

VIRGIN ISLANDS

SEGREGATED PORTFOLIO COMPANIES (BVI BUSINESS COMPANY) REGULATIONS, 2018

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VIRGIN ISLANDS
STATUTORY INSTRUMENT 2018 NO. 6
BVI BUSINESS COMPANIES ACT, 2004
(No. 16 of 2004)

Segregated Portfolio Companies (BVI Business Company) Regulations, 2018

[Gazetted 8th February, 2018]

The Cabinet, in exercise of the powers conferred by section 159 of the BVI Business Companies Act, 2004 (No. 16 of 2004) and with the advice of the Financial Services Commission, makes these Regulations:

Citation and commencement

1. (1) These Regulations may be cited as the Segregated Portfolio Companies (BVI Business Company) Regulations, 2018.

(2) These Regulations shall come into force on the day that the BVI Business Companies (Amendment) Act, 2018 is brought into force.

Definitions

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

“Act” means the BVI Business Companies Act;

“BVI business company” means a company as defined in section 3 (1) of the Act;

“BVI business company SPC” means a segregated portfolio company that is a BVI business company;

“Court” means the High Court;

“Commission” means the Financial Services Commission established under section 3 (1) of the Financial Services Commission Act; and

“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.

(2) A reference in these Regulations to the imposition by the Commission of an administrative penalty refers to the imposition of administrative penalty pursuant to the Financial Services (Administrative Penalties) Regulations.

Application for approval to incorporate or register a BVI business company SPC

3. (1) Any person who wishes to incorporate or register a BVI business company as a segregated portfolio company shall submit an application to the Commission in the approved form.

(2) An application under subregulation (1) shall include the following information –

- (a) the name, or proposed name, of the segregated portfolio company;
- (b) details of the persons who are, or who will be appointed as, the directors of the segregated portfolio company;
- (c) a list of the initial segregated portfolios that it is intended will be created, including the name, identification or designation of each segregated portfolio; and
- (d) in respect of each of the initial segregated portfolios that it is intended will be created, details of at least one director who will be appointed by the segregated portfolio company to act in respect of the segregated portfolio.

(3) An application under subregulation (1) shall be accompanied by the documents required under the Act for the incorporation or registration of a company, including a copy of the memorandum and articles proposed for the segregated portfolio company.

(4) An application under subregulation (1) for approval to register an existing BVI business company as a segregated portfolio company shall be in the approved form and shall be accompanied by –

- (a) its memorandum and articles and the changes proposed to be made to the memorandum and articles should its application be approved;
- (b) a statement in the approved form, signed by at least one director of the company on behalf of the board, setting out –
 - (i) the assets and liabilities of the company as at a date no more than 6 months prior to the date of the application;

- (ii) details of any transactions, events or other matters not reflected in the statement of assets and liabilities that the directors consider have materially affected or, prior to its registration as a segregated portfolio company are likely to materially affect, the assets and liabilities of the company;
 - (iii) the assets of the company that it is intended will be segregated portfolio assets, specifying in respect of which portfolio, and the assets that it is intended will be general assets; and
 - (iv) how the liabilities of the company will be satisfied;
- (c) a declaration in the approved form signed by at least one director of the company on behalf of the board that –
- (i) resolutions of the directors have been passed approving the registration of the company as a segregated portfolio company;
 - (ii) the company is solvent and that the company and each proposed segregated portfolio will, after the assets of the company have been allocated to segregated portfolios, be solvent; and
 - (iii) the company has given notice to members of its intention to apply for registration as a segregated portfolio company.
- (5) For purposes of subregulation (2) (d) –
- (a) any director of the segregated portfolio company may be appointed by the company to act in respect of the segregated portfolio; and
 - (b) the same director may be appointed in respect of more than one segregated portfolio.

Approval of application

4. (1) Where the Commission is satisfied that the requirements for an application under regulation 3 for the incorporation or registration of a segregated portfolio company have been complied with, the Commission shall approve the application.

(2) The requirements for an application under regulation 3 shall not be considered to be complied with, unless the Commission is satisfied that the application is in the approved form and provides all required information and is accompanied by the relevant documents or other information specified in that regulation.

Purpose for which a BVI business company segregated portfolio may be used

5. In addition to the purposes for which a segregated portfolio company may establish and use segregated portfolios under Part VII of the Act, a segregated portfolio may be used for any of the following purposes –

- (a) holding assets for high net worth persons, including institutional investors;
- (b) operating multiple businesses or types of business, including setting up new business ventures, which require segregation from the business of the segregated portfolio company;
- (c) engaging in property development and management, including the acquisition of, trading in, leasing of, or otherwise generally dealing in, real estate, ships, aircraft, and other property which the company considers will be more efficient and cost-effective to be managed or otherwise dealt with through a segregated portfolio;
- (d) engaging in bankruptcy remote vehicles in structured finance and capital markets transactions; and
- (e) performing such other duties, responsibilities and investments as are not inconsistent with any restriction or prohibition under the Act or these Regulations.

Financial statements and records

6. (1) A BVI business company SPC shall –

- (a) prepare its financial statements having regard to the provisions of section 148 of the Act; and
- (b) maintain its records and underlying documentation in accordance with and in the form required by section 98 of the Act.

(2) Subject to subregulation (3), a BVI business company SPC may prepare financial statements of its segregated portfolios separately, or consolidate the financial statements of the BVI business company SPC but in each case identifying the segregated portfolios.

(3) The Commission may, in respect of any segregated portfolio company or class of segregated portfolio company, exempt the company from the requirement to prepare and submit financial statements in relation to a segregated portfolio or segregated portfolios of that company.

Creation of segregated portfolios

7. (1) Subject to subregulation (2), a BVI business company SPC may create a segregated portfolio or such number of segregated portfolios as it wishes so long as it complies with the requirements of the Act and this regulation with regard to the creation of the segregated portfolios.

(2) Where a segregated portfolio company creates a segregated portfolio, it shall, within 14 days of the creation of the segregated portfolio, notify the Commission in writing of that fact.

(3) Without prejudice to Part IV of the Schedule, where a segregated portfolio company fails to comply with the requirement of subregulation (2), the company and every director of the company is liable to the imposition by the Commission of an administrative penalty.

Terminating a segregated portfolio

8. (1) A segregated portfolio company may terminate a segregated portfolio by submitting to the Commission in writing a notification that –

- (a) the company has terminated or intends to terminate the segregated portfolio, indicating when the termination took effect or will take effect;
- (b) the segregated portfolio does not, or on the date of termination did not or will not, have segregated portfolio assets attributable to the segregated portfolio;
- (c) the segregated portfolio has no, or on the date of termination did not or will not have any, outstanding liability;
- (d) where the segregated portfolio has, or on the date of termination had or will have, an outstanding liability, the liability had been or will be paid from the general assets of the company; and
- (e) confirming that the segregated portfolio was not terminated or is not being terminated in a manner prejudicial to investors and creditors.

(2) Where a segregated portfolio has not engaged in any business since its creation, the segregated portfolio company shall, in addition to or as part of the notification submitted under subregulation (1) –

- (a) confirm that the segregated portfolio has never commenced business; and
- (b) provide the reason or reasons why the segregated portfolio never commenced business.

Effect of termination of a segregated portfolio

9. (1) Subject to subregulation (2), where a segregated portfolio is terminated by a segregated portfolio company under regulation 8, neither the company nor a creditor of the segregated portfolio or any other person may –

- (a) commence legal proceedings, carry on any business or in any way deal with the segregated portfolio assets attributable to the segregated portfolio prior to the termination of the segregated portfolio under regulation 8;
- (b) defend any legal proceedings, make any claim or claim any rights for, or in the name of, the segregated portfolio; or
- (c) act in any way with the affairs of the segregated portfolio.

(2) Where a segregated portfolio is terminated in accordance with regulation 8, the segregated portfolio company, creditor or other person may –

- (a) in the case of the company, reinstate the segregated portfolio; or
- (b) in the case of a creditor or any other person, make application to the Court for an order reinstating the segregated portfolio; and
- (c) continue to carry on legal proceedings that were instituted in relation to the segregated portfolio prior to its termination; or
- (d) pursue a claim on behalf of or in relation to the segregated portfolio.

(3) The reinstatement of a segregated portfolio under this regulation shall terminate as soon as the purpose of the reinstatement comes to an end.

(4) Where a reinstated segregated portfolio terminates pursuant to subregulation (3), the segregated portfolio company, creditor or other person on whose initiative the segregated portfolio was reinstated under subregulation (2) shall, within 14 days of the termination, notify the Commission of the termination.

(5) Subregulation (3) does not affect a segregated portfolio company's power or authority to reinstate a segregated portfolio in accordance with section 138A (4) of the Act.

(6) A segregated portfolio company, creditor or other person who fails to comply with the requirement of subregulation (4) is liable to the imposition by the Commission of an administrative penalty.

Reuse of a reinstated segregated portfolio

10. Regulations 6 and 7 shall apply to a segregated portfolio reinstated pursuant to section 138A of the Act, if the reinstatement is effectively a reuse of the segregated portfolio and not for the purpose outlined in regulation 9.

Notification on reinstatement of a segregated portfolio

11. (1) Where a segregated portfolio company reinstates a segregated portfolio, the company shall, within 14 days of the date of reinstatement, notify the Commission in writing of the reinstatement of the segregated portfolio and pay the requisite fee.

(2) Where the Court makes an order under regulation 9 (2) (b) reinstating a segregated portfolio, the creditor or other person on whose initiative the order was made shall, within 7 days of the making of the order, provide a copy of the order to the Commission.

(3) A person who fails to comply with subregulation (1) or (2) is liable to the imposition by the Commission of an administrative penalty.

Control over names

12. (1) If the Commission considers that the name, identification or designation of a segregated portfolio is misleading or undesirable, it may by written notice direct the segregated portfolio company to change the name of the segregated portfolio on or before the date specified in the notice, which shall not be less than 21 days after the date of the notice.

(2) A segregated portfolio company that fails to comply with a notice issued under subregulation (1) is liable to the imposition by the Commission of an administrative penalty.

(3) The imposition of an administrative penalty by the Commission under subsection (2) is without prejudice to the Registrar of Corporate Affairs' exercise of his or her power under section 22 of the Act to direct a company to change its name.

Notification of changes in information submitted to the Commission

13. (1) Subject to subregulation (2), a segregated portfolio company shall, by notice in the approved form, notify the Commission of any change in information that the company is required to submit to the Commission under these Regulations, within 14 days of the date that the information changed.

(2) Subregulation (1) does not apply to information provided to the Commission under regulation 3 (4) (b) or (c).

(3) A segregated portfolio company that fails to notify the Commission of any change in information as provided in subregulation (1) is liable to the imposition by the Commission of an administrative penalty.

Fees

14. The fees and penalties specified in the Schedule shall be payable to the Commission.

SCHEDULE

FEES PAYABLE BY A SEGREGATED PORTFOLIO COMPANY

PART I

APPLICATION AND APPROVAL FEES

Fee Description	Fee US\$
For application to incorporate or register a company as a BVI business company SPC –	
(a) In respect of the company	450
(b) In respect of each segregated portfolio included in the application	400
For approval of application to incorporate or register a company as a BVI business company SPC	250
For application to register an existing BVI business company as a segregated portfolio company	500
For approval of application to register an existing BVI business company as a segregated portfolio company	650
For notification of the creation of a segregated portfolio by a BVI business company SPC	250
For notification of termination or intent to terminate a segregated portfolio by a BVI business company SPC	250
For exempting a BVI Business Company SPC from preparing financial statements in respect of a segregated portfolio	250
For notification to the Commission of the reinstatement of a segregated portfolio by a BVI business company SPC	250
For the provision of any other service by the Commission for which a fee has not been prescribed	250

PART II

INITIAL FEES

Fee Description	Fee US\$
For the incorporation or registration of a BVI business company in any year, an initial fee on incorporation or registration –	
(a) In respect of the segregated portfolio company	450

(b) In respect of each segregated portfolio approved	400
On creating one or more segregated portfolios by a BVI business company SPC, an initial fee in respect of each segregated portfolio –	
(a) Where the segregated portfolio is created on or before 30 June	400
(b) Where the segregated portfolio is created on or after 1 July	350

PART III

ANNUAL FEES

Annual Fee Description	Fee US\$
A BVI business company SPC shall pay an annual fee on or before the anniversary of its incorporation or registration –	
(a) In respect of the segregated portfolio company	450
(b) For each segregated portfolio in existence as at the date of the anniversary	400

PART IV

LATE PAYMENT PENALTY

Description of Contravention	Penalty US\$
For failure to provide notification within the prescribed period by a BVI business company SPC	15% of the notification fee for each month or part thereof that the notification remains outstanding
For failure to pay annual fee in full on or before the anniversary date of incorporation or registration by a BVI business company SPC	\$200 for each month or part thereof after the annual fee has become due and payable

Made by Cabinet this 8th day of February, 2018.

(Sgd.) Sandra Ward,
Cabinet Secretary