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group of companies

BRITISH VIRGIN ISLANDS

INTERNATIONAL BUSINESS COMPANIES ORDINANCE, 2004 (as amended, 2009)

**GSL Translations
2010**

VIRGIN ISLANDS

BVI BUSINESS COMPANIES ACT, 2004ⁱ

(as amended, 2005)

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PART I – PRELIMINARY PROVISIONS

Short title and commencement.

- 1.(1) This Act may be cited as the BVI Business Companies Act, 2004.
- (2) The provisions of this Act come into operation on 1st January 2005.

Interpretation.

2. In this Act, unless the context otherwise requires,

“approved form” means a form approved by the Commission in accordance with section 241;

“articles” means the original, amended or restated articles of association of a company;

“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;

“bearer share” means a share represented by a certificate which states that the bearer of the certificate is the owner of the share and includes a share warrant to bearer;

“board”, in relation to a company, means

- (a) the board of directors, committee of management, council or other governing authority of the company, or
- (b) if the company has only one director, that director;

“class”, in relation to shares, means a class of shares each of which has the rights, privileges, limitations and conditions specified for that class in the memorandum;

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

“company” has the meaning specified in section 3(1);

“company number” means the number allotted to the company by the Registrar

- (a) on its incorporation under section 7(1),
- (b) on its continuation under section 182, or
- (c) on its re-registration under Schedule 2;

“continued” means continued under section 182;

“Court” means the High Court;

“custodian” has the meaning specified in section 67;

“director”, in relation to a company, a foreign company and any other body corporate, includes a person occupying or acting in the position of director by whatever name called;

“distribution” has the meaning specified in section 56;

“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 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;

“dollar” or “\$” means the lawful currency for the time being of the United States of America;

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

“foreign company” has the meaning specified in section 3(2);

“former Act” means the Companies Act or the International Business Companies Act;

“former Act company” means a company incorporated, continued or registered under a former Act, but excludes a company incorporated outside the Virgin Islands registered under Part IX of the Companies Act;

“guarantee member” has the meaning specified in section 78;

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

“limited company” means a company of a type specified in section 5(a), (b) or (c);

“member”, in relation to a company, means a person who is

- (a) a shareholder,
- (b) a guarantee member, or
- (c) a member of an unlimited company who is not a shareholder;

“memorandum” means the original, amended or restated memorandum of association of a company;

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

“prescribed” means prescribed by the Regulations;

“register”, in relation to an act done by the Registrar, means to register in the Register of Companies, the Register of Foreign Companies or the Register of Charges, as appropriate;

“Register of Charges” means the Register of Charges maintained by the Registrar in accordance with section 230(1)©;

“Register of Companies” means the Register of Companies maintained by the Registrar in accordance with section 230(1)(a);

“Register of Foreign Companies” means the Register of Foreign Companies maintained by the Registrar in accordance with section 230(1)(b);

“registered agent” means

- (a) in relation to a company, the person who is the company’s registered agent in

accordance with section 91(2), or

- (b) in relation to a foreign company, the person who is the company's registered agent in accordance with section 189(1);

"registered office" has the meaning specified in section 90(2);

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

"regulated person" has the meaning specified in the Insolvency Act;

"Regulations" means the Companies Regulations made under section 240;

"resolution",

- (a) in relation to the members of a company, has the meaning specified in section 81; and
- (b) in relation to the directors of a company, has the meaning specified in section 129;

"restated articles" means a single document that incorporates the articles together with all amendments made to it;

"restated memorandum" means a single document that incorporates the memorandum together with all amendments made to it;

"restricted purposes company" means a company limited by shares that is registered on its incorporation as having restricted purposes in accordance with section 8(1);

"securities" means shares and debt obligations of every kind, and includes options, warrants and rights to acquire shares or debt obligations;

"segregated portfolio company" means a company incorporated or registered as a segregated portfolio company under Part VII;

"series", in relation to shares, means a division of a class of shares;

"shareholder" has the meaning specified in section 78;

"solvency test" has the meaning specified in section 56;

"treasury share" means a share of a company that was previously issued but was repurchased, redeemed or otherwise acquired by the company and not cancelled;

"unlimited company" means a company of a type specified in section 5(d) or (e); and

"voluntary liquidator" means a liquidator appointed under section 199, but does not include an Insolvency Act liquidator.

Meaning of "company" and "foreign company".

3.(1) Unless this Act expressly provides otherwise, "company" means

- (a) a BVI business company incorporated under section 7,
- (b) a company continued as a BVI business company under section 182, or
- (c) a former Act company re-registered as a BVI business company under Schedule 2,

but excludes a dissolved company and a company that has continued as a company incorporated under the laws of a jurisdiction outside the Virgin Islands in accordance with section 184.

(2) In this Act, “foreign company” means a body corporate incorporated, registered or formed outside the Virgin Islands but excludes a company within the meaning of subsection (1).

(3) The Regulations may prescribe types of bodies, associations and entities that, although not a body corporate, are to be treated as a body corporate for the purposes of subsection (2).

Meaning of “subsidiary” and “holding company”.

4.(1) A company (the first company) is a subsidiary of another company (the second company), if

(a) the second company

(i) holds a majority of the voting rights in the first company,

(ii) is a member of the first company and has the right to appoint or remove a majority of its board, or

(iii) is a member of the first company and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in the first company; or

(b) the first company is a subsidiary of a company which is itself a subsidiary of the second company.

(2) A company is the holding company of another company if that other company is its subsidiary.

(3) For the purposes of subsections (1) and (2), “company” includes a foreign company and any other body corporate.

PART II – INCORPORATION, CAPACITY AND POWERS

Division 1 – Incorporation

Types of company.

5. A company may be incorporated or continued under this Act as

(a) a company limited by shares;

(b) a company limited by guarantee that is not authorised to issue shares;

(c) a company limited by guarantee that is authorised to issue shares;

(d) an unlimited company that is not authorised to issue shares; or

(e) an unlimited company that is authorised to issue shares.

Application to incorporate a company.

6.(1) Subject to subsection (2), application may be made to the Registrar for the incorporation of a company by filing

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