

VIRGIN ISLANDS

VIRGIN ISLANDS INVESTMENT ACT, 2021

ARRANGEMENT OF SECTIONS

Section

**PART I
PRELIMINARY**

1. Short title and commencement.
2. Interpretation.
3. Objects of Act.

**PART II
ADMINISTRATION OF ACT**

4. Role of the Minister.
5. Functions and powers of the Commission.
6. Performance agreements with investors.
7. Integrated client service facility.

**PART III
INVESTORS, ECONOMIC SECTORS AND BUSINESS ACTIVITIES**

8. Reservation of categories of economic sectors and business activities for certain categories of investors.
9. Savings of existing investments after reservation of economic sectors and business activities.
10. Economic sectors and business activities not reserved.

**PART IV
APPLICATION FOR INVESTMENT APPROVAL AND CONTROL OF
INVESTMENTS**

11. Application for approval of investments.
12. Provisional approval of investments.
13. Criteria for approval of investments.
14. Investment proposal from foreign investors.
15. Time period for approval of investment.
16. Change of ownership and control of investment.
17. Transfer of rights and obligations.

18. Exception to requirements for approval of transfer of ownership or control.

**PART V
RIGHTS AND OBLIGATIONS OF INVESTORS**

19. Compliance with all applicable laws.
20. Registration of investors and investments.
21. Application of Act to matters under treaties.
22. Expropriation.
23. Payment of compensation.
24. Right of review concerning expropriation and compensation.
25. Foreign personnel.
26. Facilitation of visas and permits of investors, dependents and foreign personnel.
27. Capacity development and transfer of skills.
28. Transfer of funds.

**PART VI
DISPUTE SETTLEMENT**

29. Resolution of post establishment disputes.

**PART VII
RESIDENCE BY INVESTMENT COMMITTEE**

30. Establishment of Residence by Investment Committee.
31. Disqualification.
32. Functions of the Committee.
33. Powers of the Committee.
34. Acting members.
35. Resignation.
36. Revocation of appointment.
37. Publication of names of members.
38. Meetings of the Committee.
39. Seal of the Committee.
40. Protection of members.
41. Disclosure of interest.
42. Remuneration.
43. Expenses of the Committee.
44. Annual budget.
45. Accounts and audit.
46. Annual Report.

PART VIII
RESIDENCE BY INVESTMENT UNIT

- 47. Establishment of Residence by Investment Unit.
- 48. Functions of the Unit.
- 49. Appointment of Chief Executive Officer and other staff of the Unit.
- 50. Duties of the Chief Executive Officer.

PART IX
APPLICATION FOR CERTIFICATE OF RESIDENCE BY INVESTMENT

- 51. Application.
- 52. Proof of financial resources.
- 53. Due diligence checks.
- 54. Reports by Unit and recommendations to Cabinet.
- 55. Approval, denial or delay of application.
- 56. Review Process.
- 57. Revocation of Residence by investment.
- 58. Authorised agent.

PART X
NATIONAL ECONOMIC INVESTMENT FUND

- 59. National Economic Investment Fund.

PART XI
MISCELLANEOUS

- 60. Publication of Information.
- 61. Report to be laid before the House of Assembly.
- 62. Offences.
- 63. Penalties.
- 64. Opportunity for compliance with law.
- 65. Power to amend schedule.
- 66. Regulations.
- 67. Repeal and savings.

SCHEDULE

I Assent
(Sgd.) John Rankin CMG,
Governor.
30th September, 2021

VIRGIN ISLANDS

No. 35 of 2021

An Act to provide for the promotion of sustainable economic development and growth through the mobilisation and attraction of foreign and domestic investment to enhance economic development, increase employment, accelerate growth and diversify the economy; to provide for reservation of certain economic sectors and business activities to certain categories of investors; to provide for dispute resolution mechanisms involving investment; to enable persons or a class of persons to acquire a certificate of residence following investment in the National Economic Investment Fund and in approved projects in the Virgin Islands and to provide for incidental matters.

[Gazetted 12th October, 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

PART I
PRELIMINARY

Short title and
commencement.

1. (1) This Act shall be cited as the Virgin Islands Investment Act, 2021.

(2) The provisions of this Act shall come into force on such date as the Minister may, by Notice published in the *Gazette*, appoint and, the Minister may appoint different dates in respect of different sections of this Act.

Interpretation.

2. In this Act, unless the context otherwise indicates

“Act” includes any subsidiary legislation made under this Act;

“approval” means approval of an investment proposed by a foreign investor in terms of this Act;

“approved project” means a project that is approved by Cabinet following the review and recommendation of the Committee;

“authenticated translation” means a translation done by either a professional translator who is officially accredited to a court of law, a government agency, an international organisation, or similar official institution, or if done in a country where there are no official accredited translators, a translation done by a company whose role or business includes that of professional translation;

“authorised agent” means a person who is granted an agent’s licence by the Unit, and is thereby authorised to act on behalf of the main applicant in relation to a residence by investment application;

“agent’s licence” means a Residence by Investment Agent’s Licence granted under section 58;

“applicant” or “main applicant” means the person who, either as an individual or as the head of a family, undertakes an investment for the purposes of this Act and signs the relevant agreements and undertakings on behalf of his or her dependents;

“belonger”, without prejudice to section 2(2) of the Virgin Islands Constitution Order, 2007, includes

UK SI 2007 No. 1678

- (a) a person deemed to belong to the Virgin Islands under section 2(2) of the Virgin Islands Constitution Order, 2007; or
- (b) a company incorporated, registered or constituted in accordance with the laws of the Territory
 - (i) of which a majority of the issued share capital in the company, as prescribed by section 11(5), is directly or indirectly owned by a believer who proportionally benefits from the dividends or otherwise; or
 - (ii) which is directly or indirectly controlled by a person referred to in paragraph (a);

“belonger investor” means a believer investing in the Territory and registered in terms of section 20;

“Committee” means the Residence by Investment Committee established under section 30;

“business activity” means any activity carried out in the Territory

- (a) that involves the commitment of capital, the expectation of gain or profit and the assumption of risk; and
- (b) that creates a contribution to the economic development of the Territory;

U.K.S.I 2007
No. 1648

“Cabinet” means the Cabinet of the Virgin Islands established under section 47 of the Virgin Islands Constitution Order 2007;

“certificate of residence by investment” means a certificate allowing a foreign investor to reside in the Territory while that investor is the holder of a valid certificate of residence issued under this Act;

“certified copy” means a copy of an original document, certified by a Notary Public, Commissioner of Oaths, or other person of similar stature in the country where the document originates, to be a true copy of the original;

“child” means a biological or legally adopted child of a main applicant, or of the spouse of the main applicant;

No. 9 of 2020

“Commission” means the Virgin Islands Trade Commission established under section 4 of the Virgin Islands Trade Commission Act, 2020;

“dependant” means

- (a) a spouse of the main applicant;
- (b) a child of the main applicant or his or her spouse who is less than eighteen years of age;
- (c) a child of the main applicant or his or her spouse who is at least eighteen years and less than twenty-six years of age and who is studying full time at a recognised institution of higher learning and is fully supported by the main applicant;
- (d) a child of the main applicant or his or her spouse who has a physical or mental disability, and who is living with and is fully supported by the main applicant;

- (e) a parent or grandparent of the main applicant or his or her spouse who is above the age of sixty-five years and is living with and is fully supported by the main applicant;

“enterprise” means any organised business undertaking, legally established in the Territory or any state other than the Territory, as the case requires;

“expansion of investment”, for the purposes of the definition of “investment”, includes

- (a) a major expansion of facilities beyond the original investment plan or size of a pre-existing investment so as to require new approvals under applicable law; and
- (b) an expansion of an investment into new business sectors not included in the original proposal or the previous activities of an investment;

“expropriation” shall be construed to mean the same as the deprivation of property referred to in section 25 of the Virgin Islands Constitution Order, 2007;

UK SI 2007 No.
1678

“fair market value” means the estimated amount for which a property exchanges on the date of valuation between a willing buyer and a willing seller in an arm’s-length transaction;

“foreign investor” means

- (a) a natural person who is not a believer that has made or is seeking to make an investment into the Territory; or
- (b) a company incorporated, registered or constituted in accordance with the laws of
 - (i) the Territory; or
 - (ii) any country other than the Territory, that is not directly or indirectly owned or controlled by a believer, in accordance with this Act, and that has made or is seeking to make an investment into the Territory in terms of this Act;

“interest rate” means the percentage rate to be paid by reference to a rate fixed pursuant to section 23(5);

“investor” when used without a reference to foreign or believer, includes both foreign and believer investors;

“investment” means

- (a) any enterprise
 - (i) lawfully established, acquired or expanded by an investor in accordance with the laws of the Territory; and
 - (ii) that carries out a business activity through a substantial operation in accordance with the investment proposal and the nature of the business in the Territory; or
- (b) any enterprise that an investor is seeking to
 - (i) establish, acquire, merge with or expand, whether through the constitution, maintenance or acquisition of a juridical person inside the Territory or outside the Territory;
 - (ii) merge with another enterprise inside the Territory or outside the Territory; or
 - (iii) acquire shares, debentures or other ownership instruments of directly or indirectly;
- (c) the acquisition by any means of any license, permit or concession issued by the Government directly related to the operation of an investment in the Territory, including such instruments relating to the exploration or exploitation of natural resources; or
- (d) the acquisition by any means of a minority ownership interest or joint venture interest in accordance with this Act, in relation to any of the preceding paragraphs, but such interest shall constitute more than ten percent of the share of the company and the investor exercises effective management, or influence on the management, of the investment, but for the purposes of this definition, a foreign enterprise may not regard the following assets as assets for the purposes of the definition of an investment, though they are considered as assets for enterprises incorporated in the Territory
 - (i) shares, stocks, debentures and other equity instruments of the enterprise or another enterprise;
 - (ii) a debt security of another enterprise;
 - (iii) loans to an enterprise;

- (iv) movable or immoveable property and other property rights such as mortgages, liens or pledges;
 - (v) claims to money or to any performance under contract having a financial value;
 - (vi) copyrights, know how, goodwill and industrial property rights such as patents, trademarks, industrial designs and trade names, to the extent they are recognised under the law of the Territory;
 - (vii) returns such as profits, dividends, royalties and income yielded by an investment;
 - (viii) rights or concessions conferred by law or under contract, including licenses to cultivate, extract or exploit natural resources; and
 - (ix) long term leases over land or property;
- (e) a qualifying payment paid into the National Economic Investment Fund;
 - (f) a qualifying payment towards an approved project in the Virgin Islands in accordance with this Act; and
 - (g) a qualifying enterprise investment in an approved sector;

“minimum investment” means an investment into an approved project of such amount not less than that prescribed for the purposes of section 5(6);

“Minister” means the Minister to whom responsibility for Trade and Investment Promotion is assigned;

“measure” means any form of legally binding act of the Government directly affecting an investor or an investment, and includes any law, regulation, procedure, requirement, judicial decision, binding executive decision and agreement, unless otherwise excluded from the scope of this Act;

“National Economic Investment Fund” or “fund” means the fund established under section 59;

“parent” means

- (a) a biological parent or adopted parent of the applicant or the spouse of an applicant; or

- (b) a person who adopted the applicant or spouse of an applicant when the applicant or the spouse, as the case may be, was legally a minor;

“police certificate” means a statement on the status of the applicant and his or her dependants’ criminal records from the national law enforcement authority of each country where the applicant and his or her dependents have resided for more than one year over the five-year period immediately preceding the application for a residence certificate;

“prescribed” means prescribed by regulation;

“threshold” means the monetary threshold determined under section 8(3)(d) as qualification for registration as an investor in terms of this Act;

“Unit” means the Residence by Investment Unit established under section 47.

- (2) For purposes of this Act, investment does not include
 - (a) assets that are of a personal nature, unrelated to any business activity;
 - (b) debt securities issued by a government or loans to a government;
 - (c) portfolio investment that constitutes less than 10% of the share of the company or otherwise does not give the investor the possibility to exercise an effective management or influence on the management of the investment;
 - (d) claims to money or commission that arise solely from commercial contracts for the sale of goods or provision of services, by a national or enterprise, outside the Territory into the Territory, or the extension of credit in connection with a commercial transaction, or any other claims to money that do not involve the kind of interests in an enterprise set out above;
 - (e) claims to money for the performance of services or provision of goods to any branch of government procured through tender, contract including public private partnership agreements or any other means.

Objects of Act.

3. The objects of this Act are

- (a) to provide a clear and transparent framework for investment in the Territory;
- (b) to provide for an efficient dispute resolution mechanism involving investment;
- (c) to provide for a mechanism for inter-ministerial coordination on regulatory provisions and incentives and support mechanisms for investments;
- (d) to promote sustainable economic development and growth through the mobilisation and attraction of domestic and foreign investments that
 - (i) enhance the economic development objectives of the Territory to build a prosperous, industrialised society with adequate direct investment to, among other things, encourage the creation of employment, wealth, technology transfer, capacity building, value addition to natural resources and foreign currency generation;
 - (ii) reduce unemployment, poverty and economic inequality in the Territory;
 - (iii) accelerate the growth and diversification of the Territory's economy;
 - (iv) facilitate domestic investments, particularly in priority economic sectors; and
 - (iii) provide for other matters on investment promotion, admission, treatment and management.

PART II ADMINISTRATION OF ACT

Role of the Minister.

4. The Minister may give the Commission general directions, in writing, as to the performance of its powers under this Act, on matters which appear to the Minister to affect the public interest and the Commission shall give effect to such directions.

Functions and powers of the Commission.

- 5. (1)** The Commission is responsible for the administration of this Act.
- (2)** The functions of the Commission are to

- (a) receive and consider the investment proposals under this Act and to approve or disapprove such applications in accordance with this Act;
 - (b) promote both foreign and domestic investment by identifying specific projects and inviting interested investors for participation in those projects;
 - (c) undertake, either in the Territory or outside the Territory, promotional activities to attract foreign investments that are beneficial to the economy and development objectives of the Territory;
 - (d) register and keep the register of Belonger and foreign investors and their investments in accordance with the prescribed requirements;
 - (e) provide support services to investors and investments after establishment in order to assist them in their on-going relations with the Government;
 - (f) assess economic sectors and investment proposals and projects for investment potential, opportunities and social economic impact, including local and public sector participation;
 - (g) undertake periodic reviews on investment policies and trends in the Territory and globally in achieving the overall objects of the Act, including the review of levels of domestic and foreign investment in different sectors and the development benefits of these investments;
 - (h) review compliance with any approval, registration requirements and conditions by investors and investments;
 - (i) coordinate the investment related functions of commercial representatives; and
 - (j) carry out such other functions as the Minister may assign from time to time.
- (3) The Commission may

- (a) coordinate decisions and approval of investments which are of strategic importance for national economic growth with other relevant offices, ministries and agencies;
- (b) identify different sectors for investment or business activities in accordance with Part III; or
- (c) make recommendations to the Minister with respect to the monetary thresholds for the different economic sectors which belong and foreign investors are required to register.

(4) The Commission may introduce incentives and other support mechanisms consistent with this Act and any other applicable law as may be required for investments

- (a) after consultation with the Minister responsible for any specific economic sector; and
- (b) with the consent of the Minister responsible for finance, where revenue is involved.

(5) For purposes of subsection (4), the incentives which may be introduced may include those specified in the Schedule.

Schedule

(6) The Invest and Stay incentive shall be available to foreign investors who desire to invest in an approved business which is not in existence in the Virgin Islands subject to the following conditions and to such other conditions as may be prescribed:

- (a) sixty percent of the employees shall be belongers or residents;
- (b) a multi-year entry permit shall be issued to the investor for a period of two years and may be renewed for further periods of two year intervals during the period that the investor continues to own the business;
- (c) the multi-year entry permit shall be revoked where the investor sells the investment.

(7) The Cabinet shall, by Order, prescribe the minimum investment which shall be an amount not less than five million dollars for projects eligible for investment incentives under this Act.

6. (1) The Commission may, on behalf of the Government, enter into a legally binding performance agreement with any foreign investor seeking approval

Performance agreements with investors.

under this Act to agree on matters related to the contributions of the investment to the development objectives of the Territory.

(2) A performance agreement entered into under subsection (1) may become binding on the parties at the time the investment is approved in accordance with this Act.

(3) An agreement entered into in terms of subsection (1) shall be in accordance with the applicable laws of the Territory.

(4) Where an element of an agreement under this section relates to the application or implementation of another Act under the authority of another minister, the Commission shall consult with the other minister prior to concluding the agreement.

Integrated client
service facility.

7. (1) The Commission shall establish and manage within its operations an integrated client service facility for potential investors to

- (a) facilitate the sharing of information between the Government, investors and the public;
- (b) facilitate the application and approval process for required permits and licenses in relation to investments; and
- (c) facilitate the timely receipt of Government approvals for permits, registrations, licenses and other documents.

(2) The Commission shall seek the cooperation of other relevant ministries to ensure inclusive representation of investment related activities and requirements in the operation of the integrated client service facility.

(3) An integrated client service facility may provide a list of various items including licences, permits and approvals issued or made under this Act or any other law which may be applied through the integrated client service facility.

(4) An investor may, among others, apply for a licence, permit or approval of investment through an integrated client service facility.

PART III
INVESTORS, ECONOMIC SECTORS AND BUSINESS ACTIVITIES

8. (1) The Cabinet on the advice of the Minister, and in recognition of the sustainable economic sectors, business activities and development objectives of the Territory, its national security interests and the public interest, may, by Order, reserve certain categories of

Reservation of categories of economic sectors and business activities for certain categories of investors.

- (a) economic sectors; or
- (b) business activities,

as exclusive to certain categories of investors set out in subsection (2).

(2) The category of reserved economic sectors or business activities contemplated in subsection (1) are those

- (a) reserved for the Government;
- (b) reserved for belongers and entities whose majority shareholdings are owned by belongers;
- (c) reserved for joint venture partnership between belonger investors and foreign investors; and
- (d) reserved for investors that meet the requirements of section 14 (2) and the prescribed specific conditions.

(3) An Order made under in subsection (1) shall set out

- (a) the economic sectors or business activities;
- (b) conditions that may be included in any agreement between the Commission and the investor regarding specific project or undertaking;
- (c) criteria relating to investment, economic sectors or business activities, including among other things
 - (i) the value of the investment;
 - (ii) the number of employees;
 - (iii) the area in which the investment is to be located; and
 - (iv) specific sub-sectors of business activity, if any.

- (d) the monetary thresholds for different economic sectors which belonger and foreign investors are required to register with the Commission and may include different thresholds for belonger and foreign investors.

(4) A foreign investor shall meet the applicable requirements for categories of investors in order to invest in the reserved economic sectors or business activities.

(5) The expansion of an existing investment in a manner that qualifies as a new investment, merger or acquisition in terms of this Act is treated as an investment that is subject to this Part.

(6) Where a foreign investor

- (a) has made more than one investment; or
- (b) proposes to make more than one investment,

that is below the threshold set by the Cabinet in terms of value or number of employees, but the total value for such investments would be over the threshold, the investor shall treat such investments in a cumulated fashion as a single investment for the purposes of this Act.

Savings of existing investments after reservation of economic sectors and business activities.

9.(1) A reservation of an economic sector or business activity under section 8 is effective from the prescribed date.

(2) Notwithstanding anything to the contrary in this Act, an investor who had lawfully invested in an economic sector or business activity before the sector or activity has been reserved under section 8 is entitled to maintain his or her investment after the effective date of the reservation of the sector or activity.

(3) Any change in ownership or control of the maintained investments contemplated in subsection (2) is subject to the applicable requirements of Part IV.

Economic sectors and business activities not reserved.

10. An economic sector or business activity that has not been reserved pursuant to section 9 is open for investment and ownership participation by any investor in any legal form permitted by this Act and the generally applicable law.

PART IV
APPLICATION FOR INVESTMENT APPROVAL AND CONTROL OF
INVESTMENTS

- 11. (1)** A foreign investor shall not
- (a) invest in the Territory; or
 - (b) acquire any licence, permit, authorisation or concession in the Territory,

Application for approval of investments.

through any form of merger, acquisition, direct or indirect sale or transfer without the approval of the Commission.

(2) A foreign investor seeking to make an investment in the Territory shall apply to the Commission for approval of the proposed investment in the prescribed form and manner.

(3) An investor who is proposing to invest in the Territory may apply for

- (a) any proposed investment, acquisition or establishment of an investment whether directly or indirectly;
- (b) any proposed merger, whether directly or indirectly, subject to the requirements of any applicable law; or
- (c) the acquisition of any license, permit, authorisation or concession issued by the Government, including such instruments relating to the exploration and exploitation of natural resources,

and apart from the requirement of subsection (2) the application shall include other information as the Commission may reasonably require to enable the Commission to make an informed decision.

(4) Where the investor is a company that is a belonger for the purposes of this Act, the company shall provide with its application proof of majority ownership of the issued share capital.

(5) For the purposes of subsection (4), the Minister shall prescribe the percentage of the issued share capital.

12. (1) Before making a decision with respect to the application under section 14 and following the due consideration of the circumstances

Provisional approval of investments.

- (a) to cater for an emergency situation; and
- (b) to give ample time to the process of considering the proposal for the granting of any permit, license, authorisation or concession which are necessary for the final approval of the proposed investment,

the Commission may grant a provisional approval of the investment for a prescribed period.

(2) The granting of a provisional approval of investment under subsection (1) does not imply or in any other manner guarantee the granting of a final approval of the investment by the Commission in accordance with this Act.

Criteria for approval of investments.

13. In considering the application for approval of investment and in addition to any other provisions of this Act, the Commission shall consider the net benefit for the Territory, taking into account

- (a) the contribution of the investment to the national development, economic growth, public policy and national security objectives of the Territory;
- (b) the contribution of the investment to the advancement of persons who have been socially, economically or educationally disadvantaged by past discriminatory laws and practices;
- (c) the contribution of the investment to the implementation of programmes and policies aimed at redressing social and economic imbalances in the Territory, including gender-based imbalances;
- (d) the contribution of the investment towards increasing employment creation in the Territory;
- (e) the contribution of the investment to the advancement of the development of a geographical area of a low social and economic development;
- (f) the contribution of the investment to the transfer of technological and managerial skills, knowledge and innovation;
- (g) the contribution of the investment to value addition to the natural resources, manufacturing and services sectors of the Territory;

- (h) the extent to which the investment will procure goods and services from the small to medium enterprises sector and belonger suppliers in general;
- (i) the impact on the environment and contribution to environmental benefits; and
- (j) any other factors the Commission may prescribe.

14. (1) Where a foreign investor submits an investment proposal to the Commission for consideration, the Commission

Investment proposal from foreign investors.

- (a) shall consider the proposal; and
- (b) may approve or disapprove the proposal and shall in writing give the reasons for its decision.

(2) The Commission may approve the investment proposal after having considered and satisfied itself that

- (a) the conditions set out in section 13 have been met; and
- (b) a substantial number of the following requirements, as each case may require, are fulfilled or likely to be fulfilled in a specified period
 - (i) the joint venture with a belonger;
 - (ii) the employment creation for belongers;
 - (iii) the contribution of the investment to the advancement of persons who have been socially, economically or educationally disadvantaged by past discriminatory laws and practices;
 - (iv) the contribution of the investment to the implementation of programmes and policies aimed at redressing social and economic imbalances in the Territory, including gender-based imbalances;
 - (v) the transfer of technology and technological skills;
 - (vi) the development of managerial skills;

- (vii) the promotion of research, development and innovation;
- (viii) the value addition to the natural resources and manufacturing sector and procurement of goods and services;
- (ix) the environmental impact and contribution to environmental benefits; and
- (x) other matters relating to the improvement of the economy and development benefits in the public interest as the Minister may prescribe.

(3) Subject to payment of the initial capital required by section 28 (2)
(a), when

- (a) the requirements by any other law have been complied with;
- (b) an approval of investment under this Act has been received by the foreign investor; and
- (c) the foreign investor has notified the Commission of the acceptance of the approval of the investment,

the Commission shall issue a certificate of approval of investment that allows the foreign investor to register with the Commission and commence with the investment.

Time period for approval of investment.

15. The Minister may prescribe time periods for the approval of any application or review of any decision relating to the approval of investment under this Act.

Change of ownership and control of investment.

16. (1) An investor in any sector which is above the threshold may not

- (a) change the ownership or control of investment; or
- (b) transfer any licence, permit, authorisation or concession owned by the investor,

to a foreign investor through any form of merger, acquisition, direct sale or transfer without the approval of the Commission as required by subsection (2).

(2) An investor in the Territory referred to in subsection (1) who wishes

- (a) to change ownership or control of the investment in favour of a foreign investor; or
- (b) to transfer any license, permit, authorisation or concession owned by the investor to a foreign investor through any form of merger, acquisition, direct sale or other disposal,

shall, subject to the requirements of any applicable law, apply to the Commission in the prescribed form and manner for approval of such proposed change or transfer at least sixty days before the date of intended change or transfer or any earlier date as the Commission may allow in any particular circumstances.

(3) Upon receipt of the application referred to in subsection (2), the Commission may approve with or without conditions or decline any change or transfer of

- (a) ownership or control of investment;
- (b) control of an investment located inside the Territory whether through
 - (i) the constitution, maintenance or acquisition of an enterprise inside the Territory or outside the Territory;
 - (ii) the merger with another enterprise inside the Territory or outside the Territory; or
 - (iii) the acquisition, directly or indirectly, of shares, debentures or other ownership instruments of an enterprise inside the Territory or outside the Territory; or
- (c) any licence, permit, authorisation or concession owned by the investment.

(4) If an investor contravenes subsection (1), the Commission may, notwithstanding any other law to the contrary, suspend, withdraw or cancel

- (a) the existing approval of the investment;
- (b) any license, permit, authorisation or concession granted by any relevant issuing authority; or
- (c) refer the matter to the Director of Public Prosecutions as the case may require.

(5) The Commission shall notify the investor and investment of its intention before the Commission takes any decision under subsection (4).

(6) Upon receipt of the notice in terms of subsection (5), an investor shall respond and may make oral or written representation within thirty (30) days of receipt of the notice or any extended period as the Commission may determine.

(7) If after the investor having made the representation under subsection (6), the Commission finds that the investor failed to comply with subsection (2), the Commission may give the investor an opportunity to remedy the failure as prescribed.

(8) If an investor is not able to remedy the failure as required under subsection (7), the Commission shall take an appropriate decision under subsection (4).

Transfer of rights and obligations.

17. (1) Where the Commission has approved a change in ownership or control pursuant to section 16, the investor who has received such approval shall accept

- (a) the approval of such change of ownership or control including any conditions set out by the Commission; and
- (b) all the obligations, conditions and responsibilities of the prior investor, in the prescribed form and manner.

(2) The approval by the Commission of any change of ownership or control of investment contemplated in subsection (1) has no legal effect until

- (a) the investor submits the acceptance of the approval of change of ownership or control of investment to the Commission; and
- (b) the Commission issues a certificate of change of ownership or control of investment that authorises the investor to commence or continue with the investment.

Exception to requirements for approval of transfer of ownership or control.

18. (1) Where a finance contract, mortgage or similar instrument permits the provider of finance to take possession of the financed investment

- (a) in the event of a default by the debtor; or
- (b) in the event of the bankruptcy or insolvency of the investment in accordance with the Insolvency Act, 2003 by

No. 5 of 2003

that or another creditor, the transfer of ownership for this purpose may not be subject to approval under this Act.

(2) Despite subsection (1), the transfer of ownership by such financier or creditor is subject to this Act.

(3) If the financier or creditor seeks to operate the investment, other than for essential maintenance and temporary operation, including to maintaining the business value of the enterprise, until

- (a) a buyer is determined; or
- (b) the investment is dissolved in an orderly manner, the provisions relating to the transfer of ownership apply with the necessary changes.

PART V RIGHTS AND OBLIGATIONS OF INVESTORS

19. Investors shall carry out their activities at all times in full compliance with all the applicable laws of the Territory. Compliance with all applicable laws.

20. (1) A new investor in any investment above the threshold for registration shall register in the manner and form prescribed for this purpose. Registration of investors and investments.

(2) Notwithstanding anything to the contrary in this Act, the obligation to register in terms of subsection (1) applies to existing investors and investments, subject to subsection (3).

(3) An existing investor who has any investment above the threshold for registration, or investment existing at the commencement of this Act and which qualifies for registration as investor or investment under this Act shall within twelve months from the date of the commencement of this Act register in accordance with subsection (1).

(4) An investment that is below the threshold for registration but that grows to exceed the level of the threshold shall register in accordance with subsection (1) within twelve months of exceeding the threshold above which registration is required.

(5) Subject to this Act, the Commission shall accord to foreign investors and their investments treatment no less favourable than the treatment it accords, in like circumstances, to belonger investors and their investments, with respect to the management, operation and disposition of investments within the Territory.

(6) In the assessment of the “like circumstances” referred to in subsection (5), the Commission shall take into account

- (a) the effects on third persons and the local community;
- (b) the effects on the local or national environment, including the cumulative effects of all investments on the environment;
- (c) the sector of investment;
- (d) the linkages to other sectors;
- (e) the aim of the measure concerned; and
- (f) the regulatory process generally applied in relation to the measure concerned.

Application of Act to matters under treaties.

21. (1) The obligations in this Act may not apply in relation to any concessions, advantages, exemptions or other measures in favour of a foreign or belonger investor that may result from the existence or implementation of

- (a) any bilateral treaty relating to investment or free trade;
- (b) any multilateral or regional agreement relating to investment, free trade or economic integration to which the Territory is a party; or
- (c) Government procurement tied to development assistance funds or loans.

(2) Nothing in this Part may be construed to prevent the Territory from adopting or maintaining a measure that prescribes special formalities in connection with the investments of foreign investors, but the measures do not materially impair the rights granted by other provisions of this Act.

Expropriation

22. (1) In the event of an expropriation of land or property affecting any investment such expropriation is done in conformity with section 23 of the Constitution, this Act and any applicable law.

(2) The Government may take a measure of expropriation affecting an asset, a property right or any other right of an investor, if the measure

- (a) is taken in the public interest;
- (b) is taken in accordance with applicable requirements and procedures; and

(c) is accompanied by the payment of just compensation.

23. (1) Unless provided for in other domestic laws of the Territory, the just compensation required for an expropriation of investment is subject to subsection (2), once it is determined it is Payment of compensation.

(a) normally assessed in relation to the fair market value of the expropriated investment immediately before the expropriation took place; and

(b) paid promptly in the currency of the Territory.

(2) The just compensation is based on an equitable balance between the public interest and the interest of those affected having regard to all relevant circumstances, including the

(a) fair market value;

(b) profit of the investment to date of the expropriation;

(c) capital costs of the investment;

(d) the current and past use of the property;

(e) the history of its acquisition;

(f) the purpose of the expropriation;

(g) the duration of the investment; and

(h) a percentage of future losses.

(3) The assessment of fair market value may not reflect any change in value occurring because the intended expropriation had become known earlier.

(4) Compensation shall include simple interest at the rate prescribed pursuant to subsection (5)

(a) commencing on the date the act of expropriation occurs; and

(b) ending on the date the whole compensation amount is paid.

(5) For purposes of this section, the Minister with the approval of Cabinet shall, by notice in the *Gazette*, fix the interest rate to be payable with compensation required where an expropriation of investment occurs.

Right of review concerning expropriation and compensation.

24. The investor affected by an expropriation has a right to judicial review by the High Court and of the valuation of the compensation for his or her expropriated investment in accordance with the principles set out in section 23.

Foreign personnel.

25. (1) Notwithstanding subsection (3), the Minister responsible for labour, after consultation with any relevant minister as the circumstances may require, may on application authorise an investor to employ natural persons who are not belongers to perform in the Territory

- (a) scarce key professional and managerial functions; or
- (b) specialised services, scarce skills or specialities, required for the operation of the investment.

(2) The authorisation granted under subsection (1) is subject to this Act and other legislation dealing with labour and immigration control and to any applicable agreement entered into with the Minister.

(3) An investor shall

- (a) absorb available skills in the belonger labour market;
- (b) invest in human capacity development in the labour market; and
- (c) ensure the transfer of skills to belongers, so as to enhance the sustainability of the investment and its linkages within the Territory's economy and achieving the developmental objectives of the Territory.

(4) The foreign personnel referred to in subsection (1) excludes the investor and shareholder, his or her spouse and dependent children who, if non-belongers, is deemed to have been granted, subject to immigration control requirements, the right to enter and work in the Territory at the point of admission once final approval of the investment has been granted.

Facilitation of visas and permits of investors, dependents and foreign personnel.

26. (1) The Minister shall engage the Minister responsible for immigration to facilitate the issuing of visas and residence permits to investors and their dependents and foreign personnel within a reasonable period.

(2) The Minister, after consultation with the Minister responsible for immigration and the Minister responsible for education, respectively, may give approval to the engagement of foreign personnel in a written agreement with the investor to be included in the performance agreement of the investment in respect of the positions available for

- (a) a long-term engagement of foreign personnel; or
- (b) a temporary engagement of foreign personnel for a prescribed period.

(3) The Minister, after consultation with the Ministers responsible for immigration and education, respectively, may generally prescribe positions as temporary in respect of foreign personnel within various investments to which section 27 applies even in the absence of the agreement referred to in subsection (2).

27. (1) Where

Capacity development and transfer of skills.

- (a) the Minister and investor have agreed on positions that may be filled on a temporary basis by foreign personnel on the basis of lack of appropriate skills in the belonger market; or
- (b) the Minister has prescribed positions as temporary in respect of foreign personnel under section 25,

an investor shall ensure that belongers are trained to acquire relevant skills to assume those positions within the prescribed period or a period agreed upon between the Minister and the investor.

(2) An investor shall train belongers to fill the positions occupied by foreign personnel on a one-to-one apprenticeship basis, unless otherwise agreed and specified in the agreement contemplated in section 26(2).

28. (1) A foreign investor may transfer into and outside the Territory funds relating to his or her investment subject to the laws of the Territory.

Transfer of funds.

(2) The funds referred to in subsection (1), include

- (a) the initial capital and additional amounts to maintain or increase the investment;
- (b) the profits, dividends, royalties and income yielded by an investment;
- (c) the funds in repayment of loans and interests of loans related to an investment;
- (d) the compensation paid under this Act;

- (e) proceeds from the total or partial sale or liquidation of an investment;
- (f) earnings and other remuneration of personnel engaged from abroad in connection with an investment; and
- (g) payments arising out of the settlement of a dispute between the investor and another party in the Territory.

(3) Despite subsection (1), the Minister, on the advice of the Commission, may delay or prevent a transfer of funds referred to in subsection (1) through a fair, non-discriminatory and good faith application of measures, in the following circumstances:

- (a) to protect the rights of the creditors in the event of actual or anticipated bankruptcy or insolvency;
- (b) to ensure the compliance with judgments concerning criminal offences;
- (c) to ensure the compliance with tax obligations;
- (d) to comply with lawful administrative decisions and facilitate execution of judicial judgments;
- (e) in exceptional circumstances, to prevent movements of capital that causes or threaten to cause serious difficulties for macroeconomic management of the economy.

(4) Any person affected by the delay or prevention of the transfer of funds pursuant to this section may seek any redress through the judicial process.

PART VI DISPUTE SETTLEMENT

Resolution of
post
establishment
disputes.

29. (1) A foreign investor may notify the Commission of a dispute arising between the investor or the investment and the Government after admission or after establishment of the investment.

(2) The Commission, on request of the investor and where appropriate, may assist in the resolution of the dispute, and may designate a mediator or mediation panel to mediate any dispute referred to in subsection (1).

(3) An investor may choose to directly approach the courts of the Territory for remedy instead of using the mediation procedures referred to in subsection (2).

(4) The jurisdiction over disputes relating to this Act lies exclusively with the courts of the Territory, but the Commission and investor, as required by the circumstances of the alleged breach of rights or obligations, may, by written agreement, agree to arbitration in accordance with the Arbitration Act, 2013 in the Territory.

No. 13 of 2013

PART VII RESIDENCE BY INVESTMENT COMMITTEE

30. (1) For the purposes of this Part, there is established a Residence by Investment Committee which shall comprise not more than nine members to be appointed by Cabinet as follows:

Establishment of
Residence by
Investment
Committee.

- (a) one person selected by the Premier from the Sister Islands;
- (b) one person who shall be between the age of 18 and 35 selected by the Leader of the Opposition;
- (c) the Attorney General or his or her representative, *ex officio*;
- (d) the Chief Immigration Officer, *ex officio*;
- (e) the Financial Secretary, *ex officio*;
- (f) the Permanent Secretary, Premier's Office, *ex officio*;
- (g) the Chairperson of the Trade Commission Board, *ex officio*;
- (h) the Commissioner of Trade, *ex officio*; and
- (i) a representative from a Trade or Business Association, or the financial services industry, to be nominated by the Premier.

(2) The persons appointed pursuant to subsection (1) (a) and (b) may be individuals trained in law, business, trade, environmental development, finance or international relations.

(3) The Minister shall appoint one of the members of the Committee to be the Chairperson and another member to be the Deputy Chairperson.

(4) A member shall hold office for a period not exceeding three years but is eligible for reappointment.

(5) The persons appointed under subsections (1)(c) and (e) shall be non-voting members.

Disqualification.

31. A person is disqualified from being a member of the Committee if that person

- (a) is declared by a court to be bankrupt;
- (b) is declared by a court or is certified by a medical practitioner to be of unsound mind;
- (c) has been convicted of a criminal offence except where the conviction is for a minor traffic offence or the conviction is spent.

Functions of the Committee.

32. (1) Subject to subsection (3), the Committee shall

- (a) co-ordinate the administration and operation of the Residence by Investment Programme in an efficient manner;
- (b) monitor the processing of an application under the Residence by Investment Programme;
- (c) review reports of the Unit;
- (d) make recommendations to the Cabinet on the approval or denial of applications for Residence by Investment;
- (e) make recommendations to the Minister on the development of the Residence by Investment Programme;
- (f) issue guidelines within its jurisdiction under the Residence by Investment Programme;
- (g) generally to perform such other functions as may be assigned to it by the Minister.

(2) The Committee shall consider and advise upon all matters which may from time to time be referred to it by the Minister and shall furnish to the Minister information he or she may require relating to the Residence by Investment Programme.

(3) Subject to this Act, the Committee may with the approval of the Cabinet and for the purpose of exercising or discharging any functions under this

Act, do anything and enter into any transaction which in the opinion of the Committee, is reasonably necessary to ensure the proper exercise or discharge of its functions.

33. In exercise of its functions under section 32, the Committee may request any information, document or thing, with respect to an application under this Part, from Powers of the Committee.

- (a) the main applicant or any dependant;
- (b) the Unit;
- (c) any other person who, in the opinion of the Committee, may be able to assist.

34. Where both the Chairperson and Deputy Chairperson are absent or unable to act, the Cabinet may appoint another person to act temporarily in the place of the Chairperson or Deputy Chairperson and in making the appointment the Cabinet shall have regard to section 30 (2) and section 31. Acting members.

35.(1) A member of the Committee, other than the Chairperson or Deputy Chairperson may resign at any time, by notice in writing addressed to the Minister and transmitted through the Chairperson or Deputy Chairperson, and such resignation becomes effective upon receipt by the Minister. Resignation.

(2) The Chairperson or the Deputy Chairperson may resign at any time by notice in writing addressed to the Minister and such resignation becomes effective upon receipt by the Minister.

36. Cabinet may, by notice in writing, at any time revoke the appointment of any member of the Committee if that member Revocation of appointment.

- (a) becomes disqualified in accordance with section 31;
- (b) is guilty of neglect of duty, misconduct or malfeasance;
- (c) exhibits behaviour inconsistent with his or her functions as assigned under the Act; or
- (d) is absent from three consecutive meetings without a reasonable excuse.

37. The names of all members of the Committee as first constituted and every change in the membership of the Committee shall be published in the *Gazette*. Publication of names of members.

Meetings of the Committee.

38. (1) The Committee shall meet at such times as may be necessary for the purpose of performing its functions and the meetings shall be held at a place and at such times as may be determined by the Committee.

(2) The Committee shall meet

- (a) at least once quarterly with the Chief Executive Officer to review the operation of the Unit;
- (b) from time to time, as may be required to consider decisions of the Unit.

(3) Subject to section 30(5) and this section, the Committee shall regulate its own procedure in the conduct of its meetings.

Seal of the Committee.

39. (1) The Committee shall have an official seal which is kept in the custody of the Secretary.

(2) The official seal of the Committee shall be affixed in the presence of and signed by the Chairperson or the Deputy Chairperson.

(3) All documents other than those required by law to be under seal, which are executed by the Committee and all decisions of the Committee are to be signed by the Chairperson or any other member duly authorised in writing by the Chairperson to act on behalf of the Chairperson.

Protection of members.

40. (1) A member of the Committee is not personally liable for any act or default of the Committee done or omitted to be done in good faith in the execution of the functions of the Committee.

(2) Where any member of the Committee is exempt from liability by reason only of subsection (1), the Committee may be liable to the extent that it would be if such member were a servant or agent of the Committee.

Disclosure of interest.

41. (1) Where a matter is to be decided by the Committee at a meeting, any member present at the meeting who has an interest in the matter shall, at the meeting, disclose the nature of the interest in advance of any consideration of the matter.

(2) Where a member discloses an interest under this section

- (a) the disclosure shall be recorded in the minutes of the meeting; and
- (b) the member shall not

- (i) be present during any deliberations by the Committee on that matter; or
- (ii) take part in any decision of the Committee relating to the matter.

42. A member of the Committee shall be paid such remuneration, if any, whether by way of honorarium, salary or fees, or such allowances as Cabinet, on the recommendation of the Minister, determines. Remuneration.

43. Except for the expenses incurred in establishing the Residence by Investment Programme, the expenses of the Committee, including the remuneration of the members shall be paid out of the income generated by the Residence by Investment Programme. Expenses of the Committee.

44. The Committee shall, not later than three months before the commencement of each financial year, prepare in respect of the financial year, and submit for the approval of the Commission, Annual budget.

- (a) a budget of the estimates of the expected income and expenditure; and
- (b) a plan of action, for the Committee in respect of the next financial year.

45. The Committee shall cause to be kept a proper record of accounts in accordance with generally accepted international accounting standards and principles and shall cause to be prepared and shall retain financial statements in respect of each financial year. Accounts and audit.

46. (1) Not later than three months after the end of each financial year, the Committee shall submit to the Minister and to the Commission an annual report on the work and activities of the Committee for that financial year and the report shall form part of the Commission Annual Report which is tabled in the House of Assembly. Annual Report.

(2) The report referred to in subsection (1) shall include the following information:

- (a) the number of applications made, granted and refused under the Act;
- (b) the names, addresses and nationalities of successful applicants and any dependant included in the applications;
- (c) the amount and other details of the investments;

(d) such other information as the Minister considers appropriate.

(3) The name of an unsuccessful applicant shall not be included in the report in subsection (1).

PART VIII RESIDENCE BY INVESTMENT UNIT

Establishment of
Residence by
Investment Unit.

47. (1) There is established, for the purposes of the Residence by Investment Programme, a Residence by Investment Unit of the Trade Commission, which shall be responsible for processing all applications for Residence by Investment and applications for all licenses under Part IX.

(2) The Unit shall be comprised of persons of integrity who are qualified and have the necessary experience and capacity in matters relating to law, finance, trade, planning, environmental development or other relevant areas.

(3) The Commission shall determine the functions and duties of the Unit.

Functions of the
Unit.

48. (1) Subject to this Act, the Unit is responsible for the general administration of the Residence by Investment Programme.

(2) The Unit shall furnish to the Committee information it may reasonably require relating to the administration of the Residence by Investment Programme.

(3) The Unit shall

- (a) process applications for any licence required for the purposes of the Residence by Investment programme;
- (b) process applications for the Certificate of Residence by Investment;
- (c) make recommendations to the Minister on the development of the Residence by Investment Programme;
- (d) advise the Committee on any matter within its knowledge including advice in relation to the terms and conditions on which residence by investment may be granted;
- (e) provide technical advice and guidance on Residence by investment in the Virgin Islands;

- (f) collect fees for the Residence by Investment Programme;
- (g) utilise best practices in administering the Residence by Investment Programme;
- (h) perform such other functions as may be conferred on the Unit in this Act.

Appointment of Chief Executive Officer and other staff of the Unit.

49. (1) The Committee shall, with the approval of the Minister, appoint a fit and proper person to be the Chief Executive Officer of the Unit and shall appoint such other staff of the Unit as may be necessary for the efficient functioning and operation of the Unit.

(2) The Cabinet shall determine the terms and conditions of employment of the Chief Executive Officer.

Duties of the Chief Executive Officer.

50. The Chief Executive Officer shall, subject to the general directions of the Trade Commissioner, be responsible for the overall management of the Unit and shall

- (a) attend all meetings of the Committee;
- (b) provide the necessary leadership to the Unit;
- (c) continuously monitor the Residence by Investment Programme to ensure that its independence and integrity are maintained and that it is managed in accordance with international best practices;
- (d) keep the Minister, through the Trade Commissioner fully informed of the business of the Unit;
- (e) furnish the Minister, through the Trade Commissioner with all requested information as required;
- (f) generally, be responsible for the internal organisation and administration of the Unit and do all things necessary or convenient to be done for or in connection with the performance of his or her duties.

PART IX
APPLICATION FOR CERTIFICATE OF RESIDENCE BY INVESTMENT

Application.

51. (1) A person who is

- (a) at least eighteen years of age; and
- (b) who meets the application requirements,

may apply as a main applicant for certificate of residence by investment pursuant to this Act.

(2) Any person who is a qualifying dependant of an applicant may apply along with the applicant as a dependant applicant.

(3) An application under this section shall be submitted to the Unit through an authorised agent.

(4) An application shall be made in the prescribed form and shall be accompanied by

- (a) all requisite documentation and information;
- (b) the prescribed processing fees and due diligence fees which shall be non-refundable;
- (c) a health certificate by a medical practitioner with respect to the applicant and each dependant;
- (d) a police certificate,
 - (i) from the applicant's country of residence; and
 - (ii) each country the applicant has resided in during the five years immediately preceding the date of the application;
 - (iii) for each dependent who is eighteen years or older;
- (e) a banker's reference;
- (f) sworn affidavits of support, from the main applicant, for each dependant over eighteen years old, except for his or her spouse; and

- (g) the details and evidence of the proposed qualifying investment.

(5) An application form shall be completed in English and any document submitted with the application shall be in English, or, if the original language of the document is not in English, the document shall be accompanied by an authenticated translation.

(6) Each application shall be completed by the main applicant or, by the authorised agent and signed by the main applicant and any of the dependants over the age of eighteen years, subject to the following conditions:

- (a) in a case of a child who is below the age of eighteen, both parents may be required to sign the forms on behalf of the child as the child's legal guardians;
- (b) where one parent has sole custody of a child, or another person has legal guardianship of a child, the appropriate legal documentation shall be provided to demonstrate that sole custody or guardianship was awarded by the court of law or other relevant authority; and
- (c) any document required to be signed by the applicant for the purposes of this Act may be signed electronically in accordance with the law of the Virgin Islands governing electronic transactions.

(7) An application shall only be accepted and processed by the Unit if all the prescribed forms are properly completed, dated and signed, and accompanied by all required documents and fees, except in circumstances otherwise permitted by the Chief Executive Officer.

(8) Every application that is submitted shall be examined by the Unit.

(9) A dependent applicant who is at least eighteen years and less than twenty-six years of age, shall submit with his or her application official transcripts or written confirmation from an accredited university or college of further education of the dependent's enrolment at that university or college.

(10) Every certified copy of an original document submitted to the Unit shall be authenticated by

- (a) an apostille in accordance with the provisions of the Hague Convention of 5th October 1961 Abolishing the Requirements for Legalisation for Foreign Public

Documents, in the case of a jurisdiction that is a party to that Convention; or

- (b) validation of the certificate of the notary public or other functionary that is officially approved by the relevant government for that purpose, by the appropriate government department in the case of a jurisdiction that is not a party to the Convention.

Proof of financial resources.

52. For the purposes of a qualifying investment under this Act, an application shall be considered when all the requisite criteria in relation to financial resources are satisfied by the applicant pursuant to such guidelines as may be prescribed.

Due diligence checks.

53. The Unit may engage the services of one or more independent, professional, and qualified, persons or bodies to conduct due diligence checks in respect of every applicant and every dependant over eleven years of age and the applicant may be required to attend an interview in the Virgin Islands or such other place as may be specified before any decision is made in relation to his or her application.

Report by unit and recommendation to Cabinet.

54. (1) Upon receipt of all requisite information for an application for residence by investment, the Unit shall prepare a full report of its findings and recommendations for the Committee.

(2) The Committee shall review all reports prepared under subsection (1) and submit its recommendations to the Cabinet for consideration.

Approval, denial or delay of application.

55. (1) The Cabinet shall, notwithstanding anything to the contrary in the Immigration and Passport Act, after due consideration of an application for a certificate of residence submitted to it by the Unit

- (a) grant;
- (b) deny; or
- (c) delay for cause,

the application for a certificate of residence.

(2) The Unit shall, within thirty (30) days of the Cabinet's decision, notify the main applicant, in writing, through his or her authorised agent of the decision made regarding the application.

- (3) An applicant who

- (a) has provided false information on his or her application form;
- (b) not having received a free pardon, has at any time previously been convicted in any country of an offence for which the maximum penalty for the same or similar offence in the Virgin Islands is in excess of six months imprisonment;
- (c) is the subject of a criminal investigation;
- (d) is involved in any activity likely to cause disrepute to the Virgin Islands; or
- (e) has been denied a visa to a country with which the Virgin Islands has visa-free travel and who has not subsequently obtained a visa to the country that issued the denial,

shall not be approved for the grant of a certificate of residence under this Act.

(4) Where an application is approved under subsection (1)(a) the notice required by subsection (2) shall require the applicant to

- (a) pay any other fees that may be due, within sixty (60) days; or
- (b) commence all qualifying investments as described in the application within the prescribed period.

(5) An applicant who is granted a certificate of residence shall take an oath or affirmation of allegiance to the Virgin Islands.

(6) An applicant who is granted a certificate of residence shall be subject to the laws of the Virgin Islands.

Cap. 122

(7) An applicant who is granted a certificate of residence pursuant to this Act is not eligible to apply for a certificate certifying that he or she belongs to the Territory unless he or she has held a certificate of residence granted under subsection (1) for a period of not less than twenty years prior to his or her application.

56. (1) Where an application is denied under section 55, the applicant may, in writing, request a review by Cabinet. Review process.

(2) A request for review shall

- (a) be in writing and shall be submitted through the Unit;

- (b) be submitted within sixty (60) days of receipt of the letter of denial from the Unit;
- (c) not seek to introduce new information or documents;
- (d) show one or more of the following grounds for seeking a review:
 - (i) that there was an error in applying the law;
 - (ii) that the Committee either considered irrelevant matters or failed to consider relevant matters in making its recommendation to the Cabinet;
 - (iii) that there were irregularities at the decision-making stage;
 - (iv) that the Committee did not have evidence to support its findings against the applicant.

(3) The Cabinet shall consider the request within thirty (30) days of receipt and notify the applicant in writing of its decision to grant or deny the request for a review pursuant to this section.

(4) The Cabinet may, where it agrees to review an application for the purposes of this section, appoint an individual, or a panel with expert knowledge or experience to provide advice, where it deems it necessary.

(5) The Cabinet may request that an applicant appear in person to be interviewed and to provide further information or explanations with respect to an application being reviewed.

(6) Subject to subsection (7), an interview shall be conducted in the Virgin Islands.

(7) At the request of the applicant and where the Cabinet considers it to be appropriate, provision may be made for the interview to be conducted outside the Virgin Islands at the expense of the applicant.

(8) The Cabinet shall consider the application and approve or deny the application for residence as it considers appropriate.

57. (1) The Cabinet may revoke a certificate of residence granted pursuant to this Act, on any of the following grounds:

Revocation of residence by investment.

- (a) that certificate was obtained by false representation or fraud or willful concealment of material facts;
- (b) the person has been convicted of an offence; or
- (c) the person has performed any other act which, within the opinion of the Minister, has the potential to bring disrepute to the Virgin Islands,

and shall by notice in writing specify the grounds for the revocation of the certificate of residence.

(2) Where a certificate of residence is revoked pursuant to subsection (1), the person shall not be entitled to repayment of

- (a) any investment, contribution or purchase price made by him or her in the original application for Residence;
- (b) any investment or contribution made by him or her in furtherance of the grant of Residence.

(3) Any person whose residency is revoked under this section shall have the right of appeal to the High Court.

(4) Notice of appeal under this section shall be given within thirty (30) working days of the date that a copy of the notice of revocation is served on the person.

58. (1) A Residence by Investment Agent's Licence shall be issued only to a Belonger who is ordinarily resident in the Virgin Islands. Authorised agent.

(2) A person shall not act as an authorised agent for the purposes of this Act unless that person is issued a Residence by Investment Agent's Licence under this section.

(3) An application for an agent's licence shall be submitted to the Unit for the approval of the Cabinet.

(4) An application submitted under subsection (3) shall be made in the prescribed form and accompanied by

- (a) the prescribed fee; and
- (b) such evidence of the applicant's professional qualification, ability, resources, experience and integrity, as the Unit may require.

(5) An authorised agent shall maintain a place of business in the Virgin Islands and shall promptly inform the Unit of any changes in the address.

(6) An agent's licence shall be revoked if

- (a) the ability, resources, experience or integrity of the authorised agent falls below the standard that might reasonably be expected;
- (b) the prescribed fee remains unpaid for twenty-eight (28) calendar days after it has become due;
- (c) the requirements of subsection (5) have not been complied with; or
- (d) the authorised agent has contravened any of the provisions of this Act.

(7) An authorised agent shall

- (a) sign a written agreement with the Committee, among other things, agreeing to adhere to the terms and conditions of the Residence by Investment Programme;
- (b) prior to being granted a new licence, be reviewed by the Unit as to performance and suitability for continued involvement with the Residence by Investment Programme;
- (c) be responsible for all promotion, advertisement or publication in relation to Residence by Investment published or disseminated publicly by any sub-agent, promoter, media outlet, entity or person on behalf of or in conjunction with the said authorised agent;
- (d) take reasonable steps to confirm the identity and reputation of each promoter with whom the agent enters into agreement, engages or acts in conjunction with;
- (e) not engage or use any person or entity as a promoter who has not been registered and in respect of whom the prescribed annual fee has not been paid;
- (f) pay or cause to be paid the prescribed fee in respect to each promoter he or she engages, collaborates with or otherwise uses in relation to the Residence by Investment Programme.

(6) Each promoter shall comply with the terms and conditions of the Residence by Investment Programme.

(7) A person who does not have an agent's licence issued under this Act, who wilfully misrepresents himself or herself as an agent to another person, commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding one year, or both.

PART X NATIONAL ECONOMIC INVESTMENT FUND

59. (1) There is established by this Act a fund to be known as the National Economic Investment Fund (referred to in this Act as the "Fund") into which shall be paid National
Economic
Investment Fund.

- (a) monies contributed by investors pursuant to this Act;
- (b) qualifying investments paid by applicants in respect of applications for residence by investment; and
- (c) such other qualifying investments payable to the Fund pursuant to any other legislation.

(2) The monies of the Fund shall be used only for the following purposes:

- (a) infrastructure development;
- (b) environmental protection and improvement;
- (c) development of new sectors and other development programmes;
- (d) social programmes, including education, sports, and health; and
- (e) recreational facilities.

(3) The Minister for Finance shall lay before the House of Assembly every financial year for its approval the purposes to which the funds paid into the National Economic Investment Fund will be allocated.

**PART XI
MISCELLANEOUS**

Publication of
Information.

60. The Minister shall, by Notice, publish in the *Gazette* every grant of a certificate of residence, and every revocation of a certificate of residence issued under this Act.

Report to be laid
before the House
of Assembly.

61. The Minister shall annually, on such dates as may be prescribed, prepare a report containing the prescribed information on the applications made, granted and refused under this Act, and shall, as soon as practicable, but not later than thirty (30) days after the completion of the report, cause a copy of the report to be laid on the table of the House of Assembly.

Offences.

62. (1) A foreign investor commits an offence, if the investor

- (a) undertakes, establishes or operates an investment in a manner contrary to section 11(1) or 16;
- (b) invests in a sector in which such investment is not permitted pursuant to the reservations made in terms of section 8;
- (c) changes the nature of the investment in a manner that makes it materially different from the approved investment;
- (d) fails to comply with the requirement to cumulate investments into a singular investment for the purposes of this Act when so required; or
- (e) is, notwithstanding any other law to the contrary, in material breach of any conditions agreed with the Commission in relation to the establishment or operation of investment.

(2) An investor commits an offence, if the investor submits information which the investor

- (a) knows to be false, misleading or fraudulent; or
- (b) does not believe to be true,

in relation to any matter required by or under this Act and is liable on conviction to a fine not exceeding two million or to imprisonment for a term not exceeding ten years, or both.

(3) An investor commits an offence, if the investor

- (a) changes the ownership or control of his or her investment; or

- (b) transfers any licence, permit, authorisation or concession owned by the investor,

to a foreign investor in contravention of section 11(1).

63. (1) Where the Commission is of the opinion that an investor has committed an offence, the Commission may afford the investor opportunity to remedy the situation by implementing the required corrective measures, but if the investor fails to do so, the Commission may Penalties.

- (a) suspend, withdraw or cancel the approval of the investment issued under this Act or the licence, permit, authorisation or concession issued under any other law; and
- (b) cause the investor to cease operations until the suspension, withdrawal or cancellation is lifted or until the offence is remedied.

(2) An investor may appeal to court against any suspension, withdrawal or cancellation on the grounds that

- (a) no offence has been committed;
- (b) the offence so committed has no material impact on the issuance of the approval of the investment under this Act; or
- (c) the penalty imposed is manifestly excessive given the nature of the offence.

(3) Apart from suspension, withdrawal or cancellation of approval under this section, the Commission may seek a court order imposing a fine not exceeding 100 percent of the economic benefits that have accrued to the investor as a result of the offence.

(4) Where a court imposes a fine under subsection (3), the fine is regarded as a debt due to the Government, and is recoverable in a court of law in case of default.

(5) Where the offence committed under this Act is also an offence under any other law, the fine imposed under subsection (3) is in addition to such other applicable penalties in such other law.

64. (1) Where the Commission has reason to believe that an investor has committed any offence in terms of section 62, the Commission may, when appropriate Opportunity for compliance with law.

- (a) notify the investor of the reasons for its belief that an offence has been committed; and
- (b) provide the investor an opportunity to implement corrective measures to ensure compliance.

(2) If an investor agrees to implement corrective measures as contemplated in subsection (1), the investor shall implement corrective measures for any alleged offence within a period agreed upon with the Commission.

(3) Where the Minister is of the belief that an effort has been made in good faith to ensure compliance within the period referred to in subsection (2), the Commission may delay any further enforcement of any action it intends to take under this section.

Power to amend
Schedule.

65. The Minister may amend the Schedule by Order published in the *Gazette*.

Regulations.

66. (1) The Minister, with the approval of Cabinet, may make regulations not inconsistent with this Act, for giving effect to the provisions of this Act.

(2) Without limiting the generality of subsection (1), regulations may provide for the following matters:

- (a) the form of any application, notice, certificate and other document required for the purposes of this Act and the manner for making such application;
- (b) any fees to be paid for services provided under this Act;
- (c) the facilitation of domestic investment in priority economic sectors;
- (d) the provision of incentives and support mechanisms to investors;
- (e) the requirements for the invest and stay incentive;
- (f) the management and administration of the fund established under section 59;
- (g) qualifications, general requirements and procedures for residence by investment;
- (h) requirements for an investment in land or enterprise;

- (i) requirements for a direct monetary contribution;
- (j) the registration of anything required or authorised to be registered;
- (k) the administration and taking of oaths of allegiance, the time within which such oaths shall be taken and for the registration of such oaths;
- (l) the giving of any notice required or authorised to be given under this Act;
- (m) the issuing of a certificate of residence to any person registered as a resident;
- (n) the cancellation of the registration of persons whose residence has been revoked;
- (o) the imposition and recovery of fees relating to any application made in respect of any registration or the grant of any certificate, or the taking of any oath of allegiance, and in respect of supplying a certified copy of any notice, certificate, order, declaration or entry given, granted or made and for the application of such fees;
- (p) the nature of a qualifying investment;
- (q) the marketing and promotion of the Residence by Investment Programme;
- (r) anything that is required to be prescribed by this Act.

(3) A regulation made under this section may prescribe penalties not exceeding a fine of ten thousand dollars or imprisonment for a period not exceeding six months, or both, for any contravention of or failure to comply with such regulation.

67. (1) The following Acts are repealed:

- (a) the Pioneer Services and Enterprises Act;
- (b) the Hotel Aid Act;
- (c) the Encouragement of Industries Act.

Repeal and savings.

Cap. 297

Cap. 290

Cap. 287

- (2) Notwithstanding the repeals under subsection (1),
- (a) all subsidiary legislation made under the repealed Acts and in force immediately prior to the coming into operation of this Act shall, in so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act;
 - (b) anything done under a provision of the repealed Acts shall continue to be of effect until its expiry;
 - (c) anything done under a provision of the repealed Acts, and that could have been done under this Act is deemed to have been done under this Act.

SCHEDULE

[Section 5(5)]

TYPES OF INVESTMENT INCENTIVES AVAILABLE

A. Types of Investment Incentives Available

Investment incentives are public aid (subsidies) offered to investors in the following areas, based on their performance and the benefit to the economy of the Territory:

1. Residency - eligibility to apply for residency in the Territory under approved terms of investments.
2. Customs Duty Exemption/Reduction of up to 70% on building material, machinery and equipment utilised within the scope of the investment project for an established period.
3. Tax Reduction of various taxes including
 - (a) land and property tax;
 - (b) payroll tax;
 - (c) other tax.
4. Invest and Stay incentive for eligible foreign investors who desire to invest in an approved business which is not in existence in the Virgin Islands.

B. Projects eligible for Investment Incentives

1. Investment incentives are available for investment projects with such prescribed minimum investment as may be determined by the Cabinet, for the purposes of,
 - (a) constructing or expanding facilities for investment operation;
 - (b) building or expanding physical and technological infrastructure; or
 - (c) starting or expanding the activities for strategic services as determined by the Government of the Territory.
2. The following long-term assets shall be considered as eligible costs for the purpose of investment incentives:
 - (a) land acquisition (transfer fees and taxes);

- (b) buildings acquisition (transfer fees and taxes);
- (c) building material acquisition (import and transaction fees);
- (d) technology equipment and machinery acquisition (import and transaction fees);
- (e) intangible assets, including licences and patents.

3. All production and technology equipment which is to be included in the eligible costs must be new (never depreciated), acquired under market conditions and manufactured not more than two years prior to the start of its operation, and must be utilised for the purpose of the investment project.

C. Areas for Investment Incentives

Investors (legal entity and sole trader) with its registered or licenced office in the Territory can be a recipient of investment incentives for the following areas:

- (a) Tourism, Research and Development
 - (i) hotels and resorts;
 - (ii) marinas and mega yacht services and facilities;
 - (iii) health and medical tourism;
 - (iv) sports and leisure tourism; and
 - (v) cultural tourism;
- (b) Professional and Financial Services;
- (c) Business Process Outsourcing;
- (d) Fisheries Research and Development
 - (i) deep sea fishing;
 - (ii) processing;
 - (iii) packaging; and
 - (iv) aquaculture;

- (e) Environmental Research and Development, Alternative Energy Research and Development;
- (f) Manufacturing and Production;
- (g) Agriculture Research and Development; and
- (h) International Air and Sea Transport.

Passed by the House of Assembly this 23rd day of August, 2021.

(Sgd.) Julian Willock,
Speaker.

(Sgd.) Phyllis Evans,
Clerk of the House of Assembly.