations of the principal cease upon his or her death, mental incapacity or the dissolution and striking off of the name of the micro business company from the Register.

Persons disqualified from being a principal.

55. (1) The following persons are disqualified from being a principal

- (a) subject to subsection (3), an individual who is under 16 years of age;
- (b) a person who is a disqualified person within the meaning of section 260 (4) of the Insolvency Act, 2003;
- (c) a person who is a restricted person within the meaning of section 409 of the Insolvency Act, 2003; and
- (d) an undischarged bankrupt.

No. 5 of 2003

(2) A person who acts as the principal whilst disqualified under subsection (1) is nevertheless deemed to be the principal for the purposes of any provision of this Act that imposes a duty or obligation on the principal, and the

acts of such person are valid in relation to a third party who was not aware of the principal's disqualification.

(3) Subject to subsection (4), an individual who is under 16 years of age may be a principal of a micro business company if he or she

- (a) is not below 10 years;
- (b) has received the written consent of his or her parents or guardian to be the principal of the company; and
- (c) provides the written consent to the registered agent of the company.

(4) The parental written consent referred to in subsection (3) must be notarised before a notary public or sworn to before a commission for oaths in the Virgin Islands, or before any other person holding the same or an equivalent office in another jurisdiction.

(5) The operation of this section is not affected by the provisions of the Age of Majority Act, 1994.

No. 21 of 1994

Division 2 - Management Duties, Responsibilities and Obligations of the Principal

56. Subject to this section, the principal, in exercising his or her powers or performing his or her management duties, responsibilities and obligations, shall act honestly and in good faith and in what he or she believes to be in the best interest of the micro business company.

Management duties of principal.

57. The principal shall exercise his or her powers for a proper purpose and shall not act, or agree to the micro business company acting, in a manner that contravenes this Act or the charter.

Powers to be exercised for proper purpose.

58. The principal, when exercising his or her powers or performing his or her functions, shall exercise the care, diligence, and skill that a reasonable principal would exercise in the same circumstances taking into account, but without limitation

Standard of care.

- (a) the nature of the micro business company;
- (b) the nature of the decision to be taken; and
- (c) the position of the principal and the nature of the responsibilities undertaken by him or her.

Reliance on records and reports.

59. (1) Subject to subsection (2), the principal, when exercising his or her powers or performing his or her management duties, responsibilities and obligations, is entitled to rely upon the books, records, financial statements and other information prepared or supplied, and on professional or expert advice given, by

- (a) an employee of the micro business company whom the principal believes, on reasonable grounds, to be reliable and competent in relation to the matters concerned; and
- (b) a professional adviser or expert in relation to matters which the principal believes, on reasonable grounds, to be within the person's professional or expert competence.

(2) Subsection (1) applies only if the principal

- (a) acts in good faith;
- (b) makes proper inquiry where the need for the inquiry is warranted by the circumstances; and
- (c) has no knowledge that his or her reliance on the books, records, financial statements and other information or expert advice is not warranted.

Powers and duties applicable.

60. The powers and duties imposed on a principal under this Act replace and negate any other powers or duties that would otherwise be imposed on a person under common law.

Agents.

61. (1) A principal may, by written instrument in writing, appoint any natural person to be an agent of the micro business company on condition that the natural person will not, on appointment, be disqualified under section 55 (1) if he or she were to be appointed as a principal.

(2) An agent of the micro business company has such powers and authority of the principal as are set forth in the written instrument signed by the principal appointing the agent, except that no agent has any power or authority with respect to the following

- (a) to file the annual return or an interim return on behalf of the company;
- (b) to direct a change of the company's registered office or registered agent;
- (c) to appoint or remove another agent;

(d) to make a declaration of solvency or to approve a liquidation plan in respect of the company; and

(e) to make a distribution by the company.

(3) Where the principal appoints any person to be an agent of the micro business company, that agent may not appoint any substitute or delegate.

(4) The principal may remove an agent appointed under subsection (1) and may revoke or vary a power or an authority conferred on the agent under subsection (2), by way of a written instrument signed by the principal.

(5) Where a principal appoints an agent under subsection (1), or removes, revokes or varies a power or an authority conferred on an agent under subsection (4), the principal shall notify its registered agent of such appointment, removal, revocation or variation, as the case may be, and shall provide the registered agent with a copy of the written instrument concerned.

(6) The registered agent shall, upon being notified under subsection (5), file a notice of appointment, removal, revocation or variation, as the case may be, by the principal of the agent named in the written instrument concerned.

62. (1) Subject to subsection (2), a micro business company may indemnify, against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings, any person who

Indemnification.

(a) is or was a party or is threatened to be made a party to any pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is the principal; or

(b) is or was, at the request of the company, serving as a director of, or in any other capacity is or was acting for, another body corporate or a partnership, joint venture, trust or other enterprise.

(2) Subsection (1) applies only if the person referred to in that subsection acted honestly and in good faith and in what the person believed to be in the best interests of the micro business company and, in the case of criminal proceedings, the person had no reasonable cause to believe that his or her conduct was unlawful.

(3) The termination of any proceedings by any judgment, order, settlement, conviction or the discontinuance of criminal proceedings does not, by itself, create a presumption that the person

- (a) did not act honestly and in good faith and with a view to the best interests of the micro business company; or
- (b) had reasonable cause to believe that his or her conduct was unlawful.

(4) Expenses, including legal fees, incurred by the principal in defending any legal, administrative or investigative proceedings may be paid by the micro business company in advance of the final disposition of such proceedings upon receipt of an undertaking by or on behalf of the principal to repay the amount if it is ultimately determined that the principal is not entitled to be indemnified by the company in accordance with subsection (1).

(5) The indemnification and advancement of expenses provided by, or granted pursuant to, this section is not exclusive of any other rights to which the person seeking indemnification or advancement of expenses may be entitled under any agreement or otherwise, both as to acting in the person's official capacity and as to acting in another capacity while serving as principal.

(6) If a person referred to in subsection (1) has been successful in defending any proceedings, the person is entitled to be indemnified against all expenses, including legal fees, and against all judgements, fines and amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.

(7) A micro business company shall not indemnify a person in breach of subsection (2), and any indemnity given in breach of that subsection is void and of no effect.

Insurance.

63. A micro business company may purchase and maintain insurance in relation to any person who is the principal, or who at the request of the company is or was serving as a director of, or in any other capacity is or was acting for, another body corporate or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the company has or would have had the power to indemnify the person against such liability pursuant to section 62.

Division 3 – Annual Return and Interim Return

Filing Annual
return.

64. (1) The principal shall file an annual return with the registered agent of the micro business company not later than the 31st day of January of each year following the year of registration of the company.

(2) The required certifications in the annual return shall include confirmation that

- (a) the micro business company is conducting business activities within its specified business purpose;
- (b) if the micro business company is using a trade name of “doing business as [*name*]” or a domain name, the trading name or domain name remains the same (or, if the trading name or domain name has changed or the company no longer uses a trading name or a domain name, the new trading name or domain name or the fact that it is no longer using a trading name or a domain name);
- (c) the name and nationality of the principal and, if applicable, participant, are as stated in the charter (or, if the principal’s or participant’s name or nationality has been legally changed, the current full legal name and nationality of the principal or participant);
- (d) the micro business company’s business operations are within the requirements applicable to the company, in that
 - (i) it is not carrying on any business that is regulated under a financial services legislation;
 - (ii) its annual turnover is not more than \$2,000,000 or its equivalent in any other currency and not more than 10 employees; or
 - (iii) its gross asset value is not more than \$2,000,000 or its equivalent in any other currency and not more than 10 employees;
- (e) the principal is not disqualified from being the principal by virtue of section 55 (1) (or, if disqualified, the reason for disqualification);
- (f) the country where the micro business company’s primary business operation is located is as stated in its charter (or, if different, the country where its primary business operation is currently located);

- (g) the records and underlying documents of the micro business company are located at the address of its primary business operation; and
- (h) the contact details for the principal (as provided to the registered agent of the micro business company) remain true and correct or, if different, the current contact details for the principal.

(3) To the extent that the principal cannot confirm in the annual return that the micro business company's business operations are within the requirements applicable to the company under subsection (2) (d), the principal shall cause the company to transform into a BVI business company in accordance with the provisions of this Act and the BVIBCA by no later than the 30th day of April of the year of filing of the annual return.

(4) To the extent that the principal is disqualified from being a principal of the micro business company, the principal shall cause the company to be dissolved in accordance with the provisions of this Act no later than 60 days of the date the principal knew or ought to have known that he or she had become disqualified.

(5) The Registrar may, notwithstanding the periods specified in subsections (3) and (4) but upon receipt of an application in the approved form from the principal, extend any of the periods specified in those subsections for up to 60 days and on such terms and conditions as the Registrar considers fit.

(6) Where the principal fails to file an annual return with the registered agent of the micro business company as specified in subsection (1), the registered agent shall promptly file with the Registrar a notice of non-filing of the annual return by the principal, and section 87 (1) (c) shall apply accordingly.

Filing interim return.

65. (1) A principal of a micro business company shall file an interim return with its registered agent at any time if, prior to the date of filing of an annual return under section 64, a change occurs in any of the matters outlined in that section in respect of the company.

(2) The requirement to file an interim return under subsection (1) shall also apply if the

- (a) micro business company terminates its business relationship with its registered agent;
- (b) micro business company appoints a new registered agent;

- (c) micro business company transforms itself into a BVI business company pursuant to this Act and the BVIBCA;
- (d) micro business company decides to liquidate and has commence the liquidation process;
- (e) micro business company has failed to comply with an additional restriction imposed by the Commission under section 17 (3); and
- (f) principal transfers his or her share.

(3) The principal of a micro business company shall file an interim return under this section promptly but, in any case, not later than 7 days after the occurrence of the event or events being the subject of the interim return.

(4) Where the principal of a micro business company fails to comply with this section, he or she commits an offence.

PART VI

TRANSFORMATION INTO AND FROM A BVI BUSINESS COMPANY

66. (1) A micro business company may elect to, and shall if section 64 (4) applies, transform into and register as a BVI business company by filing

Election to transform into a BVI business company.

- (a) a memorandum that, subject to subsections (2), (3) and (4), complies with section 9 of the BVIBCA and articles that comply with the BVIBCA (hereafter referred to as “the new memorandum” or “the new memorandum and articles” as the context requires);
- (b) a notice in the approved form to transform into a BVI business company; and
- (c) such other documents as may be prescribed.

(2) The new memorandum and articles shall be signed by the registered agent of the micro business company.

(3) In addition to the matters required under section 9 of the BVIBCA, the new memorandum shall state

- (a) the unique number allotted to the micro business company under section 5 (1);

- (b) the date that the micro business company was first registered; and
- (c) that, immediately prior to its transformation and registration under the BVIBCA, the micro business company was governed by the provisions of this Act and any regulations made thereunder.

(4) The new memorandum shall state the name of the registered agent and the address of the registered office as at the date of filing of the notice under subsection (1) (b).

(5) A notice to transform into a BVI business company shall be authorised, and the new memorandum and articles shall be approved, by way of a written direction by the principal.

(6) The transformation of a micro business company under this section takes effect from the date that the notice filed pursuant to subsection (1) (b) is registered by the Registrar, and from that date

- (a) the company (hereinafter referred to as the “former micro business company”) shall be treated as transformed into and registered as a BVI business company (hereinafter referred to as the “transformed BVI business company”) under the BVIBCA with the same issued shareholding as it had as a micro business company and the registered agent shall serve as the first appointed director of the transformed BVI business company;
- (b) the provisions of this Act and any regulations made thereunder shall cease to apply; and
- (c) the transformed BVI business company shall be subject to the provisions of the BVIBCA and the Registrar shall act accordingly in relation to the company.

(7) As soon as the transformation becomes effective in accordance with subsection (6)

- (a) the assets, including *choses in action* and the business of the former micro business company immediately vest in the transformed BVI business company; and
- (b) the transformed BVI business company is liable for all claims, debts, liabilities and obligations of the former micro business company.

(8) Where a former micro business company is transformed as provided in this section

- (a) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the former micro business company or against the principal, participant or agent of the company, is released or impaired by the transformation; and
- (b) no proceedings, whether civil or criminal, pending at the time of transformation by or against the former micro business company or against the principal, participant or agent of the company, are abated or discontinued; and
 - (i) the proceedings may be enforced, prosecuted, settled or compromised by or against the transformed BVI business company or against any member, director, officer or agent of the company, as the case may be; or
 - (ii) the transformed BVI business company may be substituted in the proceedings for the former micro business company prior to its transformation.

(9) The Registrar shall, upon the registration of the transformed BVI business company, strike the name of the former micro business company, off the Register.

67. (1) A micro business company may not continue as an entity incorporated under the laws of a jurisdiction outside the Virgin Islands. No continuation.

(2) Where a micro business company wishes to continue as an entity incorporated under the laws of a jurisdiction outside the Virgin Islands, it shall first transform into a BVI business company.

(3) An entity incorporated under the laws of a jurisdiction outside the Virgin Islands may not continue into the Virgin Islands as a micro business company.

Transforming a BVI business company into a micro business company.

68. (1) Subject to subsection (2), a BVI business company shall not transform into a micro business company.

(2) A BVI business company that is incorporated or registered under the BVIBCA may transform into a micro business company in accordance with and within the time frame stipulated in the transitional provisions outlined in Schedule 2 if it meets the conditions outlined in that Schedule.

Schedule 2

PART VII

LIQUIDATION, STRIKING OFF AND DISSOLUTION

Division 1 – Liquidation

Interpretation for this Part.

69. In this Part, unless the context otherwise requires

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“creditor” has the meaning specified in section 9 of the Insolvency Act, 2003;

“liability” has the meaning specified in section 10 of the Insolvency Act, 2003 and the reference in that section to “for the purposes of this Act” shall be construed as if it were a reference to this Act; and

“licensed insolvency practitioner” means a person holding a licence to act as an insolvency practitioner issued under section 476 of the Insolvency Act, 2003.

Filing of notices by voluntary liquidator.

70. Where any notice or other document is required under this Part to be filed by a voluntary liquidator, the document may only be filed by

- (a) the voluntary liquidator;
- (b) a person qualified under this Act to act as the registered agent of a micro business company; or
- (c) a legal practitioner in the Virgin Islands, acting on behalf of the voluntary liquidator.

Condition for liquidation of micro business company.

71. A micro business company may only be liquidated under this Division if

- (a) it has no liabilities; or
- (b) it is able to pay its debts as they fall due and the value of its assets equals or exceeds its liabilities; and

- (c) the proposed voluntary liquidator is a suitably qualified individual in accordance with section 72 (2).

72. (1) Where it is proposed to liquidate a micro business company under this Division, the principal shall execute a liquidation plan that includes

Declaration of solvency and appointment of voluntary liquidator.

- (a) a declaration of solvency in the approved form stating that, in his or her opinion
 - (i) the micro business company is and will continue to be able to discharge, pay or provide for its debts as they fall due; and
 - (ii) the value of the micro business company's assets equals or exceeds its liabilities;
- (b) a statement specifying
 - (i) the reason or reasons for the liquidation of the micro business company;
 - (ii) his or her estimate of the time required to liquidate the micro business company;
 - (iii) whether the voluntary liquidator is authorised to carry on the business of the micro business company if he or she determines that to do so would be necessary or in the best interests of the creditors of the company;
 - (iv) the name and address of the proposed voluntary liquidator and the remuneration proposed to be paid to the voluntary liquidator;
 - (v) the assets and liabilities of the micro business company as at the latest practical date before the proposed date of execution of the liquidation plan; and
 - (vi) that the voluntary liquidator is required to send to the principal a statement of account prepared or caused to be prepared by the voluntary liquidator in respect of his or her actions or transactions; and

- (c) a written consent to be appointed as voluntary liquidator signed by the voluntary liquidator.

(2) The micro business company shall identify and appoint a suitably qualified individual resident in the Virgin Islands to act as the company's voluntary liquidator, if the individual is not

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- (a) a person disqualified for any reason under the Financial Services Commission Act, 2001, Regulatory Code, 2009 or under any financial services legislation or a person subject to an equivalent disqualification under the laws of a country outside the Virgin Islands;

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- (b) a restricted person within the meaning of section 409 of the Insolvency Act, 2003 or an individual subject to an equivalent restriction under the laws of a country outside the Virgin Islands;
- (c) a person against whom an order has been made by the Court under Part IX of the Insolvency Act, 2003 (in relation to malpractice);
- (d) a minor;
- (e) an undischarged bankrupt;
- (f) an individual who is, or at any time in the previous 2 years has been, a director of the company or an affiliated company;
- (g) an individual who acts, or at any time in the previous 2 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; or
- (h) an individual who is a close family member of an individual specified in paragraph (f) or (g).

(3) For the purpose of subsection (2), an individual

- (a) is considered to be resident in the Virgin Islands if he or she is known to be physically present in the Virgin Islands for a period of at least 180 days in each year of his or her residence in the Virgin Islands; and

(b) is a minor if he or she is below the age of 18 years.

Duration of liquidation.

73. The liquidation of a micro business company under this Division commences at the time at which the notice of the voluntary liquidator's appointment is filed and continues until it is terminated in accordance with section 82 or 83.

74. (1) A voluntary liquidator may not be appointed if

Circumstances in which voluntary liquidator may not be appointed.

(a) an administrator or liquidator of the micro business company has been appointed under the Insolvency Act, 2003; or

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(b) an application has been made to the Court to appoint an administrator or a liquidator of the micro business company under the Insolvency Act, 2003 and the application has not been dismissed.

(2) A liquidation plan is void and of no effect unless the voluntary liquidator files notice of his or her appointment on or before the fourteenth day following the date of execution of the liquidation plan.

75. (1) Where a voluntary liquidator is appointed, he or she shall, within 14 days of the appointment, file a notice of his or her appointment in the approved form and a copy of the liquidation plan of the micro business company.

Notice of liquidation.

(2) The principal shall keep a copy of the executed liquidation plan at the office of the registered agent of the micro business company.

(3) Where a voluntary liquidator fails to comply with the period for filing the notice referred to in subsection (1), his or her appointment shall lapse and shall be of no effect upon the expiry of that period.

76. (1) Subject to subsections (2) and (3), with effect from the commencement of the voluntary liquidation of a micro business company

Effect of appointment of voluntary liquidator.

(a) the voluntary liquidator has custody and control of the assets of the company; and

(b) the principal remains in office but ceases to have any powers, functions or duties other than those required or permitted under this Part.

(2) Notwithstanding subsection (1) (b), the principal, after the commencement of the voluntary liquidation, may

- (a) authorise the voluntary liquidator to carry on the business of the micro business company if the voluntary liquidator determines that to do so would be necessary or in the best interests of the creditors of the company or where the liquidation plan does not give the voluntary liquidator such authorisation; and
- (b) exercise such powers as the voluntary liquidator, by written notice, may authorise the principal to exercise.

Resignation of
voluntary
liquidator.

77. (1) A voluntary liquidator may only resign in accordance with this section.

(2) Subject to subsection (3), the voluntary liquidator shall give to the principal not less than 14 days' notice of his or her intention to resign, and he or she shall file a copy of the notice.

(3) The principal may agree in writing to accept less than 14 days' notice of the voluntary liquidator's resignation.

(4) The notice of intention to resign shall be accompanied by a summary of the liquidation accounts and a report of the voluntary liquidator's conduct of the liquidation.

(5) On the expiration of the period specified in the notice given under subsection (2) or such shorter period that may be accepted by the principal under subsection (3), the voluntary liquidator's resignation becomes effective.

Removal of
voluntary
liquidator.

78. (1) A voluntary liquidator may only be removed in accordance with this section.

(2) The Court may, on application by a person specified in subsection (3), remove a voluntary liquidator of a micro business company from office if

- (a) the voluntary liquidator
 - (i) was not eligible to be appointed, or is not eligible to act, as the voluntary liquidator of the micro business company; or
 - (ii) fails to comply with any direction or order of the Court made in relation to the liquidation of the micro business company; or
- (b) the Court has reasonable grounds for believing that

- (i) the voluntary liquidator's conduct of the liquidation is below the standard that may be expected of a reasonably competent voluntary liquidator;
- (ii) the voluntary liquidator has an interest that conflicts with his or her role as voluntary liquidator; or
- (iii) there is some other reason which warrants the removal of the voluntary liquidator.

(3) An application to the Court to remove a voluntary liquidator may be made by

- (a) the principal or a creditor of the micro business company; or
- (b) the Official Receiver.

(4) The Court may require an applicant specified in subsection (3) (a) to give security for the costs to be incurred by the voluntary liquidator on the application.

(5) On the hearing of an application under this section, the Court may make such interim or other order it considers appropriate, including the appointment of a voluntary liquidator to replace the voluntary liquidator removed by the order.

(6) Where the Court removes a voluntary liquidator, the person who applied for the removal of the voluntary liquidator under subsection (2) shall file a copy of the Court's order.

79. If a vacancy occurs in the office of voluntary liquidator, whether on account of the death, resignation or removal of the voluntary liquidator, the principal shall appoint another voluntary liquidator to fill the vacancy and all the provisions in this Part in relation to a voluntary liquidator shall apply accordingly.

Filling vacancy in office of voluntary liquidator.

80. The principal duties of a voluntary liquidator are to

- (a) take possession, protect and realise the assets of the micro business company;
- (b) identify all creditors of, and claimants against, the micro business company;

Duties of voluntary liquidator.

- (c) pay or provide for the payment of, or to discharge, all claims, debts, liabilities and obligations of the micro business company;
- (d) distribute the surplus assets of the micro business company to the shareholders in accordance with the charter;
- (e) prepare or cause to be prepared a statement of account in respect of the actions and transactions of the voluntary liquidator; and
- (f) send a copy of the statement of account to the principal.

Powers of
voluntary
liquidator.

81. (1) In order to perform the duties imposed on him or her under section 80, a voluntary liquidator has all powers of the micro business company that are not reserved to the principal under this Act or in the charter including, but not limited to, the power to

- (a) take custody of the assets of the company and to register any property of the company in the name of the voluntary liquidator or that of his or her nominee;
- (b) sell any assets of the company at public auction or by private sale without any notice;
- (c) collect the debts and assets due or belonging to the company;
- (d) borrow money from any person for any purpose that will facilitate the winding-up and dissolution of the company;
- (e) negotiate, compromise and settle any claim, debt, liability or obligation of the company;
- (f) prosecute and defend, in the name of the company or in the name of the voluntary liquidator or otherwise, any action or other legal proceeding;
- (g) retain legal practitioners, accountants and other advisers and appoint agents;
- (h) subject to subsection (2), carry on the business of the company, if the voluntary liquidator has received authorisation to do so in the liquidation plan or from the principal, as the voluntary liquidator may determine to be

necessary or to be in the best interest of the creditors of the company;

- (i) execute any contract, agreement or other instrument in the name of the company or in the name of the voluntary liquidator; and
- (j) make any distribution in money or in other property or partly in each, and if in other property, to allot the property, or an undivided interest therein, in equal or unequal proportions.

(2) A voluntary liquidator shall not, without the permission of the Court, carry on the business of a micro business company in voluntary liquidation for a period of more than 2 years.

82. (1) The Court may, upon application and at any time after the appointment of a voluntary liquidator under section 70, make an order terminating the voluntary liquidation if it is satisfied that it would be just and equitable to do so.

Termination of voluntary liquidation.

(2) An application for an order under subsection (1) may be made by

- (a) the voluntary liquidator of the micro business company; or
- (b) the principal, a participant (if any) or any creditor of the micro business company.

(3) Before making an order under subsection (1), the Court may require the voluntary liquidator to file a report with respect to any matters relevant to the application.

(4) An application for an order under subsection (1) shall be served, if made by a person other than the voluntary liquidator, on the voluntary liquidator and the voluntary liquidator is entitled to appear and be heard on the hearing of the application.

(5) An order under subsection (1) may be made subject to such terms and conditions as the Court considers appropriate and, on making the order or at any time thereafter, the Court may give such supplemental directions or make such other order as it considers fit in connection with the termination of the liquidation.

(6) Where the Court makes an order under subsection (1)

- (a) the micro business company ceases to be in voluntary liquidation;
- (b) the voluntary liquidator ceases to hold office with effect from the date of the order or such later date as may be specified in the order; and
- (c) the person who applied for the order shall, within 7 days of the date of the order
 - (i) serve a sealed copy of the order on the voluntary liquidator (if that person is not the voluntary liquidator); and
 - (ii) file a sealed copy of the order.

Completion of liquidation.

83. (1) A voluntary liquidator shall, upon completion of a voluntary liquidation, file a statement that the liquidation has been completed and upon receiving the statement, the Registrar shall make an annotation on the Register certifying that the micro business company has been dissolved and struck off the Register as at the date of the annotation.

(2) Immediately following the Registrar's action under subsection (1), the person who, immediately prior to the dissolution and striking off of the micro business company, was the voluntary liquidator of the company, shall cause to be published in the *Gazette*, a notice that the company has been dissolved and struck off the Register.

Division 2 – Liquidation where Micro Business Company is Insolvent

Micro business company in voluntary liquidation unable to pay its debts.

84. (1) For the purposes of this Division, a micro business company is insolvent if

- (a) the value of its liabilities exceeds, or will exceed, its assets; or
- (b) it is, or will be, unable to pay its debts as they fall due.

(2) If at any time the voluntary liquidator of a micro business company in voluntary liquidation is of the opinion that the company is insolvent, he or she shall forthwith send a written notice in the approved form to the Official Receiver.

Liquidator to call meeting of creditors.
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85. (1) Where a voluntary liquidator sends a notice to the Official Receiver under section 84 (2), he or she shall call a meeting of creditors of the micro business company and sections 179 and 180 of the Insolvency Act, 2003 shall apply accordingly, and

- (a) the 21 day period in section 179 of that Act shall be computed to commence from the date the voluntary liquidator forms the opinion that the company is insolvent; and
- (b) a reference in those sections to “member” and “director” shall be construed as a reference to the principal.

(2) A meeting called in accordance with subsection (1) shall be treated as if it were the first meeting of the creditors of the micro business company pursuant to sections 179 and 180 of the Insolvency Act, 2003.

(3) Without affecting any acts carried out by the voluntary liquidator appointed under Division 1 prior to sending a notice to the Official Receiver under section 84 (2), section 182 of the Insolvency Act, 2003 applies to the voluntary liquidator as if he or she were a liquidator appointed under that Act.

(4) Subject to the exercise of powers under section 180 of the Insolvency Act, 2003 where the voluntary liquidator who files a notice under subsection (1) is not a licensed insolvency practitioner with respect to the micro business company, the Official Receiver may apply to the Court *ex parte* for the Court to appoint him or a licensed insolvency practitioner as the liquidator of the company and the Court may make the appointment subject to such conditions as it considers appropriate.

86. (1) From the time that a voluntary liquidator appointed under Division 1 first becomes aware that the micro business company is not, or will not be, able to pay its debts, he or she shall, without prejudice to section 85, conduct the liquidation as if he or she had been appointed liquidator under the Insolvency Act, 2003.

Application of
Insolvency Act.
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(2) Where the voluntary liquidator of the micro business company files a notice with the Official Receiver under section 84 (2)

- (a) the Insolvency Act applies to the liquidation of the micro business company, subject to such modifications as are appropriate; and
- (b) the liquidation of the micro business company shall be deemed to have commenced on the date of the appointment of the voluntary liquidator under Division 1.

Division 3 – Striking off and Dissolution

Striking micro
business
company off the
Register.

87. (1) The Registrar may strike the name of a micro business company off the Register if

- (a) the company
 - (i) does not have a registered agent in accordance with the requirements of this Act; or
 - (ii) fails to file any return, notice or document required to be filed under this Act;
- (b) the Registrar is satisfied that
 - (i) the company has ceased to carry on business; or
 - (ii) the company is carrying on business outside of the powers and purpose stated in its charter or under this Act;
- (c) the company fails to provide its annual return to its registered agent; or
- (d) the company fails to pay its annual fee or any late payment penalty by the due date.

(2) If the Registrar is of the opinion that the micro business company is trading or has property or that there is some other reason why the company should not be struck off the Register, he or she may, instead of striking the company off the Register, refer the company to the Commission for investigation and the Commission shall, after investigation, submit its recommendation to the Registrar.

(3) Subject to subsection (6) (b), the Registrar shall, before striking a micro business company off the Register on any of the grounds specified in subsection (1) (a) to (d), send to the registered agent of the company a notice stating that, unless the company shows cause to the contrary, it will be struck off the Register on a date specified in the notice.

(4) The date for the striking off of a micro business company from the Register specified in a notice sent by the Registrar under subsection (3) shall be 30 days after the date of the notice (the “strike off date”).

(5) The Registrar may, on the strike off date, strike the name of the micro business company off the Register, unless the Registrar is satisfied that the company has shown cause against striking off.

(6) The striking off of the name of a micro business company from the Register

(a) is effective from the strike off date; and

(b) shall not be affected by any failure on the part of the Registrar to serve a notice on the registered agent of the company.

88. (1) Any person who is aggrieved by the striking off of the name of a micro business company from the Register under section 87 may, within 90 days of the date of striking off, appeal to the Court. Appeal.

(2) A notice of appeal to the Court under subsection (1) shall be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

(3) The Registrar may, pending the determination of an appeal under subsection (1), suspend the operation of a striking off upon such terms as he or she considers appropriate.

(4) For the purposes of this section, a person is considered to be aggrieved by the striking off of the name of a micro business company from the Register if he or she

(a) is a principal, participant (if applicable) or creditor of the company;

(b) is a competent authority who is dealing with a mutual legal assistance matter with respect to the company and the competent authority forms the opinion that it is not in the public interest that the company should be struck off until the mutual legal assistance matter is concluded; or

(c) can establish, to the satisfaction of the Court, that he or she has an interest in having the company restored to the Register.

(5) For the purpose of subsection (4) (b), “competent authority” means a competent authority so designated, recognised or appointed under an enactment.

Effect of striking
off.

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89. (1) Subject to subsections (2) and (3), where a micro business company has been struck off the Register, the company, its principal, its participant (if applicable) and any voluntary liquidator or liquidator under the Insolvency Act, 2003, as the case may be, or receiver thereof, may not

- (a) commence legal proceedings, carry on any business or in any way deal with the assets of the company;
- (b) defend any legal proceedings, make any claim or claim any right for, or in the name of, the company; or
- (c) act in any way with respect to the affairs of the company.

(2) Where a micro business company has been struck off the Register, the company, its principal, any participant (if applicable), and any voluntary liquidator or liquidator under the Insolvency Act, 2003 as the case may be, or receiver thereof, may

- (a) make application for restoration of the company to the Register;
- (b) continue to defend proceedings that were commenced against the company prior to the date of the striking off;
- (c) continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking off;
- (d) appoint a new registered agent; and
- (e) file an annual return or interim return with the registered agent, in the case of the principal.

(3) Nothing contained in this Act shall be construed to prevent a competent authority from instituting against a micro business company, legal proceedings or pursuing against the company any matter in relation to a mutual legal assistance request, simply on account that the company has been struck off the Register.

(4) The fact that a micro business company is struck off the Register does not prevent

- (a) the company from incurring liabilities, or
- (b) any creditor from making a claim against the company and pursuing the claim through to judgement or execution,

and does not affect the liability of its principal, its participants (if applicable), or any of its officers or agents.

90. Where a micro business company that has been struck off the Register under section 87 remains struck off continuously for a period of one year, it is dissolved with effect from the last day of that period.

Dissolution of micro business company struck off the Register.

91. (1) Subject to subsection (2), where a micro business company has been struck off the Register but not dissolved, the Registrar may, upon receipt of an application in the approved form and upon payment of the restoration fee and all outstanding fees and penalties, restore the company to the Register.

Restoration of name of micro business company to the Register.

(2) Where a micro business company has been struck off, the Registrar shall not restore the company to the Register, unless the Registrar is satisfied that

- (a) the information in relation to the company as required under this Act has not changed or, where such information has changed, the information has been updated to the satisfaction of the Registrar;
- (b) a person approved by the Commission has agreed to act as registered agent of the company;
- (c) it would be fair and reasonable for the name of the company to be restored to the Register; and
- (d) it is not against the public interest to restore the company to the Register.

(3) An application to restore a micro business company to the Register under subsection (1) may be made by the company, its registered agent, its principal, any participant (if applicable) or any voluntary liquidator or liquidator under the Insolvency Act, 2003, as the case may be, of the company.

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(4) An application under this section to restore a micro business company that has been struck off the Register and dissolved in accordance with section 90 shall be made within a period of 5 years after the effective date of dissolution of the company.

(5) Where the Registrar refuses to restore a micro business company under this section, any of the persons mentioned in subsection (3) may, within 90 days of the Registrar's refusal, appeal to the Court and, if the Court is satisfied that it would be just and fair and not against the public interest for the company to be restored to the Register, the Court may direct the Registrar to, subject to subsection (2) (a) and (b), restore the company upon such terms and conditions as the Court may consider appropriate.

(6) Any notice of appeal to the Court under subsection (5) shall be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

Updating status of restored micro business company.

92. (1) Where the Registrar restores a micro business company to the Register under section 90, he or she shall update the status of the company on the Register.

(2) Where a micro business company is restored to the Register, the company shall

- (a) be deemed never to have been struck off the Register; and
- (b) forthwith appoint a registered agent (if not already done), having regard to section 91 (2) (b).

Application to Court to restore dissolved micro business company to the Register.

93. (1) An application may be made to the Court for an order to restore to the Register a micro business company that has been dissolved following a liquidation process, whether under this Act or under the Insolvency Act, 2003 by

- (a) a creditor, former principal, former participant (if applicable) or former voluntary liquidator or liquidator under the Insolvency Act, 2003, as the case may be, of the company; or
- (b) any person who can establish an interest in having the company restored to the Register.

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(2) An application under subsection (1) may not be made more than 5 years after the date that the micro business company was dissolved.

(3) Notice of an application under this section shall be served on the Registrar and the Financial Secretary, each of whom is entitled to appear and be heard on the hearing of the application.

Court's powers on hearing.

94. (1) Subject to subsection (2), on an application under section 93, the Court may

- (a) make an order to restore the micro business company to the Register, subject to compliance with section 91 (2) (a) and (b) and upon such other conditions as the Court considers appropriate to impose; and
- (b) give such directions or make such other orders as it considers necessary or desirable for the purpose of placing

the micro business company and any other persons as nearly as possible in the same positions as if the company had not been dissolved or struck off the Register.

(2) Where the micro business company was dissolved following the completion or termination of its voluntary liquidation under this Act or its liquidation under the Insolvency Act, 2003, the Court shall not make an order restoring the company to the Register unless

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- (a) the applicant under section 93 nominates a person to be liquidator of the company, if it is restored to the Register;
- (b) the person nominated a liquidator consents to act, and is eligible to act, as liquidator of the company on its restoration; and
- (c) satisfactory provision has been made or will be made for the expenses and remuneration of the liquidator, if appointed.

(3) For the purposes of subsection (2) (b), a person is eligible to act as the liquidator of a micro business company

- (a) in the case of a micro business company that was dissolved following the completion or termination of its voluntary liquidation, if he or she would be eligible to be appointed voluntary liquidator of the company under this Act; and
- (b) in the case of a micro business company that was dissolved following the completion or termination of its liquidation under the Insolvency Act, 2003 if he or she is a licensed insolvency practitioner who would be eligible to act in relation to the company in accordance with section 482 of the Insolvency Act, 2003.

(4) Where the Court makes an order restoring to the Register a micro business company to which subsection (2) applies, the Court shall appoint as liquidator of the company

- (a) the person nominated by the applicant; or
- (b) some other person who is eligible to act as liquidator of the company.

95. (1) Where the Court makes an order restoring a micro business company to the Register, a sealed copy of the order shall be filed

Effect of
restoration.

- (a) in the case of a micro business company to which section 94 (2) applies, by the person appointed to be liquidator of the company pursuant to section 94 (4); and
- (b) in any other case, by the person making application for the order.

(2) On receiving a filed copy of a sealed order under subsection (1) and being satisfied that section 91 (2) (a) and (b) has been complied with, the Registrar shall restore the micro business company to the Register with effect from the date that the copy of the sealed order was filed and update the status of the company on the Register.

(3) Where the micro business company was dissolved following the completion or termination of its voluntary liquidation under this Act or its liquidation under this Act and the Insolvency Act, 2003

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- (a) the company is restored as a company in liquidation under this Act or the Insolvency Act, 2003; and
- (b) the person appointed by the Court as liquidator is constituted liquidator of the company with effect from the time that the company is restored to the Register.

(4) Subject to subsection (5), a micro business company is restored to the Register with the name that it had immediately before it was dissolved.

(5) A micro business company that is restored to the Register in accordance with this section is deemed to have continued in existence as if it had never been dissolved and struck off the Register.

Property of dissolved micro business company.

96. (1) Subject to subsection (2) and section 97 (5), any property of a micro business company that has not been disposed of at the date of the company's dissolution vests in the Crown.

(2) When a micro business company is restored to the Register, any property, other than money, that was vested in the Crown pursuant to subsection (1) on the dissolution of the company and that has not been disposed of must be returned to the company upon its restoration to the Register.

Disclaimer.

97. (1) In this section, "onerous property" means

- (a) an unprofitable contract; or

- (b) property of the micro business company that is unsaleable, or not readily saleable, or that may give rise to a liability to pay money or perform an onerous act.

(2) Subject to subsection (3), the Minister may, by Notice in writing published in the *Gazette*, disclaim the Crown's title to onerous property which vests in the Crown under section 96.

(3) A statement in a Notice disclaiming property under this section that the vesting of the property in the Crown first came to the notice of the Minister on a specified date shall, in the absence of proof to the contrary, be evidence of the fact stated.

(4) Unless the Court, on the application of the Minister, orders otherwise, the Minister is not entitled to disclaim property unless the property is disclaimed

- (a) within 12 months of the date upon which the vesting of the property under section 96 came to the notice of the Minister, or
- (b) if any person interested in the property gives notice in writing to the Minister requiring him to decide whether he or she will or will not disclaim the property, within 3 months of the date upon which he or she received the notice,

whichever occurs first.

(5) Property disclaimed by the Minister under this section is deemed not to have vested in the Crown under section 96.

(6) A disclaimer under this section

- (a) operates so as to determine, with effect from immediately prior to the dissolution of the micro business company, the rights, interests and liabilities of the company in or in respect of the property disclaimed; and
- (b) does not, except so far as is necessary to release the micro business company from liability, affect the rights or liabilities of any other person.

(7) A person suffering loss or damage as a result of a disclaimer under this section

- (a) shall be treated as a creditor of the micro business company for the amount of the loss or damage, taking into account the effect of any order made by the Court under subsection (8); and
- (b) may apply to the Court for an order that the disclaimed property be delivered to or vested in that person.

(8) The Court may, on an application made under subsection (7) (b), make an order under that subsection if it is satisfied that it is just for the disclaimed property to be delivered to or vested in the applicant.

PART VIII

INVESTIGATION OF MICRO BUSINESS COMPANIES

Definition of “inspector”.

98. In sections 99 to 104, “inspector” means an inspector appointed by an order made under section 99 (2).

Investigation order.

99. (1) The Registrar may apply to the Court *ex parte* or upon such notice as the Court may require, for an order directing that an investigation be carried out in respect of a micro business company.

(2) If, upon an application under subsection (1), it appears to the Court that

- (a) the business of the micro business company is or has been carried on with intent to defraud any person,
- (b) the micro business company was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose, or
- (c) any person concerned with the incorporation, business or affairs of the micro business company has in connection therewith acted fraudulently or dishonestly,

the Court may make any order it thinks fit with respect to an investigation of the company and by an inspector, who may be the Registrar.

(3) The Registrar shall not be required to give security for costs.

Court’s powers.

100. (1) An order made under section 99 (2) shall include an order

- (a) appointing an inspector to investigate the micro business company; and

(b) fixing the inspector's remuneration.

(2) The Court may, at any time, make any order it considers appropriate with respect to the investigation, including but not limited to making any one or more of the following orders, that is to

- (a) replace the inspector;
- (b) determine the notice to be given to any interested person, or dispense with notice to any person;
- (c) authorise the inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records, found on the premises;
- (d) require any person to produce documents or records to the inspector;
- (e) authorise the inspector to conduct a hearing, administer oaths or affirmations and examine any person upon oath or affirmation, and prescribe rules for the conduct of the hearing;
- (f) require any person to attend a hearing conducted by the inspector and to give evidence upon oath or affirmation;
- (g) give directions to the inspector or any interested person on any matter arising in the investigation;
- (h) require the inspector to make an interim or final report to the Court;
- (i) determine whether a report of the inspector should be published and, if so, order the Registrar to publish the report in whole or in part, or to send copies to any person the Court designates;
- (j) require an inspector to discontinue an investigation; or
- (k) require the micro business company to pay the costs of the investigation in part or in full.

(3) The inspector shall file a copy of every report he or she makes under this section.

(4) A report received by the Registrar under subsection (3) shall not be disclosed to any person other than in accordance with an order of the Court made under subsection (2) (i).

Inspector's powers.

- 101.** An inspector
- (a) has the powers set out in the order appointing him or her; and
 - (b) shall, upon request, produce to an interested person a copy of the order.

Hearing in camera.

102. (1) An application under this Part and any subsequent proceedings, including applications for directions in respect of any matter arising in the investigation, shall be heard *in camera* unless the Court orders otherwise.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part may appear or be heard at the hearing and has a right to be represented by a legal practitioner appointed by him or her for the purpose.

(3) No person shall publish anything relating to any proceedings under this Part except with the authorisation of the Court.

Incriminating evidence.

103. No person is excused from attending and giving evidence and producing documents and records to an inspector appointed by the Court under this Part by reason only that the evidence tends to incriminate that person or subject him or her to any proceeding or penalty, but the evidence may not be used or received against him or her in any proceeding thereafter instituted against him or her, other than a prosecution for perjury in giving the evidence.

Privilege.

104. (1) An oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.

(2) Nothing in this Part affects the legal privilege that exists in respect of a legal practitioner and his or her client.

PART IX

ADMINISTRATION AND GENERAL

Company Law Review Advisory Committee.

105. The Company Law Review Advisory Committee established under section 228A of the BVIBCA shall, in addition to performing its functions under that section, perform the same functions in relation to this Act as if those

functions were specified with respect to this Act in relation to micro business companies.

106. (1) The Registrar of Corporate Affairs appointed under section 229 of the BVIBCA shall act as, and perform the functions of, Registrar under this Act. Registrar of Corporate Affairs.

(2) Subject to the control of the Registrar, the Deputy Registrar and Assistant Registrar referred to in section 229 of the BVIBCA may exercise the powers and perform the functions of the Registrar under this Act and their exercise of such powers and performance of such functions shall be conclusive evidence of their authority to do so.

(3) Subject to the control of the Commission, the Registrar is responsible for the administration of this Act.

107. (1) The Registrar shall maintain on the Internet site a publicly accessible register of all micro business companies incorporated under this Act. Register of micro business companies.

(2) The Register and the information contained in any filing shall be kept in such manner as the Registrar considers fit including, either wholly or partly, by means of a device or facility

- (a) that records or stores information magnetically, electronically or by other means; and
- (b) that permits the information recorded or stored to be inspected and reproduced in legible and usable form.

(3) The Registrar shall establish systems and facilities enabling the filing of documents and the provision of information to the Registrar in electronic form and, where specifically requested or considered necessary, the issuance of certificates and other documents in electronic form.

(4) The Registrar shall

- (a) provide that specified qualifying documents, specified types or descriptions of qualifying documents, qualified documents filed by specified persons or by specified types or descriptions of persons or all qualifying documents may only be filed by electronic means; and
- (b) specify requirements concerning
 - (i) the keeping by the Registrar of the Register and of documents filed and information provided, in electronic or any other form;

- (ii) the filing of documents and provision of information in electronic form; and
- (iii) the issuance by the Registrar of certificates and other documents in electronic form.

(5) The Registrar shall

- (a) retain every qualifying document filed; and
- (b) not retain any document filed that is not a qualifying document.

(6) For the purposes of this section, a document is a qualifying document if

- (a) this Act or another enactment requires or expressly permits the document or information to be filed; and
- (b) the document or information complies with the requirements of, and is filed in accordance with, this Act or the other enactment that requires or permits the document or information to be filed.

(7) The Registrar may maintain such other registers as he or she considers appropriate in relation to micro business companies under this Act and the registers shall be in such form as the Registrar may determine.

Filing of documents.

108. (1) Except as otherwise provided in this Act or the regulations, a document or information required or permitted to be filed by a micro business company under this Act, may only be filed

- (a) by the registered agent of the company; or
- (b) if an Insolvency Act liquidator is appointed in respect of the company, by that liquidator.

(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 document or information on a non-business day.

Inspection of registers and documents filed.

109. (1) Subject to subsection (4) and except as otherwise provided in any other enactment, a person may

- (a) make an inquiry of any matter specified in the Register maintained by the Registrar under section 107 (1);

- (b) print off a copy of the charter of a micro business company from the Register;
- (c) make an inquiry of any document maintained by the Registrar in accordance with section 107 (5); and
- (d) request a certified or uncertified copy or extract of any matter contained in the Register or document maintained by the Registrar in respect of a micro business company.

(2) For the purposes of subsection (1), a certified copy or extract is *prima facie* evidence of the matters contained therein.

(3) Where a document or any other matter referred to in subsection (1) is publicly available on the Internet site, the Registrar may prevent or refuse to accede to an inquiry or a request from any person in respect of that document or other matter.

(4) A document or a copy or an extract of any document or any part of a document certified by the Registrar is admissible in evidence in any proceedings as if it were the original document.

(5) Subsection (4) applies whether the copy or extract is obtained from a document or information filed in electronic form.

(6) The charter of a micro business company shall always be treated as containing current information regarding the status of the company and accordingly

- (a) it shall not be necessary for the Registrar to issue a certificate of any matter contained in the charter, saved as may be requested under subsection (1) (d); and
- (b) a copy of a charter printed off the Register is admissible in evidence in any proceedings as if it were the original charter.

110. Any certificate or other document that may be issued by the Registrar under this Act shall be in the approved form. Form of certificate.

111. (1) The Registrar may, upon request by any person, issue a certificate confirming any specified information recorded on the Register in relation to a micro business company. Issue of miscellaneous certificates.

(2) Where any information or other matter referred to in subsection (1) is publicly available on the Internet site, the Registrar may refuse to grant the request in respect of that information or other matter.

Fees and penalties to be paid to Registrar. Schedule 1 No. 12 of 2001

112. (1) The fees and penalties specified in Schedule 1 shall be payable to the Registrar who shall pay them into the Government Trust Account established under section 19 of the Financial Services Commission Act, 2001.

(2) Subject to subsection (3) and save where this Act or any regulation made thereunder provides otherwise, the registered agent is the only person authorised to pay a fee to the Registrar under this section, and the Registrar shall not accept a fee paid by any other person.

(3) The Registrar may, on an application by a legal practitioner on behalf of a micro business company, permit the legal practitioner to pay a fee to the Registrar under this section if the Registrar is satisfied that there are reasonable circumstances that warrant the grant of such permission.

(4) The grant of permission by the Registrar under subsection (3) shall relate to a single transaction in respect to the payment of fees on behalf of a micro business company and, in granting permission, the Registrar may impose such conditions as he or she considers necessary.

Due date of annual fees.

113. (1) The annual fee payable by a micro business company is due by the 31st day of January of each year, commencing in the year following its incorporation.

Schedule 1

(2) The annual fee payable by a micro business company is the annual fee specified in Part I of Schedule 1.

(3) Where an Insolvency Act liquidator is appointed in respect of a micro business company, the company is not liable for any fees under Schedule 1 after the date of the liquidator's appointment.

Recovery of penalties, etc.

114. Any fee or penalty payable under this Act or any regulations made thereunder that remains unpaid for 30 days immediately following the date on which demand for payment is made by the Registrar is recoverable at the instance of the Commission before a Magistrate in civil proceedings.

Micro business company struck off liable for fees, etc.

115. A micro business company continues to be liable for all fees and penalties payable under this Act or any regulations made thereunder notwithstanding that the name of the company has been struck off the Register.

Power of Registrar to refuse to act.

116. The Registrar may refuse to take any action required of him or her under this Act or any regulations made thereunder for which a fee is prescribed or a penalty is payable until such fee or penalty, as the case may be, has been paid.

117. (1) Where this Act requires a document to be in “the approved form”, the Commission shall, by publication on its Internet Site in the prescribed manner, approve a form to be used for the document. Approval and filing, submission etc. of documents.

(2) The Commission may, with respect to any other document required or permitted to be filed, issued or produced under this Act, 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, 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 or in the approved form.

118. (1) The following are exempted from all provisions of the Income Tax Ordinance Exemptions from tax. Cap. 206

- (a) a micro business company;
- (b) all dividends, interest, rents, royalties, compensations and other amounts paid by a micro business company; and
- (c) capital gains realised with respect to any shares, debt obligations or other securities of a micro business company.

(2) No estate, inheritance, succession or gift tax is payable with respect to any shares, debt obligations or other securities of a micro business company.

(3) Subject to subsection (4), the following are exempt from the payment of stamp duty under the Stamp Act Cap. 212

- (a) all instruments relating to transfers of property to or by a micro business company;
- (b) all instruments relating to transactions in respect of the shares, debt obligations or other securities of a micro business company; and

(c) all instruments relating to other transactions relating to the business of a micro business company.

(4) Subsection (3) does not apply to an instrument relating to

(a) the transfer to or by a micro business company of an interest in land situate in the Virgin Islands; or

(b) transactions in respect of the shares, debt obligations or other securities of a land owning micro business company.

(5) For the purposes of subsection (4), a micro business company is a land owning micro business company if it, or any of its subsidiaries, has an interest in any land in the Virgin Islands.

(6) The following are exempt from the provisions of the Registration and Records Act with respect to deeds and other instruments relating to

(a) transfers of property to or by a micro business company;

(b) transactions in respect of the shares, debt obligations or other securities of a micro business company; and

(c) other transactions relating to the business of a micro business company.

Cap. 67

Foreign tax obligations.

119. Nothing under this Act excuses or exempts a micro business company from taxes, duties or other fees that are payable by the company in any other jurisdiction where it conducts or carries on its business operations.

Offences and penalties.

120. (1) Where a person contravenes a provision, or fails to comply with a requirement of this Act, or in complying with a requirement of this Act or adhering to any request made by the Commission or Registrar, engages in any act that misleads, the person commits an offence.

(2) A person who commits an offence under subsection (1) or under any section of this act is liable on summary conviction to a fine not exceeding \$25,000.

(3) Where an action under this Act relates to the application of and compliance with a provision of the Insolvency Act, 2003 in relation to a liquidator appointed or performing functions under or pursuant to that Act for which an offence and a penalty are prescribed under that Act, the offence and penalty prescribed under that Act shall apply instead of subsections (1) and (2).

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(4) Where an offence under this Act is committed by a micro business company, the principal, participant (if applicable) or other senior officer of the micro business company who authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on summary conviction to the penalty specified in subsection (2).

PART X

MISCELLANEOUS PROVISIONS

121. For purposes of determining matters relating to title and jurisdiction but not for purposes of taxation, the *situs* of the ownership of shares, debt obligations or other securities of a micro business company is in the Virgin Islands. Jurisdiction.

122. (1) A micro business company may, without the necessity of joining any other party, apply to the Court, by summons supported by an affidavit, for a declaration on any question of interpretation of any provision of this Act or the charter of the company, and the Court may make such declaration as it considers fit. Declaration by Court.

(2) A person acting on a declaration made by the Court as a result of an application under subsection (1) shall be deemed, in so far as regards the discharge of any fiduciary or professional duty, to have properly discharged his or her duties in the subject matter of the application.

123. A judge of the Court may exercise in Chambers any jurisdiction that is vested in the Court by this Act and in exercise of that jurisdiction, the judge may award costs as may be just. Judge in Chambers.

124. (1) The Cabinet may, on the advice of the Commission, by an Order published in the *Gazette*, amend in such manner as it considers fit Amendment of Schedules.

(a) any matter prescribed or specified in section 113;

(b) the penalty prescribed under section 120 (2); and

(c) any of the Schedules.

(2) An Order made under subsection (1) shall be subject to a negative resolution of the House of Assembly.

125. (1) The Cabinet may, acting on the advice of the Commission, make such regulations as it considers fit to deal with any matter under or in relation to this Act and such regulations may Regulations.

- (a) make different provision in relation to different persons, circumstances and cases; and
- (b) provide, subject to subsection (2), for offences and penalties for any contravention of or failure to comply with specified requirements of the regulations.

(2) A person who commits an offence under any regulations made pursuant to subsection (1) is liable on summary conviction to a fine not exceeding \$15,000.

Act binding on
the Crown.

126.

This Act binds the Crown.

SCHEDULE 1

[Section 113]

FEES AND PENALTIES

PART I – FEES

COLUMN 1 SECTION	COLUMN 2 NATURE OF FEE	COLUMN 3 FEE (\$)
5 (1)	For registration of micro business company	140
8 (1), (2)	For filing updated information and registration of amendment to charter	35
13 (2)	For re-use of name of struck off or dissolved micro business company upon restoration to the Register	50
40 (2)	For filing interim return on appointment of new registered agent	75
42 (4), (5)	For filing notice of termination/resignation as registered agent	25
43	For filing notice of change of registered address of micro business companies in a single notice	300
64 (5)	For application to the Registrar for extension of time	150
66 (1)	For filing to transform into and register as a BVI business company	120
75 (1)	For filing notice of appointment of voluntary liquidator	50
77 (2)	For filing copy of notice of intent to resign as voluntary liquidator	50
78 (6)	For filing copy of Court order removing a voluntary liquidator	50
82 (6) (c) (ii)	For filing sealed copy of Court order terminating a voluntary liquidation	50
83 (1)	For filing statement of completion of liquidation	50
91 (1), (4), (5)	For restoration of a struck off micro business company to the Register by the Registrar	200
95 (1), (2)	For filing sealed copy of Court order restoring dissolved micro business company to the Register	400
109 (1)	(a) For making an inquiry of any matter specified in the Register or any document maintained by the Registrar	25
	(b) For issue by the Registrar of a certified or uncertified copy or extract of a matter contained in the Register or document maintained by the Registrar	50
111 (1)	For issue by the Registrar of any miscellaneous certificate	50
113 (2)	Annual fee payable by a micro business company	140
	For any other filing not specified in this Schedule	50

PART II – PENALTIES

Penalty payable
by micro
business
company for late
payment of
annual fee.

If a micro business company fails to pay the annual fee payable under Part I on or before the date on which the annual fee is due, it shall, in addition to the annual fee, be liable to pay a penalty calculated as follows:

- (a) if the fee is paid before the expiration of 2 months after the date when the fee was due, the penalty payable shall be equal to 10% of the annual fee due; and
- (b) if the fee is paid after the expiration of 2 months after the date when the fee was due, the penalty payable shall be equal to 50% of the annual fee due.

SCHEDULE 2

[Section 68]

TRANSITIONAL PROVISIONS APPLICABLE TO A BVI BUSINESS COMPANY TRANSFORMING INTO A MICRO BUSINESS COMPANY

1. A BVI business company that is incorporated or registered under the BVIBCA may transform into a micro business company only if the following conditions are satisfied
- Conditions for transforming into a micro business company.
- (a) the BVI business company is in good standing in accordance with section 235 of the BVIBCA;
 - (b) the BVI business company is not in liquidation under the BVIBCA, Insolvency Act, 2003 or other enactment; No. 5 of 2003
 - (c) an investigation has not been commenced against the BVI business company in accordance with Part XIII of the BVIBCA;
 - (d) the BVI business company does not have more than 6 shareholders;
 - (e) the BVI business company does not have a charge registered over its property pursuant to Part VIII of the BVIBCA;
 - (f) the BVI business company holds a licence under the Business, Professions and Trade Licences Act; Cap. 200
 - (g) the BVI business company is carrying on business in the Virgin Islands;
 - (h) the restrictions outlined in section 17 (1) do not apply or will not, upon the BVI business company's transformation into a micro business company, apply;
 - (i) the BVI business company will, upon its transformation into a micro business company, have a principal who is not disqualified under section 55 and not more than 5 participants; and
 - (j) the BVI business company has or will, at the time of transformation of the company, have a registered agent

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No. 8 of 1990

who is qualified under the Banks and Trust Companies Act, 1990 or Company Management Act, 1990 to act as a registered agent of a micro business company.

Process for transforming into a micro business company.

2. (1) A qualified registered agent of a BVI business company that wishes to transform into a micro business company shall file with the Registrar a request in the approved form.

(2) The request shall be treated as if it were an application for the incorporation of a micro business company under section 4 and shall contain the matters specified in that section.

(3) For the purposes of sub-paragraph (1), a qualified registered agent is the registered agent referred to in paragraph 1 (j).

Approval by Registrar.

3. Subject to paragraph 4, if the Registrar is satisfied that the requirements of paragraphs 1 and 2 have been satisfied and the required fees paid, he or she shall approve the BVI business company as transformed into a micro business company by

(a) allotting a unique registration number to the micro business company; and

(b) registering the micro business company on the Register, and section 5 (2) to (4) shall apply accordingly as if the company were incorporated under subsection (1) thereof.

Use of name of transformed BVI business company.

4. A micro business company that has transformed from a BVI business company shall be registered on the Register only if it complies with section 10 (1) and without the name ending of its BVI business company name under the BVIBCA.

Status of contracts entered into by BVI business company.

5. Where a BVI business company, prior to transforming into a micro business company, was liable under any contract or for any obligation, or was entitled to any rights under such contract or obligation, the liability, obligation or rights shall be deemed to be passed on to and assumed by the micro business company from the date of registration of the company.

Pending legal proceedings in relation to a BVI business company.

6. (1) Where, prior to a BVI business company transforming into a micro business company, legal proceedings were instituted by or against the company, those proceedings shall be continued against the company as if it had not been transformed into a micro business company.

(2) Nothing contained in this Act shall be construed

- (a) as relieving the BVI business company from any liability or obligation it had or may have; or
- (b) as affecting any lien the BVI business company may have,

prior to its transformation into a BVI business company.

7. A BVI business company that wishes to transform into a micro business company shall do so within a period of 9 months from the date of coming into force of this Act, and the Registrar shall not permit any BVI business company to transform into a micro business company after that period.

Duration of transition.

Passed by the House of Assembly this 24th day of November, 2017.

(Sgd.) Ingrid Moses-Scatliffe,
Speaker.

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