

No. 4 of 2003

VIRGIN ISLANDS  
INTERNATIONAL BUSINESS COMPANIES  
(AMENDMENT) ACT, 2003

ARRANGEMENT OF SECTIONS

*Section*

1. Short title and commencement.
2. Amendment of section 2 of the International Business Companies Act.
3. Amendment of section 9 of the principal Act.
4. Amendment of section 12 of the principal Act.
5. Amendment of section 28 of the principal Act.
6. Amendment of section 31 of the principal Act.
7. Amendment of section 37A of the principal Act.
8. Insertion of Part IIIA.
9. Amendment of section 43 of the principal Act
10. Amendment of section 43A of the principal Act..
11. Amendment of section 64 of the principal Act.
12. Amendment of section 104 of the principal Act
13. Amendment of section 105 of the principal Act
14. Amendment of section 111A of the principal Act.
15. Amendment of section 112 of the principal Act.

No. 4 of 2003

International  
Business Companies  
(Amendment) Act, 2003

Virgin  
Islands

I Assent

Sgd. M E Georges  
Acting Governor

5th May, 2003

VIRGIN ISLANDS

No. 4 of 2003

An Act to amend the International Business Companies Act (Cap. 291).

[Gazetted 5th May, 2003]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and  
commencement.

1. (1) This Act may be cited as the International Business Companies (Amendment) Act, 2003.

(2) The provisions of this Act come into operation on such date or dates as may be appointed by the Governor by Proclamation published in the *Gazette*.

Amendment of  
section 2 of the  
International  
Business  
Companies Act.

2. Section 2 of the International Business Companies Act (referred to in this Act as "the principal Act") is amended

(a) by inserting after the definition of "authorized capital" the following definition:

"bearer share" means a share represented by a certificate which states that the bearer of the certificate is the owner of the share;"

- (b) by inserting after the definition of “court” the following definitions:

““custodian” has the meaning specified in section 37B;” and

““effective date” means the date on which the International Business Companies (Amendment) Act, 2003 comes into effect;” and

- (c) by inserting after the definition of “surplus” the following definition:

““transition date” means 31<sup>st</sup> December, 2004;”.

3. Section 9 of the principal Act is amended in subsection (1)(a) by deleting “shares issued to bearer” and substituting “bearer shares”.

Amendment of section 9 of the principal Act.

4. Section 12 of the principal Act is amended

Amendment of section 12 of the principal Act.

- (a) in subsection (1)(i)

(i) by deleting “shares issued to bearer” and substituting “bearer shares”, and

(ii) by deleting “or to bearer” in both places where the phrase occurs and substituting “or bearer shares”;

- (b) in subsection (1)(j) by deleting “shares issued to bearer” in both places where the phrase occurs and substituting “bearer shares”; and

- (c) in subsection (1)(k) by deleting “shares issued to bearer” in both places where the phrase occurs and substituting “bearer shares”.

Amendment of  
section 28 of the  
principal Act.

5. Section 28 of the principal Act is amended

- (a) by deleting "shares issued to bearer" in each of the places where the phrase occurs and substituting "bearer shares"; and
- (b) in subsection (1)(f)
  - (i) in sub-paragraph (ii), by deleting "and",
  - (ii) in sub-paragraph (iii), by inserting "and" after the semi-colon, and
  - (iii) by inserting after sub-paragraph (iii) the following sub-paragraph:
    - "(iv) the name and address of the custodian of the certificate;"

Amendment of  
section 31 of the  
principal Act.

6. Section 31 of the principal Act is amended by deleting "A share issued to bearer" and substituting "Subject to Part IIIA, a bearer share".

Amendment of  
section 37A of the  
principal Act.

7. Section 37A of the principal Act is amended

- (a) by repealing subsection (2) and substituting the following subsection:
  - "(2) A mortgage or charge of a bearer share is not valid and enforceable unless the certificate for the share is deposited with a custodian."; and
- (b) by inserting after subsection (9) the following subsection:
  - "(10) The Governor in Council may, on the advice of the Commission, make regulations providing for such transitional provisions as he considers necessary or expedient to have effect in relation to this section consequent upon the coming into operation of Part IIIA and the repeal and substitution of subsection (2) by the International Business Companies (Amendment) Act, 2003."

Part: 8. The principal Act is amended by inserting after Part III the following Insertion of Part IIIA.

**“PART IIIA**

**IMMOBILISATION OF BEARER SHARES**

Interpretation  
for this Part.

No. 12 of 2001

**37B.** In this Part

“authorised custodian” means a person approved by the Commission as an authorised custodian under section 50A(1) or section 50A(2) of the Financial Services Commission Act, 2001;

“custodian” means an authorised custodian or a recognised custodian;

“existing bearer share” means a share in a company that was issued as or converted to a bearer share prior to the effective date and that remains a bearer share in the company on the effective date; and

“recognised custodian” means a person recognised by the Commission as a custodian under section 50B of the Financial Services Commission Act, 2001.

Meaning of  
disabled bearer  
share.

**37C.** (1) During the period in which a bearer share is disabled, that share does not carry any of the entitlements which it would otherwise carry and, subject to subsection (3), any transfer or purported transfer of an interest in the bearer share is void and of no effect.

(2) Without limiting subsection (1), “entitlement” includes an entitlement to vote, an entitlement to a dividend and an entitlement to a share in the assets of the company on its winding up or on its dissolution.

(3) Subsection (1) does not apply to the transfer or delivery of a bearer share in a company

(a) to a custodian in accordance with this Part;

(b) to the company where the share is to be, or has been

- (i) converted to, or exchanged for, a registered share,
- (ii) redeemed, purchased or otherwise acquired by the company, or
- (iii) forfeited and cancelled,

and the company does not hold the bearer share for or on behalf of any other person; or

- (c) to the registered agent of a company in accordance with section 37I(1)(c), 37I(4)(b) or 37J(2).

Issue of bearer shares and conversion of registered shares after effective date.

**37D.** (1) Where a company issues a bearer share, or disposes of a treasury share that is a bearer share, on or after the effective date, it shall not deliver the share to any person other than a custodian who has agreed to hold the share.

(2) A company shall not, on or after the effective date, deliver a bearer share converted from a registered share to any person other than a custodian who has agreed to hold the share.

Existing bearer shares.

**37E.** (1) Every existing bearer share of a company shall, on or before the transition date

- (a) be deposited with a custodian who has agreed to hold the share; or
- (b) be converted to, or exchanged for, a registered share.

(2) Subsection (1) does not apply to a bearer share that, before the transition date

- (a) is cancelled; or
- (b) is redeemed, purchased or otherwise acquired by the company as a treasury share.

(3) An existing bearer share in a company is deemed not to have been deposited with a custodian for the purposes of subsection (1) until the registered agent of the company has received

- (a) in the case of a bearer share deposited with an authorised custodian, notification of the deposit from the authorised custodian in accordance with section 37H(1); or
- (b) in the case of a bearer share deposited with a recognised custodian, the proof of the deposit of the share and the notice required to be sent by section 37G(3).

(4) The Court may, on the application of the company or of a person interested in a bearer share, extend the period specified in subsection (1) by such further period or periods not exceeding one year in total as it considers fit.

(5) On an existing bearer share being deposited with a custodian in accordance with subsections (1)(a) and (3), it shall for all purposes of this Part cease to be regarded as an existing bearer share and shall thereafter be treated as if it had been issued after the effective date.

Bearer shares  
not held by  
custodian  
disabled.

37F. (1) Subject to subsections (2), (3) and (4), a bearer share in a company is disabled for any period during which it is held by a person other than a custodian.

(2) Subsection (1) shall not have effect with respect to an existing bearer share until after the transition date.

(3) Subject to section 37J(7), subsection (1) does not apply to a bearer share in a company

- (a) that is held by the registered agent of the company under section 37I(1)(c), 37I(4)(b) or 37J(2); or
- (b) that is held by a person who received the share at a time when he was a custodian but who has ceased to be a custodian.
- (4) Subsection (1) does not apply where
  - (a) a bearer share in a company is held by the company;
  - (b) the bearer share is to be, or has been
    - (i) converted to, or exchanged for, a registered share,

- (ii) redeemed, purchased or otherwise acquired by the company, or
- (iii) cancelled and forfeited; and
- (c) the company does not hold the bearer share for or on behalf of any other person.

Information concerning beneficial owner of bearer share.

37G. (1) Where a bearer share in a company is delivered to or deposited with an authorised custodian, the company, where it delivers the share, or the authorised custodian delivering or the person depositing the share, shall provide the authorised custodian with a notice in the prescribed form

- (a) stating the full name of the beneficial owner of the bearer share;
- (b) stating the full name of any other person having an interest in that share, whether by virtue of a charge on the share or otherwise, or containing a statement that no other person has an interest in that share; and
- (c) containing such other information as may be prescribed.

(2) An authorised custodian shall not accept a bearer share unless it is accompanied by a notice complying with subsection (1).

(3) Where a bearer share in a company is delivered to or deposited with a recognised custodian, the company, where it delivers the share, or the person depositing the share shall, within 14 days of the date on which the share is delivered or deposited with the recognised custodian, send to the registered agent proof, in such form as may be prescribed, of the delivery or deposit of the share and a notice in the prescribed form containing the information specified in paragraphs (a), (b) and (c) of subsection (1).

Duties of authorised custodian holding bearer share.

37H. (1) An authorised custodian shall, within 14 days of the receipt of a bearer share in a company that is delivered to it, other than by the registered agent of the company, or deposited with it, send notification to the registered agent of the company that it is the custodian of the share.

- (2) An authorised custodian who holds a bearer share
- (a) shall keep the notice provided to it under section 37G(1), any notice filed under section 37K(1), any notice sent to the registered agent under section 37M(1) or (4) and a record of the location of the bearer share
    - (i) in the case of an authorised custodian approved under section 50A(1) of the Financial Services Commission Act, 2001 at its principal office in the British Virgin Islands or at such other office in the British Virgin Islands as may be approved by the Commission in writing, or
    - (ii) in the case of an authorised custodian approved under section 50A(2) of the Financial Services Commission Act, 2001, at such office as may be approved by the Commission in writing; and
  - (b) whether the bearer share is kept inside or outside the British Virgin Islands, shall ensure that the bearer share remains at all times within its custody and control.

(3) Where an authorised custodian desires to cease acting as custodian in respect of a bearer share in a company, it shall give the registered agent of the company, the beneficial owner and any person who has an interest in that share not less than 60 days notice of its intention to cease acting as custodian in respect of the share.

Transfer of  
bearer shares.

37I. (1) An authorised custodian holding a bearer share in a company shall not transfer possession of that share to any person other than

- (a) another authorised custodian who has agreed to hold the share,
- (b) the company where the bearer share is to be, or has been
  - (i) converted to, or exchanged for; a registered share,

(ii) redeemed, purchased or otherwise acquired by the company, or

(iii) cancelled and forfeited; or

(c) the registered agent of the company.

(2) Where an authorised custodian transfers possession of a bearer share in accordance with subsection (1), it shall

(a) make a copy of all notices provided to it under section 37G(1) or section 37K(1) and any notices sent to the registered agent under section 37M(1) or (4) and retain the copies made for such period as may be prescribed; and

(b) deliver, with the bearer share, all original notices provided to it under section 37G(1) or section 37K(1) and copies of any notices sent to the registered agent under section 37M(1) or (4).

(3) Where an authorised custodian transfers possession of a bearer share in a company to another authorised custodian or to the company, it shall, within 7 days, send a notice of transfer in the prescribed form to the registered agent of the company.

(4) A recognised custodian shall not transfer possession of a bearer share in a company to any person other than

(a) the company where the bearer share is to be, or has been

(i) converted to, or exchanged for, a registered share,

(ii) redeemed, purchased or otherwise acquired by the company, or

(iii) cancelled and forfeited; or

(b) the registered agent of the company.

(5) Where a recognised custodian transfers possession of a bearer share in a company, it shall deliver, with the bearer share, a copy of any notice sent to the registered agent under section 37M(1) or (4).

(6) Where possession of a bearer share in a company is transferred by a recognised custodian to the company, the company shall, within 14 days of the receipt of the share, send notification of its receipt of the share to its registered agent.

(7) The registered agent of a company shall not transfer possession of a bearer share in the company to any person other than

- (a) a custodian who has agreed to hold the share, or
- (b) the company where the bearer share is to be, or has been
  - (i) converted to, or exchanged for, a registered share,
  - (ii) redeemed, purchased or otherwise acquired by the company, or
  - (iii) cancelled and forfeited.

(8) Where a registered agent transfers possession of a bearer share received from an authorised custodian to an authorised custodian, he shall

- (a) make a copy of all notices provided to him under subsection (2)(b) and retain the copies made for such period as may be prescribed; and
- (b) deliver, with the bearer share,
  - (i) the original notices, and
  - (ii) any copies of notices,received under subsection (2)(b).

Procedure on a person ceasing to be a custodian.

**37J.** (1) Where the Commission revokes the approval of an authorised custodian or ceases to recognise a person as a recognised custodian, it shall

- (a) publish a notice in the *Gazette* and in a newspaper published and circulating in the Virgin Islands; and

- (b) send a notice to the person whose approval has been revoked or who has ceased to be recognised.

(2) A person whose approval as an authorised custodian has been revoked or who has ceased to be recognised by the Commission as a recognised custodian shall, in respect of each bearer share in a company that he holds,

- (a) forthwith give the registered agent of the company, the beneficial owner of the share and any person who has an interest in that share notice in the prescribed form that he has ceased to be an authorised or recognised custodian; and
- (b) deliver to the registered agent of the company, within 14 days of his ceasing to be a custodian,
  - (i) the bearer share in the company; and
  - (ii) all original notices provided to him under section 37G(1) or section 37K(1) and a copy of any notice sent to the registered agent under section 37M(1) or (4).

(3) A registered agent of a company who receives a bearer share in a company under subsection (2); shall hold the share on behalf of the beneficial owner of the share and shall only transfer possession of that share in accordance with instructions received under subsection (4) or, if he does not receive such instructions within the time period specified in subsection (4), in accordance with subsection (5).

(4) The beneficial owner of a bearer share received by a registered agent under subsection (1) or (4) shall, within 90 days of the date of publication in the *Gazette* of a notice under subsection (1)(a), provide the registered agent with written instructions as to the transfer of possession of the share to

- (a) a custodian who has agreed to hold the share, or
- (b) the company where the bearer share is to be, or has been
  - (i) converted to, or exchanged for; a registered share,

(ii) redeemed, purchased or otherwise acquired by the company, or

(iii) cancelled and forfeited.

(5) If the registered agent does not receive instructions from the beneficial owner of a bearer share complying with subsection (4) within the time period specified in subsection (4), the registered agent shall transfer possession of the share to such authorised custodian as he considers fit.

(6) Where a registered agent fails to transfer possession of a bearer share in accordance with subsection (5), the Commission may apply to the Court for an order that the bearer share be disabled, notwithstanding section 37F(3).

(7) On an application made under subsection (6), the Court may make such order as it considers appropriate.

(8) A registered agent commits an offence and is liable on summary conviction to a fine of \$10,000 if he

(a) transfers possession of a bearer share otherwise than in accordance with instructions received in accordance with subsection (4); or

(b) fails to transfer possession of a bearer share in accordance with subsection (5).

Transfer of  
beneficial  
ownership of,  
or interest in,  
bearer share.

37K. (1) A transfer of the beneficial ownership of, or an interest in, a bearer share held by an authorised custodian is not effective until a notice in the prescribed form amending the notice provided under section 37G(1) is submitted to the authorised custodian.

(2) A transfer of the beneficial ownership of, or an interest in, a bearer share in a company held by a recognised custodian is not effective until a notice in the prescribed form amending the notice provided under section 37G(3) is submitted to the registered agent of the company.

Redemption of  
existing shares.

37L. (1) Where an existing bearer share in a company is not deposited with a custodian who has agreed to hold the share on or before the transition date, the company may, notwithstanding section 33(1A) or any provision in the memorandum or articles, in any shareholders' agreement or in any other agreement, redeem the share.

(2) Subject to subsection (3), sections 81(3) and 83 apply to the redemption of bearer shares under subsection (1).

(3) Where a company is unable, on making reasonable enquiries, to ascertain the identity or address of the holder of a bearer share

(a) it is not required to give the member notice under section 81(3); and

(b) the company shall hold the proceeds of redemption on trust for the owner of the bearer share.

Notification of person having right to entitlements carried by bearer share.

37M. (1) The custodian of a bearer share in a company may deliver to the registered agent of the company a notice specifying the name and address of the person who is to be regarded as having the right to those entitlements carried by the share that are specified in the notice.

(2) A notice under subsection (1) may extend to all the entitlements carried by the share or may be limited to certain specified entitlements, including the right to vote at meetings of the company generally or to vote at a specified meeting of the company.

(3) Subject to sections 37C and 37F, where the registered agent of a company receives a notice under subsection (1) that has not been revoked, notwithstanding that the bearer share is in the custody of a custodian, the company shall treat the person specified in the notice as the bearer of the share for the purposes of the entitlements carried by the share that are specified in the notice.

(4) The custodian of a bearer share may by written notice delivered to the registered agent of the company, revoke a notice delivered under subsection (1).

(5) A notice of revocation under subsection (4) takes effect from the time that the notice is received by the registered agent or at such later time as may be specified in the notice.

Application for winding up.

37N. (1) Where, after the transition date, a company has one or more existing bearer shares that have not been deposited with a custodian in accordance with this Part, the Commission may apply to the Court for the winding up of the company under the Companies Act.

Cap. 285

(2) Section 97 applies to any application by the Commission to wind up a company under this section.

Regulations.

37O. Without limiting section 112, regulations may provide that where

- (a) notice is required or permitted to be given by a custodian, or former custodian, to the beneficial owner of a bearer share or to any person who has an interest in a bearer share, or
- (b) instructions are required or permitted to be given by the beneficial owner of a bearer share in a company to a custodian, or former custodian, or to the registered agent of the company,

the notice or instructions may be given to or by some other person or persons instead of or in addition to the beneficial owner or, in the case of a notice, instead of or in addition to the person interested in the share.”.

9. Section 43(1) of the principal Act is amended by inserting after “memorandum” the words “within 30 days of the date of incorporation of the company”.

Amendment of section 43 of the principal Act

10. Section 43A(1) of the principal Act is amended

Amendment of section 43A of the principal Act.

- (a) in the marginal note, by deleting “Optional register” and substituting “Register”;
- (b) in subsection (1)
  - (i) by deleting “may keep” and substituting “shall keep”;
  - (ii) in paragraph (b), by deleting “and” after the semi-colon;
  - (iii) in paragraph (c), by deleting “company.” and substituting “company; and”, and
  - (iv) by inserting after paragraph (c) the following paragraph:

“(d) such other information as may be prescribed.”;

- (c) by inserting after subsection (4) the following subsection:

“(5) The following transitional provisions apply with respect to a company incorporated before the effective date (“an existing company”):

- (a) an existing company shall establish a register of directors complying with subsection (1) within 12 months of the effective date and shall thereafter maintain the register in accordance with this section;
- (b) notwithstanding paragraph (a), the register of directors, when established, shall contain details of the directors of the company on the effective date together with all changes in, or in respect of, its directors thereafter;
- (c) where an existing company maintained an optional register of directors under this section prior to the effective date, a copy of that register shall be retained at the registered office of the company for a period of at least ten years following the effective date.”.

Amendment of section 64 of the principal Act.

11. Section 64 of the principal Act is amended in subsection (1)(b) and in subsection (2), by deleting “shares issued to bearer” and substituting “bearer shares”.

Amendment of section 104 of the principal Act

12. Section 104 of the principal Act is amended

- (a) by repealing paragraphs (a) and (b) and substituting the following paragraphs:

“(a) \$300.00 upon the registration of a company incorporated under this Act if

- (i) the authorised capital of the company does not exceed \$50,000.00,

- (ii) all the shares of the company have a par value, and
  - (iii) the company is prohibited by its memorandum from issuing bearer shares;
- (b) \$1,000.00 upon the registration of a company incorporated under this Act if either or both of the following apply to the company:
  - (i) the authorised capital of the company exceeds \$50,000.00;
  - (ii) the company is not prohibited by its memorandum from issuing bearer shares.”;
- (b) by inserting after paragraph (c), the following paragraph:

“(ca) a fee of \$700.00 upon the registration by the Registrar of a copy of a resolution of members or a resolution of directors amending the memorandum of a company incorporated under this Act that has the effect of permitting the company to issue bearer shares;”;
- (c) by repealing paragraph (d) and substituting the following paragraph:

“(d) \$500.00 upon the registration by the Registrar of articles of merger or consolidation, but \$700.00 if the articles of merger or consolidation

  - (i) also constitute the memorandum of a company which, if it was being registered, would be liable to pay a fee of \$1,000.00 under paragraph (b), or
  - (ii) amend the memorandum of a company such that the company, if it was being registered, would be liable to pay a fee of \$1,000.00 under paragraph (b);”;

- (d) by repealing paragraph (e) and substituting the following paragraph:
- “(e) \$500 upon the registration by the Registrar of articles of arrangement, but \$700.00 if the articles of arrangement
- (i) also constitute the memorandum of a company which, if it was being registered, would be liable to pay a fee of \$1,000.00 under paragraph (b), or
  - (ii) amend the memorandum of a company such that the company, if it was being registered, would be liable to pay a fee of \$1,000.00 under paragraph (b);”;
- (e) in paragraph (f), by inserting after “\$50,000.00”, the words “and which is prohibited by its memorandum from issuing bearer shares”;
- (f) in paragraph (g), by deleting “the authorised capital of which exceeds \$50,000.00” and substituting , the words “and which, if it was being registered, would be liable to pay a fee of \$1,000.00 under paragraph (b)”;
- (g) in paragraph (h), by inserting after “\$50,000.00”, the words “and which is prohibited by its memorandum from issuing bearer shares”;
- (h) in paragraph (i), by deleting the words “the authorised capital of which exceeds \$50,000.00” and substituting “which, if it was being registered, would be liable to pay a fee of \$1,000.00 under paragraph (b)”;
- (i) in paragraph (t)
- (i) by inserting after “incorporated under this Ordinance” the words “that is prohibited by its memorandum from issuing bearer shares, if”, and
  - (ii) in subparagraph (i), by deleting “if”.

13. Section 105 of the principal Act is amended

Amendment of  
section 105 of the  
principal Act

(a) in subsection (1)

(i) by repealing paragraphs (a) and (b) and substituting the following paragraphs:

“(a) \$300.00 if on the licence fee payment date

(i) the authorised capital of the company does not exceed \$50,000.00;

(ii) all the shares of the company have a par value; and

(iii) the company is prohibited by its memorandum from issuing bearer shares;

(b) \$1,000.00 if either or both of the following apply to the company on the licence fee payment date

(i) the authorised capital of the company exceeds \$50,000.00;

(ii) the company is not prohibited by its memorandum from issuing bearer shares.”; and

(ii) in paragraph (c), by deleting “if on the licence fee payment date” and substituting “if, on the licence fee payment date, the company is prohibited by its memorandum from issuing bearer shares and”;

(b) in subsection (2)

(i) by repealing paragraphs (a) and (b) and substituting the following paragraphs:

“(a) \$300.00 if on the licence fee payment date

- (i) the authorised capital of the company does not exceed \$50,000.00;
  - (ii) all the shares of the company have a par value; and
  - (iii) the company is prohibited by its memorandum from issuing bearer shares;
- (b) \$1,000.00 if either or both of the following apply to the company on the licence fee payment date
- (i) the authorised capital of the company exceeds \$50,000.00;
  - (ii) the company is not prohibited by its memorandum from issuing bearer shares.”; and
- (ii) in paragraph (c), by deleting “if on the licence fee payment date” and substituting “if, on the licence fee payment date, the company is prohibited by its memorandum from issuing bearer shares and”.

Amendment of section 111A of the principal Act.

14. Section 111A(1) of the principal Act is amended

- (a) in paragraph (a), by inserting after the semi-colon the word “or”; and
- (b) by deleting paragraph (b).

Amendment of section 112 of the principal Act.

15. Section 112 is amended

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

“(1) The Governor in Council may, on the advice of the Commission, make regulations generally for giving effect to the provisions of this Act and specifically for prescribing any thing required or permitted to be prescribed by this Act.”; and

(b) by inserting after subsection (2) the following subsection

“(3) Regulations made under this section may make different provision in relation to different persons, circumstances or cases.”.

Passed by the Legislative Council this 17<sup>th</sup> day of April, 2003.

Sgd. REUBEN VANTERPOOL,  
Speaker.

Sgd. OLEANVINE MAYNARD,  
Ag. Clerk of the Legislative Council.