

No. 42 of 2021

VIRGIN ISLANDS

**BENEFICIAL OWNERSHIP SECURE SEARCH SYSTEM
(AMENDMENT) (NO. 2) ACT, 2021**

ARRANGEMENT OF SECTIONS

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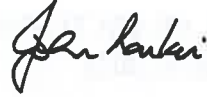
**Beneficial Ownership Secure Search System
(Amendment) (No. 2) Act, 2021**

**Virgin
Islands**

I Assent

Governor.

31 December



, 2021



VIRGIN ISLANDS

No. 42 of 2021

An Act to amend the Beneficial Ownership Secure Search System Act, (Revised Edition 2020).

[Gazetted , 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement.

1. (1) This Act may be cited as the Beneficial Ownership Secure Search System (Amendment) (No. 2) Act, 2021.

(2) This Act shall come into force on the 1st January, 2022.

Application.

2. This Act shall be applicable to those financial periods beginning on or after 1st January, 2022.

Section 2 amended.

3. The Beneficial Ownership Secure Search System Act, (Revised Edition 2020) (hereinafter referred to as the principal Act) is amended in section 2 by deleting the definition of “beneficial ownership information” and replacing it with the following:

““beneficial ownership information” means the prescribed information outlined in section 10(3)(a) to (d) and (g) other than that prescribed information outlined in section 10(3)(a)(vii), (viii), (ix) and (x), in so far as the prescribed information outlined in sections 10(3)(a) (i) to (vi), (xi) and 10(3)(g) shall also be economic substance information;”

Section 6 amended.

4. Section 6 of the principal Act is amended by deleting the words “corporate or legal entity” and replacing it with the words “corporate and legal entity”.

5. Section 7 of the principal Act is amended in subsection (1) by deleting the words “section 10(3)(b)” where it first occurs and replacing it with the words, “section 10(3)(a)(ix) and (x), 10(3)(b) and 10(3)(e) and (f)”. Section 7 amended.

6. Section 9 of the principal Act is amended

Section 9 amended.

(a) in subsection (2)(c) by deleting the words “sections 10(3)(e) and (f)” and replacing them with the words “section 10(3)(e), (f) and (g)”;

(b) in subsection (6) by deleting the words “corporate or legal entity” and replacing it with the words “corporate and legal entity”; and

(c) by deleting subsection (6A) and replacing it with the following:

“(6A) A corporate and legal entity shall notify the registered agent of the economic substance information within a period following the end of the financial period to be fixed by regulations, and shall notify the registered agent of the beneficial ownership information within 15 days of identifying those matters, for those limited partnerships without legal personality, the beneficial ownership information shall be reported within 15 days of identifying those matters following the 1st January, 2022.”.

7. Section 10 of the principal Act is amended by deleting subsections (3) and (3A) and replacing it with the following:

Section 10 amended.

“(3) The prescribed information with respect to each corporate and legal entity is

(a) the particulars of each corporate and legal entity including

(i) the name, including alternative names;

(ii) the incorporation number or its equivalent;

(iii) date of incorporation;

(iv) status;

- (v) registered address;
 - (vi) business address (if different from the registered address);
 - (vii) whether it carries on a relevant activity;
 - (viii) any relevant activities which it carries on;
 - (ix) the name of its ultimate parent;
 - (x) the name of its immediate parent; and
 - (xi) any other particulars as the Minister may by Order prescribe;
- (b) with respect to each beneficial owner of the corporate and legal entity
- (i) name;
 - (ii) residential address;
 - (iii) date of birth;
 - (iv) taxpayer identification number (“TIN”) or other identification reference number, if any; and
 - (v) nationality;
- (c) with respect to each registrable legal entity of the corporate and legal entity
- (i) details of the registrable legal entity as outlined in subsection (3)(a)(i) to (v);
 - (ii) jurisdiction in which the registrable legal entity is formed;
 - (iii) the basis or bases upon which the legal entity is designated as a registrable legal entity;

- (iv) where the registrable legal entity is a foreign regulated person, the name of the jurisdiction of regulation and the name of the foreign regulator; or
 - (v) where the registrable legal entity is a sovereign state or a wholly owned subsidiary of a sovereign state, the name of that sovereign state and (if applicable) wholly owned subsidiary;
- (d) with respect to an exempt person
 - (i) the details of the exempt person as outlined in subsection (3)(a); and
 - (ii) the basis or bases upon which the exempt person is designated as an exempt person;
- (e) with respect to the immediate parent (if any) of any corporate and legal entity
 - (i) details of the immediate parent as outlined in subsection (3)(a)(i) and (ii);
 - (ii) taxpayer identification number (“TIN”) or other identification reference number of the immediate parent;
 - (iii) jurisdiction in which the immediate parent is formed;
- (f) with respect to the ultimate parent (if any) of any corporate and legal entity
 - (i) details of the ultimate parent as outlined in subsection (3)(a)(i) and (ii);
 - (ii) taxpayer identification number (“TIN”) or other identification

- reference number of the ultimate parent;
- (iii) jurisdiction in which the ultimate parent is formed;
- (g) with respect to any corporate and legal entity which is registered on a recognised exchange, details of the recognised exchange listing;
- (h) with respect to any corporate and legal entity which carries on a relevant activity and claims to be outside the scope of the economic substance requirements by reason of being a non-resident company or a non-resident limited partnership,
 - (i) the jurisdiction in which it is tax resident;
 - (ii) taxpayer identification number (“TIN”) or other identification reference number;
 - (iii) name of MNE group, if different; and
 - (iv) evidence to support the tax residence;
- (i) with respect to any corporate and legal entity which carries on a relevant activity, and which does not claim to be outside of the scope of the economic substance requirements by reason of being a non-resident company or a non-resident limited partnership, in relation to each such activity which it carries on during a financial period, and in respect of each financial period
 - (i) taxpayer identification number (“TIN”), if any;
 - (ii) type of mobile income;
 - (iii) amount and type of gross income in relation to the relevant activity;

- (iv) the total amount of expenditure incurred in relation to the relevant activity generally;
- (v) the total amount of expenditure incurred in relation to the relevant activity in the Virgin Islands;
- (vi) amount and type of assets and premises held in the course of carrying out the relevant activity;
- (vii) net book values of tangible assets held in the course of carrying out the relevant activity;
- (viii) the total number of employees of the corporate and legal entity;
- (ix) the total number of employees engaged in the relevant activity generally;
- (x) the number of employees engaged in the relevant activity within the Virgin Islands;
- (xi) details of the employees engaged in the relevant activity including
 - a. name; and
 - b. whether the employee is full time or part time; and
 - c. qualification; or
 - d. years of relevant experience;
- (xii) the core income generating activity in relation to each relevant activity being conducted;
- (xiii) the address of any premises within the Virgin Islands which is used in connection with the relevant activity;

- (xiv) details of the persons responsible for the direction and management of the relevant activity, together with their relationship to the corporate and legal entity and whether they are resident in the Virgin Islands;
- (xv) details of the board meetings held by the corporate and legal entity including
 - a. total number of board meetings held generally;
 - b. total number of board meetings held in the Virgin Islands;
 - c. the quorum for board meetings;
 - d. whether the meetings and decisions were minuted and kept in the Virgin Islands;
 - e. whether the quorum of directors was physically present in the Virgin Islands;
 - f. details of the directors of the corporate and legal entity including
 - i. name;
 - ii. qualifications;
 - iii. years of relevant experience; and
 - iv. whether they are physically present in the Virgin Islands;

- (j) with respect to the corporate and legal entity which carries on intellectual property business, and which does not claim to be outside of the scope of the economic substance requirements by reason of being a non-resident company or a non-resident limited partnership, in addition to the particulars supplied under section 10(3)(i), in relation to that activity
 - (i) the nature of any equipment located within the Virgin Islands which is used in connection with the relevant activity;
 - (ii) whether or not the corporate and legal entity is a high risk IP legal entity as defined under section 2 of the Economic Substance (Companies and Limited Partnerships) Act, (Revised Edition 2020);
 - (iii) whether the corporate and legal entity wishes to contest the rebuttable presumption introduced by section 9(2)(a) or, as the case may be by section 9(2)(b) of the Economic Substance (Companies and Limited Partnerships) Act, (Revised Edition 2020);
 - (iv) if the corporate and legal entity wishes to contest the rebuttable presumption introduced by section 9(2)(a) of the Economic Substance (Companies and Limited Partnerships) Act, (Revised Edition 2020), it must provide the following information:
 - a. the relevant tangible asset which the corporate and legal entity holds;

- b. explanation of how that intangible asset is being used to generate income;
 - c. identify the decisions for which each employee is responsible for in respect of the generation of income from the intangible asset;
 - d. the nature and history of the strategic decisions (if any) taken by the entity in the Virgin Islands;
 - e. the nature and history of the trading activities (if any) carried out in the Virgin Islands by which the intangible asset is exploited for the purpose of generating income from third parties;
- (v) if the corporate and legal entity wishes to contest the rebuttable presumption introduced by section 9(2)(b) of the Economic Substance (Companies and Limited Partnerships) Act, (Revised Edition 2020), it must provide the following information
- a. identify the relevant intellectual property asset which it holds;
 - b. provide detailed business plans which explain the commercial rationale of holding the intellectual property assets in the Virgin Islands;
 - c. identify the decisions for which each employee is responsible for in respect of

the generation of income from the intangible asset; and

- d. provide concrete evidence that decision-making is taking place within the Virgin Islands, including but not limited to, minutes of meetings which have taken place in the Virgin Islands;

(k) with respect to the corporate and legal entity which carries on holding business, and which does not claim to be outside of the scope of the economic substance requirements by reason of being a non-resident company or a non-resident limited partnership, the prescribed information in subsection (3)(i) shall be limited to subparagraphs (i) to (viii), and

- (i) whether the activities carried out by the corporate and legal entity are active or passive;

- (ii) where the activities of the corporate and legal entity are active

- a. details of qualified employees engaged in the relevant activity including

- i. name; and

- ii. whether the employee is full time or part time; and

- iii. qualifications; or

- iv. years of relevant experience.

- b. details of the appropriate premises;

(iii) where the activities of the corporate and legal entity are passive, a statement that the corporate and legal entity complies with its statutory obligations under the BVI Business Companies Act, (Revised Edition 2020) or the Limited Partnership Act, (Revised Edition 2020);

(l) with respect to any corporate and legal entity which carries on a relevant activity and which does not claim to be outside of the scope of the economic substance requirements by reason of being a non-resident company or a non-resident limited partnership, but for which core income-generating activity is carried out by another entity, the name of the entity which carries out that activity on its behalf, together with the details of the resources deployed by that entity in carrying out the activity on its behalf.

(3A) Economic substance information shall be entered by the registered agent on the RA database by reference to each financial period of the corporate and legal entity on a basis and within a time period to be prescribed by regulations.”

Section 17 amended.

8. Section 17 of the principal Act is amended in subsection (1)(d) by removing the word “and” directly following the full stop.

Schedule 1 amended.

9. Schedule 1 of the principal Act is amended by renumbering the second paragraph 8 to paragraph 9.


Schedule 4 amended.

10. Schedule 4 of the principal Act is amended as follows:

i. in section 2(b) by deleting the occurrences of the words “10(3)(i)(ii)” and replacing them with the words “10(3)(j)(iii)”; and

ii. in subsection section 2(d) by deleting the word “direct”.

Passed by the House of Assembly this 20th day of December, 2021.



Julian Willock
Speaker.



Phyllis Evans
Clerk of the House of Assembly.

LEGAL REPORT

The purpose of this Act is to amend the Beneficial Ownership Secure Search System Act, (Revised Edition 2020).

Section 1 provides for the short title and commencement of the Act.

Section 2 provides for the application of the Act.

Section 3 amends section 2 of the principal Act by widening the definition for “beneficial ownership information” to include information relating to economic substance.

Section 4 amends section 6 of the principal Act by deleting the words “corporate or legal entity” and replacing it with the words “corporate and legal entity”.

Section 5 amends section 7 of the principal Act by deleting the words “section 10(3)(b)” where it first occurs and replacing it with the words, “section 10(3)(a)(ix) and (x), 10(3)(b) and 10(3)(e) and (f)”.

Section 6 amends section 9 of the principal Act by making grammatical corrections to the section.

Section 7 amends section 10 of the principal Act by repealing and replacing subsections (3) and (3A) to broaden the duties to maintain a RA database to include the particulars of each corporate and legal entity such as the business address, if different from the registered address, the name of its ultimate parent, the name of its immediate parent, the taxpayer identification number (“TIN”) or other identification reference number. It also makes provisions to include immediate parent and ultimate parent (if any) of any corporate and legal entity amongst other things.

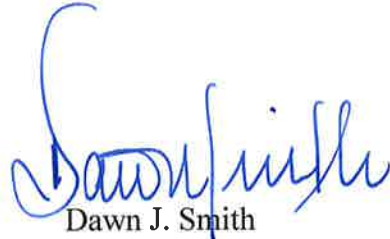
Section 8 amends section 17 of the principal Act by making a grammatical correction to the section.

Section 9 amends Schedule 1 of the principal Act by renumbering the second paragraph 8 to paragraph 9.

Section 10 amends Schedule 4 of the principal Act by making grammatical corrections to the Schedule.

This Act was introduced in the House of Assembly on the 15th day of December, 2021 taken through its remaining stages and passed on the 20th day of December, 2021.

In my opinion, His Excellency the Governor may properly assent to this Act in the name and on behalf of Her Majesty.

A handwritten signature in blue ink, appearing to read "Dawn J. Smith". The signature is fluid and cursive, with the first name "Dawn" being the most prominent part.

Dawn J. Smith
Attorney General
29th December 2021

