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BRITISH VIRGIN ISLANDS

TRUSTEE ORDINANCE (AS AMENDED, 2003)

**GSL Translations
2010**

VIRGIN ISLANDS

BVI BUSINESS COMPANIES ACT, 2004ⁱ

(as amended, 2005)

ARRANGEMENT OF SECTIONS

PART I - PRELIMINARY PROVISIONS

1. Short title and commencement.
2. Interpretation.
3. Meaning of “company” and “foreign company”.
4. Meaning of “subsidiary” and “holding company”.

PART II - INCORPORATION, CAPACITY AND POWERS

Division 1 - Incorporation

5. Types of company.
6. Application to incorporate a company.
7. Incorporation of a company.
8. Registration of company as restricted purposes company.

Division 2 - Memorandum and Articles

9. Memorandum.
10. Additional matters to be stated in memorandum of restricted purposes company.
11. Effect of memorandum and articles.
12. Amendment of memorandum and articles.
13. Filing of notice of amendment of memorandum or articles.
14. Amendment of memorandum with respect to restricted purposes.
15. Restated memorandum or articles.
16. Provision of copies of memorandum and articles to members.

Division 3 - Company Names

17. Required part of company name.
18. Restrictions on company names.
19. Company number as company name.
20. Foreign character name.
21. Company may change name.
22. Registrar may direct change of name.
23. Effect of change of name.
24. Re-use of company names.
25. Reservation of name.
26. Use of company name.

Division 4 - Capacity and Powers

27. Separate legal personality.
28. Capacity and powers.
29. Validity of acts of company.
30. Personal liability.
31. Dealings between company and other persons.
32. Constructive notice.

PART III - SHARES

Division 1 - General

33. Legal nature of shares.
34. Rights attaching to shares and classes of shares.

35. Series of shares.
36. Types of shares.
37. Par value and no par value shares.
38. Bearer shares.
39. Fractional shares.
40. Change in number of shares company authorised to issue.
- 40A. Division and combination of shares.
41. Register of members.
42. Register of members as evidence of legal title.
43. Ratification of register of members.
44. Share certificates.

Division 2 - Issue of Shares

45. Issue of shares.
46. Pre-emptive rights.
47. Consideration for shares.
48. Shares issued for consideration other than money.
49. Consent to issue of shares.
50. Time of issue.
51. Forfeiture of shares.

Division 3 - Transfer of Shares

52. Transferability of shares.
53. Transfer of shares by operation of law.
54. Method of transfer of registered share.
55. Transfer of bearer share.

Division 4 - Distributions

56. Meaning of solvency test and distribution.
57. Distributions.
58. Recovery of distribution made when company did not satisfy solvency test.
59. Company may purchase, redeem or otherwise acquire its own shares.
60. Process for purchase, redemption or other acquisition of own shares.
61. Offer to one or more shareholders.
62. Shares redeemed otherwise than at option of company.
63. Purchases, redemptions or other acquisitions deemed not to be a distribution.
64. Treasury shares.
65. Transfer of treasury shares.
66. Mortgages and charges of shares.

Division 5 - Immobilisation of Bearer Shares

67. Interpretation for this Division.
68. Meaning of disabled bearer share.
69. Issue of bearer shares and conversion of registered shares.
70. Bearer shares not held by custodian disabled.
71. Information concerning beneficial owner of bearer share.
72. Duties of authorised custodian holding bearer share.
73. Transfer of bearer shares.
74. Procedure on a person ceasing to be a custodian.
75. Transfer of beneficial ownership of, or interest in, bearer share.
76. Notification of person having right to entitlements carried by bearer share.
77. Regulations.

PART IV - MEMBERS

78. Meaning of “shareholder”, “guarantee member” and “unlimited member”.
79. Company to have one or more members.
80. Liability of members.
81. Members’ resolutions.

- 82. Meetings of members.
- 83. Notice of meetings of members.
- 84. Quorum for meetings of members.
- 85. Voting trusts.
- 86. Court may call meeting of members.
- 87. Proceedings at meetings of members.
- 88. Written resolutions.
- 89. Service of notice on members.

PART V - COMPANY ADMINISTRATION

Division 1 - Registered Office and Registered Agent

- 90. Registered office.
- 91. Registered agent.
- 92. Change of registered office or registered agent.
- 93. Resignation of registered agent.
- 94. Registered agent ceasing to be eligible to act.
- 95. Register of Approved Registered Agents.

Division 2 - Company Records

- 96. Documents to be kept at office of registered agent.
- 97. Other records to be maintained by company.
- 98. Financial records.
- 99. Form of records.
- 100. Inspection of records.
- 101. Service of process, etc. on company.
- 102. Books, records and common seal.

Division 3 - General Provisions

- 103. Contracts generally.
- 104. Contracts before incorporation.
- 105. Notes and bills of exchange.
- 106. Power of attorney.
- 107. Authentication or attestation.
- 108. Company without members.

PART VI - DIRECTORS

Division 1 - Management by Directors

- 109. Management by directors.
- 110. Committees of directors.

Division 2 - Appointment, Removal and Resignation of Directors

- 111. Persons disqualified for appointment as director.
- 112. Consent to act as director.
- 113. Appointment of directors.
- 114. Removal of directors.
- 115. Resignation of director.
- 116. Liability of former directors.
- 117. Validity of acts of director.
- 118. Register of directors.
- 118A. Annual return for unlimited company not authorised to issue shares.
- 119. Emoluments of directors.

Division 3 - Duties of Directors and Conflicts

- 120. Duties of directors.
- 121. Powers to be exercised for proper purpose.

- 122. Standard of care.
- 123. Reliance on records and reports.
- 124. Disclosure of interest.
- 125. Avoidance by company of transactions in which director is interested.

Division 4 - Proceedings of Directors and Miscellaneous Provisions

- 126. Meetings of directors.
- 127. Notice of meeting of directors.
- 128. Quorum for meetings of directors.
- 129. Consents of directors.
- 130. Alternates for directors.
- 131. Agents.
- 132. Indemnification.
- 133. Insurance.

PART VII - SEGREGATED PORTFOLIO COMPANIES

Division 1 - Approval and Registration

- 134. Interpretation for this Part.
- 135. Incorporation or registration as segregated portfolio company.
- 136. Application for approval of Commission.
- 137. Commission may approve application.

Division 2 - Attributes and Requirements of Segregated Portfolio Companies

- 138. Segregated portfolios.
- 139. Segregated portfolio shares.
- 140. General shares.
- 141. Segregated portfolio distributions and dividends.
- 142. Company to act on behalf of portfolios.
- 143. Assets.
- 144. Creditors of a segregated portfolio company.
- 145. Segregation of assets.
- 146. Segregation of liabilities.
- 147. General liabilities and assets.
- 148. Financial statements.
- 149. Limitation on transfer of segregated portfolio assets from segregated portfolio company.

Division 3 – Liquidation, Portfolio Liquidation Orders and Administration

- 150. Meaning of “liquidator”.
- 151. Liquidation of segregated portfolio company.
- 152. Portfolio liquidation orders.
- 153. Application for portfolio liquidation order.
- 154. Conduct of portfolio liquidation.
- 155. Distribution of segregated portfolio assets.
- 156. Discharge and variation of portfolio liquidation orders.
- 157. Remuneration of portfolio liquidator.
- 158. Administration of segregated portfolio under Insolvency Act.

Division 4 - General Provisions

- 159. Regulations.

PART VIII - REGISTRATION OF CHARGES

- 160. Interpretation for this Part.
- 161. Creation of charges by a company.
- 162. Company to keep register of charges.
- 163. Registration of charges.
- 164. Variation of registered charge.

- 165. Charge ceasing to affect company's property.
- 166. Priority of relevant charges.
- 167. Priority of other charges.
- 168. Exceptions to sections 166 and 167.

PART IX - MERGER, CONSOLIDATION, SALE OF ASSETS, FORCED REDEMPTIONS, ARRANGEMENTS AND DISSENTERS

- 169. Interpretation for purposes of this Part.
- 170. Approval of merger and consolidation.
- 171. Registration of merger and consolidation.
- 172. Merger with subsidiary.
- 173. Effect of merger or consolidation.
- 174. Merger or consolidation with foreign company.
- 175. Disposition of assets.
- 176. Redemption of minority shares.
- 177. Arrangements.
- 178. Arrangement where company in voluntary liquidation.
- 179. Rights of dissenters.
- 179A. Schemes of arrangement.

PART X - CONTINUATION

- 180. Foreign company may continue under this Act.
- 181. Application to continue under this Act.
- 182. Continuation.
- 183. Effect of continuation.
- 184. Continuation under foreign law.

PART XA – MEMBERS' REMEDIES

- 184A. Interpretation for this Part.
- 184B. Restraining or compliance order.
- 184C. Derivative actions.
- 184D. Costs of derivative action.
- 184E. Powers of Court when leave granted under section 184C.
- 184F. Compromise, settlement or withdrawal of derivative action.
- 184G. Personal actions by members.
- 184H. Representative actions.
- 184I. Prejudiced members.

PART XI - FOREIGN COMPANIES

- 185. Meaning of "carrying on business".
- 186. Registration of foreign company.
- 187. Registration.
- 188. Registration of changes in particulars.
- 189. Foreign company to have registered agent.
- 190. Control over names of foreign companies.
- 191. Use of name by foreign company.
- 192. Annual return.
- 193. Foreign company ceasing to carry on business in the Virgin Islands.
- 194. Service of documents on a foreign company registered under this Part.
- 195. Validity of transactions not affected.
- 196. Transitional provisions for this Part.

PART XII - LIQUIDATION, STRIKING-OFF AND DISSOLUTION

Division 1 - Liquidation

- 197. Application of this Part.
- 198. Declaration of solvency.
- 199. Appointment of liquidator.

- 200. Appointment of voluntary liquidator of long term insurance company or other regulated person.
- 201. Control of voluntary liquidation of regulated person.
- 202. Duration of liquidation.
- 203. Circumstances in which liquidator may not be appointed.
- 204. Notice and advertisement of liquidation.
- 205. Effect of appointment of voluntary liquidator.
- 206. Duties of voluntary liquidator.
- 207. Powers of voluntary liquidator.
- 207A. Termination of voluntary liquidation.
- 208. Completion of liquidation.

Division 2 – Liquidation where Company Insolvent

- 209. Company in voluntary liquidation unable to pay its debts.
- 210. Liquidator to call meeting of creditors.
- 211. Insolvency Act to apply.

Division 3 – Striking Off and Dissolution

- 212. Interpretation for this Division.
- 213. Striking company off Register.
- 214. Appeal.
- 215. Effect of striking off.
- 216. Dissolution of company struck off the Register.
- 217. Restoration of name of company to Register by Registrar.
- 218. Declaration that dissolution void and restoration of name to Register by Court.
- 219. Appointment of Official Receiver as liquidator of company struck off.
- 220. Property of dissolved company.
- 221. Disclaimer.

PART XIII – INVESTIGATION OF COMPANIES

- 222. Definition of “inspector”.
- 223. Investigation order.
- 224. Court’s powers.
- 225. Inspector’s powers.
- 226. Hearing in camera.
- 227. Incriminating evidence.
- 228. Privilege.

PART XIV – ADMINISTRATION AND GENERAL

- 228A. Company Law Review Advisory Committee
- 229. Registrar of Corporate Affairs.
- 230. Registers.
- 231. Optional registration of registers of members and directors.
- 232. Filing of documents.
- 233. Inspection of Registers and documents filed.
- 234. Form of certificate.
- 235. Certificate of good standing.
- 236. Fees and penalties to be paid to Registrar.
- 237. Recovery of penalties, etc.
- 238. Company struck off liable for fees, etc.
- 239. Fees payable to Registrar.
- 240. Companies Regulations.
- 241. Approval of forms by Commission.
- 242. Exemptions from tax.
- 243. Offence provisions.

PART XV – TRANSITIONAL AND MISCELLANEOUS PROVISIONS

- 244. Limited Liability Companies.
- 245. Jurisdiction.
- 246. Declaration by Court.
- 247. Judge in Chambers.
- 248. Transitional provisions.
- 249. Amendment of Schedules.
- 250. Repeals and amendments.
- 251. Act binding on Crown.

SCHEDULES

- 1. Fees and Penalties
- 2. Transitional Provisions
- 3. Repeals and Amendments

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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