

No. 15 of 2024

VIRGIN ISLANDS

BVI BUSINESS COMPANIES (AMENDMENT) ACT, 2024

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I ASSENT

**Daniel Pruce,
Governor.
23rd September, 2024**

VIRGIN ISLANDS

No. 15 of 2024

AN ACT TO AMEND THE BVI BUSINESS COMPANIES ACT, REVISED EDITION 2020, TO PROVIDE FOR: THE UNIFORM FILING OF REGISTERS OF MEMBERS WITH THE REGISTRAR; THE COLLECTION, KEEPING AND MAINTAINING OF CERTAIN INFORMATION; A REDUCTION IN THE PERIOD FOR APPOINTMENT OF FIRST DIRECTORS OF INCORPORATED COMPANIES; SUFFICIENTLY DISSUASIVE AND PROPORTIONATE PENALTIES AND FOR OTHER MATTERS CONNECTED THEREWITH.

[Gazetted 26th September, 2024]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement

1. (1) This Act may be cited as the BVI Business Companies (Amendment) Act, 2024.

(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. The BVI Business Companies Act, Revised Edition 2020 (hereinafter referred to as the “principal Act”), is amended in section 2

(a) in subsection (1) by placing in their appropriate alphabetical order, the following new definitions:

“beneficial owner” means a natural person who ultimately owns or controls a company or limited partnership and includes

- (a) in the case of a legal person other than a company whose securities are listed on a recognised exchange, a natural person who
 - (i) subject to section 96A(11), ultimately owns or controls, whether directly or indirectly, 10% or more of the shares or voting rights in the legal person;
 - (ii) holds, directly or indirectly, the right to appoint or remove a majority of the directors of the board (“board of directors”) of the legal person; or
 - (iii) otherwise exercises control over the management of the legal person;
- (b) in the case of a limited partnership, a natural person who
 - (i) subject to section 96A(11), is ultimately entitled to or controls, whether directly or indirectly, 10% or more share of the capital or profits of the partnership or 10% or more voting rights in the partnership; or
 - (ii) otherwise exercises control over the management of the partnership; and
- (c) in the case of a trust,
 - (i) the trustee;
 - (ii) the settlor or other person by whom the trust is made;
 - (iii) the protector, if any;
 - (iv) the beneficiaries or class of beneficiaries with a vested interest in the trust at the time of or before distribution of any trust property or income; and
 - (v) any other natural person exercising ultimate effective control over the trust (including through a chain of control or ownership);

“law enforcement agency” means an institution of government which has responsibility, whether under an enactment or otherwise, for the detection, prevention and investigation of crime;” and

(b) by inserting after subsection (1), the following new subsection:

“(1A) A member of a company acts as a nominee shareholder if he or she holds shares in the company and exercises the associated voting rights according to the instructions of a nominator without any discretion or receives dividends on behalf of a nominator.”.

Section 16 amended

3. The principal Act is amended in section 16 by repealing subsection (2).

Section 17A amended

4. The principal Act is amended in section 17A by repealing subsection (9).

Section 17B amended

5. The principal Act is amended in section 17B by repealing subsection (6).

Section 26 amended

6. The principal Act is amended in section 26 by repealing subsection (2).

Section 38 amended

7. The principal Act is amended in section 38 by repealing subsection (3).

Section 40 amended

8. The principal Act is amended in section 40 by repealing subsection (2).

Section 41 repealed and substituted

9. The principal Act is amended by repealing section 41 and substituting the following section:

“Register of members

41. (1) A company shall keep a register to be known as the register of members.

(2) The register of members shall contain, as appropriate for the company

- (a) the names and addresses of the persons who hold registered shares in the company;
- (b) the names and addresses of the persons who are guarantee members of the company;
- (c) the names and addresses of the persons who are unlimited members of the company;
- (d) the number of each class and series of registered shares held by each shareholder including, subject to subsection (4), the nature of associated voting rights;
- (e) the date on which the name of each member was entered in the register of members; and
- (f) the date on which any person ceased to be a member.

(3) Where a company has a member that acts as a nominee shareholder, the company shall, in addition to the register of members kept under subsection (1), file with the Registrar the following information in relation to the nominee shareholder

- (a) the name and address of the nominator;
- (b) the date on which the nominee shareholder ceased to be a member; and

(c) the date on which a person ceased to be a nominator.

(4) Where a company's memorandum or articles provide the nature of associated voting rights as outlined in subsection (2)(d), the company's register of members need not contain that information.

(5) The register of members and, if applicable, the additional information required under subsection (3), may be in such form as the directors may approve but if it is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents.

(6) Where reference is made in this section and sections 43 and 43A to a company's register of members, the reference shall be construed to include the information required under subsection (3), if applicable."

Section 43A repealed and substituted

10. The principal Act is amended by repealing section 43A and substituting the following section:

"Registration of register of members

43A. (1) Subject to subsection (7), a company shall file for registration by the Registrar a copy of its register of members.

(2) The initial copy of a company's register of members shall be filed for registration by the Registrar

- (a) within 30 days after the date of incorporation; or
- (b) in the case of a continuation under section 182(1), within 30 days after the date of continuation.

(3) A company that has filed for registration by the Registrar a copy of its register of members shall, within 30 days of any changes occurring, file the changes in the register by filing a copy of the register containing the changes.

(4) Subsections (2) and (3) shall not apply to a company

- (a) whose shares are listed on a recognised exchange;
- (b) that is a private, professional, public or private investment fund recognised under the Securities and Investment Business Act, Revised Edition 2020; or
- (c) that is an incubator or approved fund under the Securities and Investment Business (Incubator and Approved Funds) Regulations, Revised Edition 2020.

(5) The Registrar shall

- (a) maintain a copy of a company's register of members filed pursuant to subsection (1), including any changes to the register filed under subsection (3); and
- (b) not, subject to subsection (6), make a copy of a company's register of members available to any person except

- (i) the company or its registered agent;
- (ii) a competent authority
 - (aa) acting in the lawful exercise of its powers under an enactment; or
 - (bb) for the purposes of dealing with a matter for which it has authority under an enactment, including pursuant to its obligations to a mutual legal assistance request received or made or to be made by it; and
- (iii) a law enforcement agency in the lawful performance of its investigative functions or in relation to the lawful exercise of its investigative powers.

(6) A company may either at the time of filing a copy of its register of members or at any time thereafter opt to have the filing publicly accessible, and the filing may include such notations as the company considers fit for its own purposes.

(7) Where a company that was struck off and dissolved is restored to the Register

- (a) in accordance with section 218A(1); or
- (b) with the appointment by the Court of a receiver in respect of the company,

the company is not required to file for registration by the Registrar a copy of its register of members.

(8) A reference in this section and Parts I and II of Schedule 1 to a filing of a copy of a register of members for registration by the Registrar means providing the particulars of members referred to in section 41 which shall be in such form as the Registrar may determine.

(9) A reference in subsections (1) to (8) to a copy of a company's register of members relates only to the members of the company as of the date of filing of the copy of the register of members and includes the filing of a copy of the register containing any changes to the register of members.

(10) The operation of this section is without prejudice to section 66(8).”.

Section 91 amended

11. The principal Act is amended in section 91 by repealing subsections (4) and (6).

Section 93 amended

12. The principal Act is amended in section 93

- (a) by repealing subsection (5);
- (b) in subsection (6) by deleting from the opening paragraph, the words “(the “rescission notice”)” and substituting the words “(the “resignation notice”)”; and

- (c) by repealing subsection (9).

Section 94 amended

13. The principal Act is amended in section 94

- (a) by repealing subsection (5); and
- (b) in subsection (6) by deleting from the opening paragraph, the words “under section 91(4)” and substituting the words “, under, or shall not be considered to be in contravention of, section 91(3)”.

Section 95 amended

14. The principal Act is amended in section 95 by repealing subsection (4).

Section 96 amended

15. The principal Act is amended in section 96

- (a) by repealing subsection (1A);
- (b) by repealing subsection (3A);
- (c) in subsection (3B), by deleting the words “without prejudice to subsections (1A) and (3A),”;
- (d) by repealing subsection (3C);
- (e) by repealing subsection (3D); and
- (f) by repealing subsection (4).

Section 96A inserted

16. The principal Act is amended by inserting after section 96, the following new section:

“Company to collect, keep and maintain beneficial ownership information

96A. (1) A company shall collect, keep and maintain adequate, accurate and up to date information on the beneficial owners of the company.

(2) Subject to subsection (3), the beneficial ownership information required under subsection (1) shall be filed for registration by the Registrar

- (a) within 30 days after the date of incorporation of the company;
or
- (b) where a company has continued in the Virgin Islands under section 182(1), within 30 days after the date of continuation of the company.

(3) Subsection (2) shall not apply

- (a) to a company whose shares are listed on a recognised exchange; or
- (b) subject to the conditions outlined in subsection (4), to a company

- (i) that is a private fund, professional fund, public fund or private investment fund recognised or registered under the Securities and Investment Business Act, Revised Edition 2020; or
- (ii) that is an incubator or approved fund under the Securities and Investment Business (Incubator and Approved Funds) Regulations, Revised Edition 2020

(4) The conditions referred to in subsection (3)(b) are that

- (a) the company's beneficial ownership information is held by
 - (i) a person who holds a Category 6 investment business licence pursuant to the Securities and Investment Business Act, Revised Edition 2020; or
 - (ii) its authorised representative or other person licensed by the Commission that has a physical presence in the Virgin Islands; and
- (b) the beneficial ownership information can be provided to the Registrar within 24 hours of request, by the person referred to in paragraph (a)(i) or the authorised representative or other person referred to in paragraph (a)(ii).

(5) Where the beneficial ownership information of a company is held in accordance with subsection (4)(a), the company shall file with the Registrar the name and address of the person specified in that subsection within 30 days after the date of incorporation or continuation of the company.

(6) A registered agent shall, before filing beneficial ownership information referred to in subsection (2), take reasonable measures to verify the information, including the identity of the beneficial owners, to ensure that the particulars provided pursuant to Regulations made under section 230(3A) are adequate, accurate and up to date.

(7) Where a company files its beneficial ownership information pursuant to subsection (2), the Registrar shall adopt such measures as are considered necessary and adequate, including adopting a risk-based approach, to further verify the information filed under subsection (2), and ensure that such information is kept up to date.

(8) Where a beneficial owner of, or any information in relation to a beneficial owner or beneficial owner's interest in a company changes, the company shall, within 30 days of becoming aware of the change, file information of the change.

(9) The obligation placed on the Registrar under subsection (7) may be undertaken by the Commission independently or as part of its inspection process pursuant to the exercise of powers granted under the Financial Services Commission Act, Revised Edition 2020, but this shall not be construed as precluding the Registrar from verifying any information filed for registration.

(10) Where the Commission acts in accordance with subsection (9), it shall ensure that the records of the Registrar in relation to the company's

beneficial ownership information reflect the verification of the information concerned.

(11) Save in relation to competent authorities and law enforcement agencies, Regulations made under section 230(3A) shall, for the purposes of permitting access to beneficial ownership information, restrict such access to beneficial ownership of 25% or more of the shares or voting rights in a legal person.

(12) For the purposes of this section, measures (including a risk-based approach) undertaken by the Registrar to verify beneficial ownership information and to keep such information up to date shall be considered necessary and adequate if the measures (or risk-based approach) undertaken

- (a) clearly identify the identity of the beneficial owner and other information required in relation to him or her;
- (b) assist in securing information on the ownership structure and control mechanisms of the company to verify that the person identified under paragraph (a) as the beneficial owner is in fact the beneficial owner; and
- (c) utilise reliable, independent source documents, data or information for such verification.”.

Section 97 amended

17. The principal Act is amended in section 97 by repealing subsection (4).

Section 98 amended

18. The principal Act is amended in section 98 by repealing subsection (8).

Section 98A amended

19. The principal Act is amended in section 98A by repealing subsections (8) and (9).

Section 102 amended

20. The principal Act is amended in section 102 by repealing subsection (3).

Section 113 amended

21. The principal Act is amended in section 113 by repealing subsection (1) and substituting the following subsection:

“(1) The first registered agent of a company shall within 15 days after the date of incorporation of the company, appoint one or more persons as the first director or directors of the company.”.

Section 118 amended

22. The principal Act is amended in section 118 by inserting after subsection (4), the following new subsection:

“(5) Where a person licensed by the Commission under the Banks and Trust Companies Act, Revised Edition 2020 or the Company Management

Act, Revised Edition 2020, to provide director services to companies, acts as director to a company, the company shall

- (a) indicate that the person licensed to provide director services is appointed as a director, whether
 - (i) as the corporate entity licensed to provide director services; or
 - (ii) as an individual representing the person licensed to provide directorship services; and
- (b) file the information with the Registrar at the time of filing a copy of the company's register of directors for registration under section 118B(1)."

Section 118A amended

23. The principal Act is amended in section 118A by inserting after subsection (1), the following new subsection:

“(1A) Where section 118(5) applies, the company shall record and file with the Registrar

- (a) the name of the person who has been licensed to provide director services; and
- (b) where applicable, the name and address of the individual on whose behalf the person licensed to provide director services acts.”.

Section 118AA inserted

24. The principal Act is amended by inserting after section 118A, the following new section:

“Rectification of register of directors

118AA. (1) If

- (a) information that is required to be entered in the register of directors under section 118A(1) is omitted from the register or inaccurately entered in the register; or
- (b) there is unreasonable delay in entering the information in the register of directors,

a member, director, or any person who is aggrieved by the omission, inaccuracy or delay, may apply to the Court for an order that the register of directors be rectified, and the Court may either refuse the application, with or without costs to be paid by the applicant, or order the rectification of the register of directors, and may direct the company to pay all costs of the application and any damages the applicant may have sustained.

(2) The Court may, in any proceedings under subsection (1), determine any question relating to the right of a person who is a party to the proceedings to have his or her name entered in or omitted from the register of directors, whether the question arises between

- (a) 2 or more directors or alleged directors; or

(b) directors or alleged directors and the company,
and generally the Court may, in the proceedings, determine any question that may be necessary or expedient to be determined for the rectification of the register of directors.”.

Section 118B amended

25. The principal Act is amended in section 118B

(a) by repealing subsection (2) and substituting the following subsection:

“(2) The initial copy of a company’s register of directors shall be filed for registration by the Registrar

(a) within 15 days after the date of appointment of the first directors under section 113; or

(b) in the case of a continuation under section 182(1), within 15 days after the date of the company’s continuation.”; and

(b) in subsection (4)

(i) by deleting the word “and” at the end of paragraph (a); and

(ii) by deleting paragraph (b) and substituting the following paragraphs:

“(b) make a copy of a company’s register of directors available to

(i) the company or its registered agent;

(ii) a competent authority

(aa) acting in the lawful exercise of its powers under an enactment; or

(bb) for the purposes of dealing with a matter for which it has authority under an enactment, including pursuant to its obligations to a mutual legal assistance request received or made or to be made by it; and

(iii) a law enforcement agency in the lawful performance of its investigative functions or in relation to the lawful exercise of its investigative powers; and

(c) make available to any other person, upon request, a list of directors contained in a company’s register of directors filed with the Registrar.”.

Section 124 amended

26. The principal Act is amended in section 124 by repealing subsection (7).

Section 138 amended

27. The principal Act is amended in section 138 by repealing subsection (5).

Section 138A amended

28. The principal Act is amended in section 38A by repealing subsection (5).

Section 162 amended

29. The principal Act is amended in section 162 by repealing subsection (3).

Section 179A amended

30. The principal Act is amended in section 179A by repealing subsection (9).

Section 184 amended

31. The principal Act is amended in section 184(1B) by deleting paragraph (b) thereof and substituting the following paragraph:

- “(b) file with the Registrar a notice of such intention in the approved form, which shall include a declaration that
- (i) the requirements of paragraph (a)(i) and (ii) have been complied with;
 - (ii) the company does not have any pending request from a competent authority to produce documents or provide information which has not been satisfied;
 - (iii) a receiver has not been appointed over the company or in relation to any assets of the company; and
 - (iv) the company is not aware of any legal proceedings, whether civil or criminal, pending against the company, or any member, director, officer or agent of the company as it directly pertains to the affairs of the company.”.

Section 186 amended

32. The principal Act is amended in section 186

- (a) in subsection (2) by inserting after
 - (i) paragraph (c), the following new paragraph:

“(ca) a list of its members as at the date of the application specifying the full name, nationality and address of each member;”; and
 - (ii) paragraph (d), the following new paragraph:

“(da) the address of the foreign company’s registered office in its country of incorporation;”; and
- (b) by repealing subsection (3).

Section 187A repealed

33. The principal Act is amended by repealing section 187A.

Section 187B repealed

34. The principal Act is amended by repealing section 187B.

Section 188 amended

35. The principal Act is amended in section 188

(a) by repealing subsection (1) and substituting the following subsection:

“(1) A foreign company registered under this Part shall file a notice in the approved form within 30 days after a change in

- (a) its corporate name;
- (b) the jurisdiction of its domiciliation;
- (c) the instrument constituting or defining its constitution;
- (d) its directors, or in the information filed in respect of a director;
- (e) its members, or in the information filed in respect of a member;
- (f) the address of its registered office in its country of incorporation;
- (g) its registered agent; or
- (h) such other particulars as may be prescribed.”;

(b) by repealing subsection (3) and substituting the following new subsection:

“(3) A notice of a change in

- (a) the corporate name of a foreign company shall be accompanied by a resolution of directors, or any other form of authorisation permitted by the instrument constituting or defining the constitution of the foreign company, confirming the change; and
- (b) the instrument constituting or defining the constitution of a foreign company shall be accompanied by
 - (i) a certified copy of the new or amended instrument; and
 - (ii) if the instrument is not in English, a translation of the document certified as accurate in accordance with the Regulations.”;

(c) by repealing subsection (3A) and substituting the following subsection:

“(3A) Where the Registrar receives a notice of change in particulars under subsection (3) that complies with this section, he or she shall

- (a) in the case of a change in the corporate name
 - (i) register the foreign company’s change of name in the Register of Foreign Companies; and
 - (ii) issue a certificate of change of name to the foreign company; and
- (b) in the case of other particulars, register the change in the Register of Foreign Companies.”;

(d) by inserting after subsection (3A), the following new subsection:

“(3B) The Registrar shall not, save where a foreign company opts otherwise at the time of its registration under section 187 or at any time thereafter, make a copy of the foreign company’s list of members available to any person except

- (a) the foreign company or its registered agent;
- (b) a competent authority
 - (i) acting in the lawful exercise of its powers under an enactment; or
 - (ii) for the purposes of dealing with a matter for which it has authority under an enactment, including pursuant to its obligations to a mutual legal assistance request received or made or to be made by it; and
- (c) a law enforcement agency in the lawful performance of its investigative functions or in relation to the lawful exercise of its investigative powers.”; and

(e) by repealing subsection (4).

Section 189 amended

36. The principal Act is amended in section 189 by repealing subsection (3).

Section 189A amended

37. The principal Act is amended in section 189A

- (a) in subsection (2)(a) by deleting the words “30 days written notice” and substituting the words “60 days written notice”; and
- (b) by repealing subsections (5) and (6) and substituting the following subsections:

“(5) A registered agent wishing to rescind a notice of his or her intention to resign under subsection (2) (the “resignation notice”) shall

- (a) give at least 14 days written notice of his or her intention to rescind the resignation notice on the date

specified in the notice to the person to whom he or she sent the resignation notice; and

(b) file the notice (the “rescission notice”).

(6) A rescission notice may not be filed

(a) if the foreign company has, by the time of filing, changed its registered agent; or

(b) 14 days or less prior to the date specified in subsection (2).

(7) The rescission notice takes effect on the date specified in the rescission notice unless the foreign company has changed its registered agent before that date.”.

Section 189B amended

38. The principal Act is amended in section 189B

(a) in subsection (3) by inserting at the end of the opening paragraph, the word “to”;

(b) by repealing subsection (6); and

(c) in subsection (7) by deleting from the opening paragraph, the words “under subsection (6)” and substituting the words “under, or be considered to be in breach of, subsection (2) or (4)”.

Section 190 amended

39. The principal Act is amended in section 190 by repealing subsection (5).

Section 191 amended

40. The principal Act is amended in section 191 by repealing subsection (5).

Section 192 amended

41. The principal Act is amended in section 192 by repealing subsection (3).

Section 198 amended

42. The principal Act is amended in section 198 by repealing subsection (4).

Section 204 amended

43. The principal Act is amended in section 204 by repealing subsection (4).

Section 207A amended

44. The principal Act is amended in section 207A

(a) in subsection (6) by deleting from the opening paragraph the words “within 5 days” and substituting the words “within 30 days”; and

(b) by repealing subsection (7).

Section 209 amended

45. The principal Act is amended in section 209 by repealing subsection (3).

Section 210 amended

46. The principal Act is amended in section 210 by repealing subsection (5).

Section 211A amended

47. The principal Act is amended in section 211A

- (a) in subsection (1) by deleting the words “The Court may” and substituting the words “Subject to subsection (4), where a voluntary liquidator has been appointed under Division 1, the Court may”; and
- (b) by inserting after subsection (3), the following new subsection:
 - “(4) Subsection (1) does not apply to an application for the restoration of a company under section 218.”.

Section 213 amended

48. Section 213 of the principal Act is amended

- (a) in subsection (1)
 - (i) in paragraph (a), by deleting subparagraph (ii) and substituting the following subparagraph:
 - “(ii) fails to file or provide any return, notice, information or document required to be filed or provided under this Act;”;
 - (ii) by deleting paragraph (c) and substituting the following paragraph:
 - “(c) the company fails to pay its annual fee, fixed penalty, administrative penalty or other applicable penalty by the due date;”;
 - (iii) in paragraph (d) by deleting the full-stop at the end of the paragraph and substituting the words “; or”; and
 - (iv) by inserting after paragraph (d), the following new paragraph:
 - “(e) in relation to a restored company for which an undertaking has been made in accordance with section 217(2)(c)(ii) or 218A(1)(a)(ii)(bb), the undertaking has not been complied with within the stipulated period.”;
- (b) by repealing subsection (3) and substituting the following subsection:
 - “(3) The Registrar shall
 - (a) before striking the name of a company off the Register on the grounds specified in subsection (1)

- (i) send the company a notice stating that, unless the company shows cause to the contrary, it will be struck from the Register on a date specified in the notice which shall be no longer than 90 days after the date of the notice; and
 - (ii) publish a notice in the *Gazette* of his or her intention to strike the company's name off the Register;
- (b) on the date specified in the notice referred to in paragraph (a)(i), strike the name of the company off the Register, unless the company has shown cause to the contrary; and
- (c) upon striking off of the name of the company from the Register, publish notice of the striking off in the *Gazette*.”.
- (c) by repealing subsection (4);
- (d) by repealing subsection (5);
- (e) by repealing subsection (6) and substituting the following subsection:
 - “(6) The striking off of the name of a company from the Register is effective from the date specified in the notice sent in accordance with subsection (3)(a)(i).”;
- (f) by repealing subsection (7) and substituting the following subsection:
 - “(7) The striking off and dissolution of a company shall not be affected by any failure on the part of the Registrar to
 - (a) serve a notice on the registered agent or to publish a notice in the *Gazette* under subsection (3)(a); or
 - (b) publish a notice in the *Gazette* under subsection (8)(a); and”;
- (g) by inserting after subsection (7), the following new subsection:
 - “(8) If a company is struck off the Register by virtue of subsection (1)(e)
 - (a) the Registrar shall publish notice of the striking off in the *Gazette*;
 - (b) subsections (2), (3) and (3A) shall not apply;
 - (c) subsection (3B) shall be construed as if the references in that subsection to the notice and the period specified in the notice were references to the undertaking and the period specified in section 217(2)(c)(ii) or 218A(1)(a)(ii)(bb), as the case may be; and
 - (d) subsection (6) shall be construed as if the reference in that subsection to “the date specified in the notice sent

in accordance with subsection (3)(a)” were a reference to the undertaking and the period specified in section 217(2)(c)(ii) or 218A(1)(a)(ii)(bb), as the case may be.”.

Section 216 repealed and substituted

49. The principal Act is amended by repealing section 216 and substituting the following section:

“Dissolution of company struck off the Register

216. Where a company is struck off the Register under section 213(3)(b), the company is dissolved on the same date.”.

Section 217 amended

50. The principal Act is amended in section 217

- (a) in subsection (2)
 - (i) by deleting paragraph (c) and substituting the following paragraph:
 - “(c) the proposed registered agent has made
 - (i) a declaration in the approved form that the company’s records have been updated as required under section 213(3B); or
 - (ii) an undertaking in the approved form that the company’s records will be updated as required under section 213(3B) or procured and maintained within 14 days from the date of restoration of the company to the Register;”;
 - (ii) by inserting after paragraph (d), the following new paragraph:
 - “(da) the company has filed, or will within 14 days from the date of restoration of the company to the Register file, for registration by the Registrar
 - (i) a copy of its register of members; and
 - (ii) a copy of its register of directors;”;
- (b) by inserting after subsection (2), the following new subsection:
 - “(2A) The requirements under subsection (2)(da)(i) and (ii) shall not apply if at the date the company was struck off and dissolved it had filed its register of members and register of directors.”.

Section 218 amended

51. The principal Act is amended in section 218

- (a) in subsection (2) by adding at the end of paragraph (d) before the semi-colon, the words “, or its former directors or former members, or in respect of any assets of the company or issued shares”;

- (b) by inserting after subsection (3), the following new subsection:
 - “(3A) Subsection (2)(c) and (f) shall not be construed to include a registered agent or former registered agent of the company.”; and
- (c) in subsection (4), by deleting from the opening paragraph the words “under subsection (1)(c)(iii)” and substituting the words “under subsection (1)(c)(ii)”.

Section 218A amended

52. The principal Act is amended in section 218A

- (a) by repealing subsection (1) and substituting the following subsection:

“(1) Subject to subsection (2), on an application under section 218, the Court may

- (a) make an order to restore the company to the Register if

- (i) the Court is satisfied that a licensed person has agreed to act as registered agent of the company;

- (ii) the proposed registered agent makes

- (aa) a declaration in the approved form that the company’s records have been updated as required under section 213(3B); or

- (bb) an undertaking in the approved form that the company’s records will be updated as required under section 213(3B) or procured and maintained within 14 days from the date of restoration of the company to the Register;

- (iii) the company files, or makes an undertaking to file within 14 days from the date of restoration of the company to the Register, copies of its register of members and register of directors; and

- (iv) subject to subsection (6), the company pays the restoration fee and any outstanding penalties in relation to the company; and

- (b) give such directions or make such orders as it considers necessary or desirable for the purpose of placing the company and any other persons as nearly as possible in the same position as if the company had not been dissolved or struck off the Register.”;

- (b) by inserting after subsection (1), the following new subsections:

“(1A) In making an order of restoration under subsection (1), the Court may impose such conditions as it considers appropriate.

(1B) The requirements under subsection (1)(a)(iii) shall not apply if at the date the company was struck off and dissolved it had filed its register of members and register of directors.”; and

(c) by inserting after subsection (4), the following new subsections:

“(5) Where a company to which subsection (1) applies is restored to the Register, it shall forthwith appoint a registered agent under section 91A.

(6) Where an application under section 218 to restore a dissolved company to the Register is made by a person other than a former director of the company, subsection (1)(a)(iv) shall not be a condition for the Court making an order for the restoration of the company, but compliance with that subsection shall be included as a condition in the order with which the Registrar has to be satisfied to act in accordance with section 218B(2). ”.

Section 218B amended

53. The principal Act is amended in section 218B

(a) in subsection (1)

(i) by deleting from the opening paragraph the words “within 30 days” and substituting the words “within 60 days”; and

(ii) in paragraph (b), by adding at the end of the paragraph before the full-stop, the words “or the proposed registered agent referred to in section 218A(1)(a)(i)”;

(b) in subsection (1A) by deleting the words “the order shall cease to be valid” and substituting the words “the Registrar shall not accept a sealed copy of the Order for filing unless the relevant penalty prescribed in Part II of Schedule 1 is paid.”.

Section 228AA inserted

54. The principal Act is amended by inserting after section 228, the following new section:

“Duty to cooperate

228AA. (1) Subject to subsection (4), every company shall cooperate with

(a) the Registrar in the lawful discharge of his or her functions under this Act;

(b) a person conducting an inspection under this Part;

(c) a competent authority in the lawful discharge of its functions under an enactment or pursuant to an agreement or a treaty or other similar arrangement to provide mutual legal or regulatory assistance; and

(d) a law enforcement agency in the lawful performance of its investigative functions or in relation to the lawful exercise of its investigative powers.

(2) Cooperation under subsection (1) may include but is not limited to

- (a) disclosing information that is within the knowledge of the company;
- (b) producing documents in the possession or under the control of the company; and
- (c) providing any other material which the company has access to and authority to produce.

(3) The Registrar may, for the purpose of facilitating a competent authority or law enforcement agency in the discharge of its functions, provide the competent authority or law enforcement agency access to the systems and facilities, including the electronic platform maintained by the Registrar in accordance with section 230, to enable the search of basic information or other information required under any other enactment in relation to a company.

(4) A company may not be required by virtue of this section to produce, disclose or permit the inspection of any information or document which it would be entitled to refuse to produce, disclose or permit the inspection of, on the grounds of legal professional privilege.

(5) For the purposes of

- (a) subsection (3), a reference to “basic information” means a company’s name, certificate of incorporation (legal form and status), address of registered office and, if different, principal place of business, memorandum and articles of association, register of members and register of directors; and
- (b) subsection (4), information or a document comes to a legal practitioner in privileged circumstances if it is communicated or given to him or her
 - (i) by, or by a representative of, a client in connection with the giving by the legal practitioner of legal advice to the client;
 - (ii) by, or by a representative of, a person seeking legal advice from the legal practitioner; or
 - (iii) by any person
 - (aa) in contemplation of, or in connection with, legal proceedings; and
 - (bb) for the purposes of those proceedings.

(6) Information or a document shall not be treated as coming to a legal practitioner in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

(7) Notwithstanding subsections (4), (5)(b) and (6), a legal practitioner may be required to provide the name and address of his or her client.”.

Section 230 amended

55. The principal Act is amended in section 230

- (a) in subsection (1) by deleting paragraph (d) and substituting the following paragraph:

“(d) a Register of Beneficial Ownership.”;

- (b) by inserting after subsection (1), the following new subsection:

“(1A) The Registrar shall

- (a) maintain such other register as

(i) may be required or authorised under any other enactment; or

(ii) the Registrar considers feasible for the purposes of facilitating the administration of this Act; or

- (b) incorporate into a new or an existing register such information as may be

(i) required or authorised under this Act or any other enactment; or

(ii) transferred to or received by the Registrar pursuant to any enactment, agreement or arrangement which requires the information to be stored in an electronic form.”;

- (c) in subsection (2) by deleting the opening paragraph and substituting the following opening paragraph:

“The Registers, including any register under subsection (1A), maintained by the Registrar and the information contained in any document filed or otherwise required, authorised, transferred or received pursuant to subsection (1A)(b), may be kept in such manner as the Registrar considers fit including, either wholly or partly, by means of a device or facility established by the Registrar”;

- (d) in subsection (3A)(c)

(i) by deleting from the opening paragraph the words “Register of Persons with Significant Control” and substituting the words “Register of Beneficial Ownership”;

(ii) by deleting from subparagraph (i), the words “significant control” and substituting the words “beneficial ownership”;

(iii) by inserting at the end of subparagraph (ii)(bb) before the semi-colon, the words “to persons who can demonstrate legitimate interest in acquiring the information”;

(iv) in subparagraph (iv)(aa) by deleting the word “voting”; and

- (v) in subparagraph (v)
 - (A) by deleting the word “or” at the end of sub-subparagraph (cc);
 - (B) by adding the word “or” at the end of sub-subparagraph (dd); and
 - (C) by inserting after sub-subparagraph (dd), the following new sub-subparagraph:
 - “(ee) where the person does not qualify as a person with a legitimate interest as may be defined in the Regulations;”;
- (e) in subsection (3C)(a), by inserting after the words “this Act”, the words “and the Limited Partnership Act, Revised Edition 2020”; and
- (f) by repealing subsection (6) and substituting the following subsection:
 - “(6) Regulations made under subsection (3A)(c) shall
 - (a) define what constitutes a legitimate interest; and
 - (b) be subject to a negative resolution of the House of Assembly.”.

Section 235 amended

56. The principal Act is amended in section 235

- (a) in subsection (1)
 - (i) by deleting from the opening paragraph the words “Subject to section 98A(5), the Registrar” and substituting the words “The Registrar”; and
 - (ii) by repealing paragraphs (c) and (d) and substituting the following paragraphs:
 - “(c) subject to section 43A(4) and (7), the company has filed with the Registrar a copy of its register of members in accordance with that section;
 - (d) subject to section 118B(5), the company has filed with the Registrar a copy of its register of directors in accordance with that section;
 - (e) subject to section 98A(5), he or she has not received any notification, pursuant to section 98A(4), that the company has failed to file its annual return; and
 - (f) subject to section 96A(3), the company has filed with the Registrar beneficial ownership information in accordance with section 96A(2).”;
- (b) by repealing subsection (1A);
- (c) in subsection (2A) by inserting after the word “shall”, the words “be valid for such period and”; and

(d) by repealing subsection (3).

Section 240 amended

57. The principal Act is amended in section 240

(a) by repealing subsection (3) and substituting the following subsection:

“(3) The Regulations may

- (a) make provisions in relation to different persons, circumstances or cases;
- (b) provide penalties for any contravention of or failure to comply with any specified requirements of this Act and the Regulations, including any filing of
 - (i) a document or provision of information pursuant to a requirement under this Act, which is false or misleading; and
 - (ii) a return issued pursuant to an Order made by the Commission under section 242A, which is false or misleading; and
- (c) provide for the imposition of administrative penalties by the Commission.”; and

(b) by adding after subsection (3), the following new subsection:

“(4) Where the Regulations provide for the imposition of administrative penalties by the Commission pursuant to subsection (3)(c), the Commission shall set out in guidelines the procedure to be followed in relation to the imposition of the administrative penalties.”.

Section 240A amended

58. The principal Act is amended in section 240A

(a) in subsection (4)

- (i) by deleting the word “and” at the end of paragraph (a); and
- (ii) by repealing paragraph (b) and substituting the following paragraphs:

“(b) provide penalties for any contravention of or failure to comply with any specified requirements of the Regulations, including any filing of

- (i) a document or provision of information pursuant to a requirement under this Act, which is false or misleading; and
- (ii) a return issued pursuant to an Order made by the Commission under section 242A, which is false or misleading; and

- (c) provide for the imposition of administrative penalties by the Commission.”; and
- (b) by repealing subsection (5) and substituting the following subsection:

"(5) Where the Regulations provide for the imposition of administrative penalties by the Commission pursuant to subsection (4)(c), the Commission shall set out in guidelines the procedure to be followed in relation to the imposition of the administrative penalties.”.

Section 242A inserted

59. The principal Act is amended by inserting after section 242, the following new section:

“Returns

242A. (1) The Commission may, by an Order published in the *Gazette* and on the Internet site, require a company to prepare and submit to the Commission a return on any matter concerning the business or affairs of the company.

(2) Any return required by the Commission pursuant to subsection (1)

- (a) shall be in the approved form and contain such detail as may be specified in the Order issued under subsection (1);
- (b) may be issued independently or as part of an existing return issued by the Commission, if the Commission considers this feasible;
- (c) may be used for the purpose of analysing and developing relevant statistical data for use by the Commission or the Registrar or for public dissemination;
- (d) may be used for the purpose of facilitating the supervisory functions of the Commission or the functions of the Registrar, including the assessment of risk;
- (e) may be used in response to statistical inquiries by persons who are connected to or have interest in the work of the Commission or the Registrar or generally in the operation of financial services business in and from within the Territory and which the Commission considers to be legitimate and appropriate;
- (f) may be used for the purpose of meeting any obligation or undertaking of the Commission by virtue of its membership or association of any institution or organisation or of implementing any domestic or internationally established standard or commitment;
- (g) may be applied for some other purpose consistent with the duties and functions of the Commission or the Registrar; and

(h) shall be prepared and submitted for the period and within the time frame as may be specified in the Order issued under subsection (1).

(3) A company shall ensure that information provided in any return is accurate and complete.

(4) An Order made under subsection (1) may apply to a company incorporated, continued or registered under this Act, and includes a company that is restored to the Register under section 217 or 218A.

(5) A reference in this section to “company” shall be construed to include a foreign company, although the Order made under subsection (1) may, for any particular purpose, be applied differently as between a company that is incorporated, continued or registered.”.

Section 243 repealed and substituted

60. The principal Act is amended by repealing section 243 and substituting by the following section:

“Liability of directors, managers, etc.

243 Where a company contravenes or fails to comply with a provision of this Act, a director, general manager, secretary or other officer of the company who authorised, permitted or acquiesced in the contravention or non-compliance shall be treated as also contravening or failing to comply with the provision of the Act and is liable to the penalties prescribed in the Regulations pursuant to section 240(3) or 240A(4).”.

Schedule 1 amended

61. The principal Act is amended in Schedule 1 by repealing Part II and substituting the following Part:

“PART II

PENALTIES PAYABLE BY COMPANY FOR LATE PAYMENT OF FEES OR LATE FILING

Column 1 Section	Column 2 Nature of Contravention	Column 3 Penalty
43A(2)(a) & (b)	Failure to file for registration copy of initial register of members within the specified period	\$200 For first month or part thereof that the filing remains outstanding

		<p>\$250 For each month or part thereof after the first month that the filing remains outstanding (up to 2 months)</p> <p>\$300 For each month or part thereof after the third month that the filing remains outstanding (up to 3 months)</p>
43A(3)	Failure to file changes in the register of members within the specified period	\$200 For each month or part thereof that the filing remains outstanding (up to a maximum of \$2,400)
96A(2)(a) & (b)	Failure to file for registration beneficial ownership information within the specified period	<p>\$500 For first month or part thereof that the filing remains outstanding</p> <p>\$550 For each month or part thereof after the first month that the filing remains outstanding (up to 2 months)</p> <p>\$600 For each month or part thereof after the third month that the filing remains outstanding (up to 3 months)</p>
96A(8)	Failure to file changes in beneficial ownership information within the specified period	\$500 For each month or part thereof that the filing remains outstanding (up to a maximum of \$6,000)

118B(2)(a) & (b)	Failure to file for registration copy of initial register of directors within the specified period	<p>\$300 For first month or part thereof that the filing remains outstanding</p> <p>\$350 For each month or part thereof after the first month that the filing remains outstanding (up to 2 months)</p> <p>\$400 For each month or part thereof after the third month that the filing remains outstanding (up to 3 months)</p>
118B(3)	Failure to file changes to register of directors within the specified period	\$300 For each month or part thereof that the filing remains outstanding (up to a maximum of \$3,600)
188(1)	Failure to file notice of change in particulars within specified period	\$200 For each month or part thereof that the filing remains outstanding (up to a maximum of \$2,400)
207A(6)(b)	Failure to file a sealed copy of Court order terminating a voluntary liquidation within the specified period	\$150 For each month or part thereof that the filing remains outstanding (up to a maximum of \$1,800)
218B(1)	Failure to file a sealed copy of a Court Order restoring a company to the Register within the specified period	\$150 For each month or part thereof that the filing remains outstanding (up to a maximum of \$1,800)

236	Failure to pay annual fee payable under Part I of Schedule 1, within the specified period (Company)	<ul style="list-style-type: none"> ▪ if the fee is paid before the expiration of 2 months after the date when the fee is due, the penalty payable shall be equal to 10% of the annual fee due; or ▪ if the fee is paid on or after the expiration of 2 months after the date when the fee is due, the penalty payable shall be equal to 50% of the annual fee due.
	Failure to pay annual fee payable under Part I of Schedule 1, on or before 31 March (Foreign Company)	<ul style="list-style-type: none"> ▪ if the fee is paid on or before 31 May in that year, the penalty payable shall be equal to 10% of the annual fee due; or ▪ if the fee is paid on or after 1 June in that year, the penalty payable shall be equal to 50% of the annual fee due
Schedule 2, paragraph 31 or 48	Failure to pay annual fee payable under paragraph 31 or 48 of Schedule 2, within the specified period	<ul style="list-style-type: none"> ▪ if the fee is paid before the expiration of 2 months after the date when the fee is due, the penalty payable shall be equal to 10% of the annual fee due; or ▪ if the fee is paid on or after the expiration of 2 months after the date when the fee is due, the penalty payable shall be equal to 50% of the annual fee due.”.

Schedule 2 amended

62. The principal Act is amended in Schedule 2

(a) in Part VIIA

- (i) in paragraph 60E(1), by deleting the words “paragraph 60C” and substituting the words “paragraph 60D”; and
- (ii) in paragraph 60G(2), by deleting the words “creditor,”; and

(b) by inserting after Part VIIA, the following new Part:

“Part VIIB

TRANSITIONAL PROVISIONS IN RELATION TO
COMPANIES REQUIRED TO FILE REGISTER OF
MEMBERS AND BENEFICIAL OWNERSHIP
INFORMATION

Interpretation for this Part

60H. (1) For the purposes of this Part

“effective date” means the date this Act (BVI Business Companies (Amendment) Act, 2024) comes into force;

“existing company” means a company that was incorporated before the effective date and has not been struck off and dissolved;

“existing struck off and dissolved company” means a company that

- (a) was incorporated before the effective date;
- (b) has been struck off and dissolved; and
- (c) has not been restored to the Register prior to the effective date; and

“Register” means the Register of Companies maintained by the Registrar under section 230(1).

(2) For the purposes of the application of sections 41, 42, 43, 43A and 96A to this Part, the references in those sections to “company” shall be construed as if the references were to an existing company or an existing struck off and dissolved company, as the case may be.

Filing of register of members, information on director services provided and beneficial ownership information by existing company

60I. (1) An existing company shall, within 6 months of the effective date, comply with the requirements of section 41, section 43A (save where subsection (4) thereof applies), section 96A (save where subsection (3) thereof applies), and, if applicable, sections 118 and 118A.

(2) The Registrar may, if he or she considers it necessary, extend the period outlined in subparagraph (1) for a further period not exceeding 6 months.

(3) Where prior to the effective date an existing company had opted to file and had indeed filed its register of members, it shall not be required to file a copy of another register of members, save that if the copy of the register of members filed did not contain any of the information required under section 41(2) and, if applicable, the additional information required under section 41(3) has not been filed, the company shall

- (a) file a copy of the register of members containing the information required under section 41(2); and
- (b) if applicable, file the additional information required under section 41(3).

(4) An existing company that fails to comply with the requirements of this paragraph is liable to

- (a) a penalty of \$600 for the first 3 months that it failed to so comply;
- (b) a penalty of \$800 for the second 3 months following the end of the period specified in sub-subparagraph (a); and
- (c) be struck off by the Registrar from the Register after the end of the second period referred to in sub-subparagraph (b).

Filing of register of members, register of directors and beneficial ownership information by existing struck off and dissolved company

60J. (1) An existing struck off and dissolved company shall not be restored to the Register unless

- (a) in the case of an application for restoration under section 217, the Registrar is satisfied that the company has filed its register of members, register of directors, beneficial ownership information and, if applicable, information on the requirements outlined in sections 118(5) and 118A(1A) or will, within 14 days after restoration, make such filing; or
- (b) in the case of an application for restoration under section 218, the Court is satisfied that the company has filed its register of members, register of directors, beneficial ownership information and, if applicable, information on the requirements outlined in sections 118(5) and 118A(1A) or will, within 14 days after restoration, make such filing.

(2) Subparagraph (1) is without prejudice to the requirements for restoration of a struck off and dissolved company under section 217 or sections 218 and 218A.

(3) Subparagraph (1) shall not apply in an application for restoration under section 217 or 218 if at the date the company was struck off and dissolved it had

- (a) opted to file and had indeed filed its register of members containing all the information required under section 41(2) and, if applicable, had also filed the additional information required under section 41(3); and
- (b) filed its register of directors which is up to date

but this shall not preclude the company from

- (i) where the copy of the register of members filed did not contain any of the information required under section 41(2) and, if applicable, the additional information required under section 41(3) had not been filed, filing a copy of the register containing the information required under section 41(2) and, if applicable, the additional information required under section 41(3); and
 - (ii) the requirement to file its beneficial ownership information; and
 - (iii) if applicable, the information required to be filed under sections 118(5) and 118A(1A).
- (4) For purposes of subparagraph (1)(a) and (b)
- (a) the period stipulated for the existing struck off and dissolved company to file its register of members, register of directors and beneficial ownership information shall be construed as if it were an undertaking under section 217(2)(c)(ii) or 218A(1)(a)(ii)(bb), as the case may be; and
 - (b) section 213 shall apply accordingly.

Restored existing struck off and dissolved company liable to be struck off

60K. (1) Where by virtue of

- (a) paragraph 60J(1)(a), the Registrar restores an existing struck off and dissolved company to the Register, or
- (b) paragraph 60J(1)(b), the Court makes an order for an existing struck off and dissolved company to be restored to the Register and the company is so restored,

with the requirement for the company to file its register of members, register of directors and beneficial ownership information within the period stipulated in that paragraph and the company fails to do so, the Registrar shall strike the name of the company from the Register in accordance with section 213(1)(a)(ii) or (e).

(2) If an existing struck off and dissolved company is again struck off by virtue of subparagraph (1)

- (a) the company shall, notwithstanding anything to the contrary contained in this Act (including this Part), be deemed never to have been restored to the Register;

- (b) the company is liable to the payment of a penalty of \$5,000 in any subsequent application for restoration to the Register, if the application for restoration is by the same person; and
- (c) any transaction carried out by the company within the period prior to being struck off again shall, notwithstanding anything to the contrary contained in this Act, be deemed invalid.

Penalty on restoration of existing company struck off and dissolved for not complying with this Part

60L. (1) Where an existing company that is struck off the Register in accordance with paragraph 60I(4)(c) (failure to comply with the requirements of that paragraph) subsequently applies to be restored to the Register, the company shall, in addition to satisfying the requirements for restoration under section 217 or 218A (as the case may be), be liable to a penalty of \$2,500.

(2) The penalty specified in subparagraph (1) shall not apply if the application for restoration is made by a person other than a former director, former member or former liquidator of the company.

(3) For the avoidance of doubt, the penalty specified in subparagraph (1) shall not be treated as a restoration fee or an outstanding penalty as provided in section 218A(1)(a)(iv).”.

Passed by the House of Assembly this 4th day of September, 2024.

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

(Sgd.) Bethsaida Smith-Hanley,
Clerk of the House of Assembly.