

No. 6 of 2018

VIRGIN ISLANDS

COMPANY MANAGEMENT (AMENDMENT) ACT, 2018

ARRANGEMENT OF SECTIONS

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Company Management (Amendment) Act, 2018

Virgin
Islands

I Assent

(Sgd.) Augustus J. U. Jaspert,

Governor.

27th July, 2018

VIRGIN ISLANDS

No. 6 of 2018

An Act to amend the Company Management Act (No. 8 of 1990).

[Gazetted 3rd August, 2018]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement

1. (1) This Act may be cited as the Company Management (Amendment) Act, 2018.

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

Section 2 amended

2. Section 2 of the Company Management Act, 1990 (hereinafter referred to as the “principal Act”) is amended –

(a) in subsection (1) –

(i) by inserting after the definition of “prescribed”, the following new definition –

““registered agent” means a person who provides registered agent services;” and

(ii) by deleting “(subsection 1A)” in the definition of “registered agent services” and substituting “section 9B”; and

(b) by deleting subsections (1A) and (1B).

Section 4 amended

3. Section 4 of the principal Act is amended –

(a) by deleting subsections (3A) and (3B); and

(b) by adding after subsection (5), the following new subsections –

“(6) Where prior to the coming into force of this Act (hereinafter referred to as “the 2018 Amendment Act”), a company engaged or approved to engage in company management business was listed in a schedule of the licence of a licensee as a subsidiary of the licensee, that company shall, no later than 30th June, 2019, submit a written application to the Commission to be separately licensed.

(7) Where a company referred to in subsection (6) fails to comply with the requirement of that subsection by the stipulated deadline

(a) the company shall, after the stipulated deadline, be deemed to have ceased to be listed in the schedule of the licence of the licensee;

(b) the licensee on whose licence the company was listed shall no later than 31st July, 2019 surrender its licence to the Commission; and

(c) the Commission shall re-issue the licensee’s licence without a list of any subsidiary included on the licence.

(8) Upon the coming into force of the 2018 Amendment Act –

(a) a licensee cannot merge into a company that is listed as a subsidiary on the licensee’s licence unless the company had applied for and obtained a separate licence under this Act; and

- (b) a company that is listed as a subsidiary on the licensee's licence may, before the end of the deadline stipulated in subsection (6), merge into the licensee.

(9) A company that is listed in the schedule of a licensee's licence that engages in company management business after the deadline stipulated in subsection (6) without obtaining a separate licence commits an offence and is liable on conviction to a fine not exceeding \$50,000".

Section 6 amended

4. Section 6 of the principal Act is amended by deleting "licensee" and substituting "licence".

Section 7 amended

5. Section 7 of the principal Act is amended in subsection (2) by deleting "Class III trust licensee" and substituting "Class III or Class V licensee".

Section 9A amended

6. Section 9A of the principal Act is amended by deleting subsection (2) and substituting the following subsection –

“(2) The functions of an authorised agent are to –

- (a) act as an intermediary between the licensee and the Commission, except that in the absence or inability of one authorised agent to act, the other authorised agent may carry out the functions of both authorised agents; and
- (b) accept, on behalf of the licensee, service of legal and other process, including any other documents.”.

Section 9B inserted

7. The principal Act is amended by inserting after section 9A, the following new section –

“Registered agent, and registered agent and registered office services

9B. (1) A person provides registered agent services if he or she –

- (a) is licensed under this Act or the Banks and Trust Companies Act but excludes a person licensed to provide banking business under that Act;
- (b) acts as the registered agent of –
 - (i) a company incorporated under the BVI Business Companies Act;
 - (ii) a corporation incorporated under or pursuant to an enactment;
 - (iii) a foreign company registered under the BVI Business Companies Act; or
 - (iv) a limited partnership registered under the Partnership Act; and
- (c) provides registered office services or carries on other company management services under this Act.

(2) A person provides registered office services if he or she provides the registered office for any of the entities listed in subsection (1) (b).

(3) The Commission may, by an Order published on the Internet site, restrict a registered agent or any class of registered agents from acting as a registered agent of any of the entities listed in subsection (1) (b) unless the person or class of persons meets such conditions as the Commission may specify in the Regulatory Code.

(4) The Commission may specify in the Regulatory Code additional registered agent services and registered office services or specify the details of any registered agent services or registered office services as it may consider necessary.”.

Section 13 amended

8. Section 13 of the principal Act is amended –

- (a) in subsection (1), by inserting after “transfer,” the word “merge,”;
- (b) in subsection (3) –
 - (i) by inserting after “transfer,” in paragraph (a), the word “merger,”;

- (ii) by inserting after “significant interest” in paragraph (b) (i) and (ii), the words “or controlling interest”;
- (c) in subsection (5), by inserting after “significant interest” in paragraph (b), the words “or controlling interest”;
- (d) by inserting after subsection (5), the following new subsection –

“(5A) In the case of a merger where the licensee is not the surviving company and the surviving company is not or will not be licensed under this Act, the reference in subsection (5) (a) to “the licensee” shall be restricted to the licensee that is licensed under this Act.”;
- (e) in subsection (8) –
 - (i) by inserting after “transfers,” in the opening paragraph, the words “merges,”;
 - (ii) by inserting after “transfer,” wherever the words appear in paragraph (b), the words “merger,”; and
- (f) in subsection (10), by inserting after “transfer,” the words “merger,”.

Passed by the House of Assembly this 10th day of July, 2018.

(Sgd.) Ingrid Moses-Scatliffe,
Speaker.

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