



## VIRGIN ISLANDS

### UNOFFICIAL CONSOLIDATED VERSION OF THE INTERNATIONAL TAX AUTHORITY ACT REVISED EDITION 2020 (AS AMENDED)

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014, and updated with amendments by the International Tax Authority

(Act 7 of 2018, Act 3 of 2022, and 17 of 2023)

**Date consolidated: 20<sup>th</sup> April 2023**

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<sup>1</sup> **DISCLAIMER:** *This Consolidation of the International Tax Authority Act has been carried out by the International Tax Authority (“the Authority”) for the purpose of facilitating the work of the Authority. While other persons may choose to use and rely on the consolidated Act for their own purposes, the Authority does not accept any liability that may arise in relation to the consolidated Act and/ or use or reliance on the consolidated Act. Persons using and/or relying on the Act should consider taking such further steps (such as authenticating the consolidated Act against the relevant amendments) as may be necessary to satisfy themselves of the authenticity of the provisions they are relying on.*

**UNOFFICIAL CONSOLIDATED VERSION OF THE  
INTERNATIONAL TAX AUTHORITY ACT  
ARRANGEMENT OF SECTIONS**

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# INTERNATIONAL TAX AUTHORITY ACT

(Act 7 of 2018, Act 3 of 2022 and Act 17 of 2023)

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS THE INTERNATIONAL TAX AUTHORITY, THE FUNCTIONS AND POWERS OF THAT BODY, TO TRANSFER CERTAIN STATUTORY POWERS AND FUNCTIONS TO THE AUTHORITY AND TO PROVIDE FOR OTHER MATTERS CONNECTED THEREWITH.

## Commencement

[3 December 2018]

## Short title

1. This Act may be cited as the International Tax Authority Act.

## Interpretation

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

“Agreement” has the meaning assigned to it under section 2 of the Mutual Legal Assistance (Tax Matter) Act;

“Authority” means the International Tax Authority established under section 3(1);

“Board” means the Board of the Authority established under section 3(2); “Cabinet” means the Cabinet established under section 47(1) of the Virgin Islands Constitution Order, 2007, No. 1678;

“Chairperson” means the Chairperson of the Board assigned under section 3(2);

“Committee” means the Committee of the Authority established under section 3(4);

“Company” includes

(a) a company within the meaning of section 3(1) of the BVI Business Companies Act, Revised Edition 2020;

(b) a foreign company within the meaning of section 3(2) of the BVI Business Companies Act, Revised Edition 2020, which is registered under Part XI of that Act, but does not include a non-resident company;<sup>i</sup>

“Court” means the High Court;

“Director” means the Director of the Authority appointed under section 6;

“Financial Institution” means a custodial institution, a depository institution, an investment entity or a specified insurance company;<sup>ii</sup>

"Intermediary (promoter)" means a person who is responsible for the design, and marketing of Common Reporting Standards avoidance arrangements and opaque offshore structures as well as those persons that provide assistance or advise with respect to the design, marketing, implementation or organization of the arrangement or structure<sup>iii</sup>;

“local company” means any company or limited partnership who is resident for tax purposes in the Virgin Islands and receives a certificate of exclusion from the Authority under section 27;<sup>iv</sup>

“legal entity” means a company, a limited partnership, Financial Institution, multinational enterprise group, intermediary (promoter) or a reportable taxpayer;<sup>v</sup>

“Limited Partnership” includes

- (a) an existing limited partnership within the meaning of section 2 of the Limited Partnership Act, Revised Edition 2020;
- (b) a limited partnership within the meaning of section 2 of the Limited Partnership Act, Revised Edition 2020; and
- (c) a foreign limited partnership within the meaning of section 2 of the Limited Partnership Act, Revised Edition 2020, which is registered under Part VI of that Act<sup>vi</sup>;

“Minister” means the Minister to whom responsibility for the subject of this Act is assigned;

“Multinational Enterprise Group” means any group that

- (a) includes two or more enterprises the tax residence for which is in different jurisdictions or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction; and
- (b) is not an excluded Multinational Enterprise Group<sup>vii</sup>;

“mutual legal assistance legislation” means any legislation listed in Schedule 1, or statutory document made thereunder;

“regulations” means regulations made under section 26;

“Representative” has the meaning assigned to it under section 2 of the Mutual Legal Assistance (Tax Matters) Act;

“reportable taxpayer” means, in respect of a Common Reporting Standard avoidance arrangement, any actual or potential user of that arrangement and in respect of an opaque structure, a natural person whose identity as a beneficial owner cannot be accurately determined due to the opaque offshore structure<sup>viii</sup>;

“resident for tax purposes” means any company, entity or person who can demonstrate to the Authority that they have no tax liabilities arising outside of the Virgin Islands<sup>ix</sup>;

“request” means a request made under an Agreement by a requesting party to the Authority.

### **Establishment of the Authority and the Board**

**3. (1)** There is hereby established a body corporate to be known as the International Tax Authority, which shall have power to do all such things as are necessary or incidental to the performance of its functions and the provisions of section 21 of the Interpretation Act shall apply accordingly.

- (2) There shall be a Board of the Authority which shall comprise—
- (a) a Chairperson, who shall be the Financial Secretary;
  - (b) the Executive Director, International Business Regulation, who shall act as Chairperson in the absence of the Financial Secretary;
  - (c) the Attorney General;
  - (d) the Managing Director of the Financial Services Commission;
  - (e) the Director of the Financial Investigation Agency; and
  - (f) the Director of the International Tax Authority.<sup>x</sup>

(3) Schedule 2 shall have effect with respect to the meetings of the Board, the administration and proceedings of the Authority, the Director and otherwise in relation to the Authority.

### **Functions of the Authority and the Board**

4. (1) The functions of the Authority are—
- (a) to ensure that the Government of the Virgin Islands fulfills its obligations under an Agreement;
  - (b) to monitor the compliance of the Virgin Islands with international obligations in relation to cross border tax matters;
  - (c) to administer, supervise and monitor the compliance of persons, legal entities, legal and other arrangements in the Virgin Islands under this Act and any other mutual legal assistance legislation<sup>xi</sup>;
  - (d) subject to the provisions of this Act, to provide the Minister with periodic reports, advice, assistance and information in relation to any matters relating to information exchange in relation to tax matters as may be necessary;
  - (e) to develop appropriate legal, supervisory and monitoring mechanism for the effective and efficient administration of the Authority and the mutual legal assistance legislation;
  - (f) to maintain contact and develop relations with foreign competent authorities, international bodies and associations in relation to tax matters and other international associations or groups relevant to its functions and to provide assistance to foreign competent authorities in accordance with this Act or as may be provided in any other mutual legal assistance legislation;
  - (g) to monitor the effectiveness of mutual legal assistance legislation in providing for the supervision and monitoring of persons, legal<sup>xii</sup> entities, legal and other arrangements in the Virgin Islands to the internationally accepted standards;
  - (h) to make recommendations to the Minister on such amendments or revisions to the mutual legal assistance legislation or such new legislation as the Authority considers necessary or appropriate to ensure compliance with the international standards in relation to tax matters;
  - (i) to develop, with such persons as the Authority may determine for the purposes of maintaining compliance and understanding in relation to cross border tax matters, a system of continuing education for persons in the Virgin Islands and towards this end to develop such curriculum as it considers appropriate;

- (j) to adopt such measures as may appropriately inform the general public of its functions and on matters relating to or affecting cross border tax matters or mutual legal assistance legislation;
- (k) to issue such advisories to the general public as it considers appropriate;
- (l) to monitor, in the public interest, promotional advertisements relating to any cross-border tax matters or with respect to any mutual legal assistance legislation and give such advice relating to accuracy, fairness and compliance with established laws and policies;
- (m) to enter into memoranda of understanding and competent authority agreements with other competent authorities within and outside of the Territory with the consent of the Minister;
- (n) to perform such other functions as may be assigned to it under this Act or under any other enactment.

(2) In performing its functions, the Authority may take into account any matter which it considers appropriate including international initiatives geared towards cross-border tax matters.

(3) The Authority shall not be liable for any loss or injury arising from the performance of its functions pursuant to subsection (1) or (2).

(4) The Board is the governing body of the Authority and shall be responsible for providing guidance on policy and for taking policy decisions in relation to the administration of the Authority and, in addition to any powers conferred by or under this Act, shall—

- (a) submit the budget estimates of the Authority to the Minister for approval, subject to section 14;
- (b) classify and identify senior management positions to which to appoint suitably qualified persons;
- (c) review and approve a staff pension plan;
- (d) through the Authority, inform the public, entities, legal or other arrangements of their obligations under measures that have been or might be taken in relation to tax matters and other related matters concerning international cooperation;
- (e) consider and approve such other matters which in the opinion of the Director requires the input or approval of the Board.

### **General powers of disclosure and related restrictions**

**4A.** The Authority may, for the purpose of ensuring the discharging of its functions, request any person or legal entity to furnish the Authority with such information as may be specified, in such form as the Authority may require.

### **Recovery of costs**

**4B.** Where assistance to a foreign competent authority is provided in accordance with the provisions of this Act or pursuant to the provisions of any mutual legal assistance legislation which makes no provision as to costs, the resulting extraordinary cost of that assistance shall be borne by the foreign competent authority requesting the assistance in a similar manner to a claim for costs submitted to the court.

## **Power of Authority to request information and documents**

**4C.** (1) Without prejudice to the generality of section 4A, where it is required for the purpose of

- (a) discharging its functions;
- (b) ensuring compliance with any mutual legal assistance legislation; or
- (c) ensuring compliance with a request from a competent authority acting pursuant to an enactment,

the Authority may, by notice in writing given to a person specified in subsection (2), require such person

- (i) to provide specified information or information of a specified nature or description; or
- (ii) to produce specified documents or documents of a specified nature or description.

(2) A notice under subsection (1)

- (a) may be issued to
  - (i) a legal entity or a person connected with that legal entity;
  - (ii) any person reasonably believed to be in the possession or control of the information or documents to which the notice relates; and
- (b) shall specify the place where and the period within which the information or document is to be provided or produced; and
- (c) may require that the information is to be provided to, or the documents are to be produced to, such person as may be specified in the notice.

(3) The Authority may require any information provided pursuant to this section

- (a) to be provided in such form as the Authority may require; and
- (b) to be verified or authenticated in such manner as it may reasonably require.

(4) The Authority may take copies or extracts of any document produced pursuant to this section.

(5) Where a person claims a lien on a document, the production of the document pursuant to this section is without prejudice to his or her lien.

## **Authority may apply for a search warrant**

**4D** (1) Where

- (a) a person who is issued a notice under section 4C, fails to comply or only partly complies with such notice;
- (b) the Authority is of the opinion that if a notice is issued to a person under section 4C it would not be complied with or the documents or information to which the notice relates may be removed, tampered with or destroyed; or
- (c) the Authority is of the opinion that
  - (i) an offence under a mutual legal assistance legislation has been or is being committed, or may be committed unless swift action is taken to prevent the commission of the offence;

(ii) there are documents, or there is information, on the premises of a person referred to in section 4C (2) which may reveal the commission of an offence; and

(iii) if a notice under section 4C is issued it would not be complied with or the documents or information to which the notice relates may be removed, tampered with or destroyed,

the Authority may, on oath sworn to on its behalf by an officer of the Authority, apply to a Magistrate for a search warrant.

(2) On receipt of an application under subsection (1), the Magistrate may authorize a named representative of the Authority, together with a police officer and any other person named in the warrant

(a) to enter the premises specified in the warrant at any time within one month from the date of the warrant;

(b) to search the premises and take possession of any documents or information appearing to be documents or information of a type in respect of which the warrant was issued or to take, in relation to such documents or information, any other steps which appear to be necessary for preserving or preventing interference with them;

(c) to take copies of, or extracts from, any documents or information appearing to be documents or information of a type in respect of which the warrant was issued;

(d) to require any person on the premises to provide an explanation of any document or information appearing to be documents or information of a type of which the warrant was issued or to state where such documents or information may be found; and

(e) to use such force as may be reasonably necessary to execute the warrant.

(3) Unless the court, on the application of the Authority, otherwise orders, any document of which possession is taken under this section may be retained

(a) for a period of three months; or

(b) if within that period proceedings for a criminal offence, to which the document is relevant, are commenced against any person, until the conclusion of those proceedings.

(4) For the purposes of this section, "premises" includes a vehicle, a vessel or an aircraft.

### **Examination under oath before a Magistrate**

**4E.** (1) Where the Authority considers it necessary to examine a person on oath, the Authority may apply to a Magistrate to have that person examined before the Magistrate and to have the results of that examination transmitted to the Authority.

(2) Subject to subsections (3) and (4), on an application under subsection (1), the Magistrate may order the examination of a person under oath on such terms and conditions as he or she considers fit.

(3) Where the Magistrate orders the examination of a person under subsection (2), that person may choose to be represented by a legal practitioner, and the proceedings of the examination shall be held in camera.



(4) An application to a Magistrate under subsection (1) shall be processed by the Magistrate within seven days of the application and the results of the examination shall be transmitted to the Authority within a reasonable period, not exceeding fourteen days, from the date of the examination.

### **Examination under oath by the Authority**

**4F.** (1) Where the Authority on reasonable grounds believes that a person (referred to in this section as "the examinee") can provide information that is required under section 4C(1) the Authority may, by notice in writing, require the examinee to attend before a specified officer of the Authority (referred to in this section as 'the examiner') to be examined under oath.

(2) A notice under subsection (1) shall state

- (a) the general nature of the matters on which the examinee is to be examined;
- (b) the date, time and place of the examination; and
- (c) the entitlement of the examinee to be represented by a legal practitioner in accordance with subsection (5).

(3) Any change in the matters required to be stated in the notice under subsection (2) shall be confirmed by the Authority to the examinee in writing.

(4) The examiner is entitled to administer an oath to the examinee for the purposes of this section, notwithstanding that the examiner may not otherwise be entitled to administer an oath.

(5) An examinee may be represented at the examination by a legal practitioner of his or her choice who may, at such times as the examiner determines

- (a) address the examiner; and
- (b) examine the examinee on any matters on which the examiner has examined the examinee.

(6) Subject to subsection (7), an examination under this section shall be held in camera.

(7) The examiner may in his or her discretion permit to be present at the examination

- (a) any officer or employee of the Authority and any other person that, in the opinion of the examiner, is essential to the examination; and
- (b) any person whom the examinee requests to be present.

(8) The examiner shall cause a written record to be made of the examination and shall, within a reasonable period following the examination, provide a written copy of the record to the examinee, subject to such conditions (including a condition as to disclosure of the record or any part thereof or information relating thereto) as the examiner may impose.

(9) A person commits an offence if

- (a) having received a notice under subsection (1), he or she fails or refuses to submit to examination in accordance with the notice;
- (b) as an examinee, he or she fails to answer a question properly put to him or her by the examiner; or
- (c) having been issued with a record of an examination pursuant to subsection (8), he or she fails to comply with any condition imposed by an examiner.

(10) A person who commits an offence under subsection (9) is liable on summary conviction to a fine not exceeding five thousand dollars.

(11) The operation of this section shall not be construed to be contingent on the Authority first complying with section 4C(1).

### **Duty to cooperate**

**4G.** (1) Subject to the provisions of this Act, the Authority shall take such steps as it considers appropriate to co-operate with

- (a) foreign competent authorities; or
  - (b) a competent authority acting pursuant to an enactment.
- (2) Co-operation may include
- (a) the sharing of documents and information which the Authority is not prevented by this Act or any other enactment from disclosing;
  - (b) making requests for assistance to foreign competent authorities; and
  - (c) making application for the examination of a person by a Magistrate under section 4E or requiring a person to be examined under section 4F.

### **Provision of assistance to foreign competent authorities**

**4H.** (1) Subject to subsection (2), the Authority may, on the written request of a foreign competent authority and subject to such conditions as it considers appropriate

- (a) exercise the power conferred on it by section 4C;
- (b) appoint one or more competent persons as examiners to investigate any matter;
- (c) make an application for the examination of a person under section 4E or require a person to be examined under section 4F; or
- (d) disclose information, or provide documentation, to the foreign competent authority, whether such information or documentation is already in the Authority's possession or whether it is obtained pursuant to the exercise of a power under paragraph (a), (b) or (c).

(2) The Authority shall not exercise the power conferred on it by subsection (1) unless it is of the opinion that the information or documentation to which the request relates, or the investigation is sought, is reasonably required by the foreign competent authority for the purposes of its regulatory functions.

(3) Where the Authority considers it appropriate in any case to do so, it may, notwithstanding anything to the contrary contained in this Act, provide a foreign competent authority with information in its control or possession, whether or not obtained pursuant to the exercise of any power under this Act, although the information has not been specifically requested by the foreign competent authority.

(4) Section 4K (2) to (5) apply to an examiner appointed under subsection (1)(b).

(5) In deciding whether or not to exercise the powers conferred on it by subsection (1), the Authority may take into account, in particular

- (a) whether corresponding assistance would be given to the Authority in the country or territory of the foreign competent authority concerned;
- (b) the nature and seriousness of the matter to which the request for assistance

relates, the importance of the assistance to be provided in the Virgin Islands and whether the assistance can be obtained by other means;

- (c) the relevance of the information or documentation to the enquiries to which the request relates; and
- (d) whether it is otherwise appropriate in the public interest to provide the assistance sought.

(6) For the purposes of subsection (5)(a), the Authority may require the foreign competent authority making the request to give a written undertaking, in such form as the Authority may require, to provide corresponding assistance to the Authority.

(7) If a foreign competent authority fails to comply with a requirement of the Authority made under subsection (5), the Authority may refuse to provide the assistance sought by the foreign competent authority.

(8) Without limiting the discretion of the Authority under this section, the Authority may decide that it will not, on the request of a foreign competent authority, exercise its powers under this section unless

- (a) the foreign competent authority undertakes to make such contribution towards the cost of exercising its powers as the Authority considers appropriate;
- (b) it is satisfied that the foreign competent authority is subject to adequate legal restrictions on further disclosure of the information and documents and that it will not, without the written permission of the Authority obtained at the time of the request or thereafter
  - (i) disclose information or documents provided to it to any person other than an officer or employee of the foreign competent authority engaged in the exercise of its supervisory functions; or
  - (ii) take any action on information or documents provided to it; and
- (c) it has received satisfactory assurances from the foreign competent authority that any information provided to it will not be used in any criminal proceedings against the person furnishing it, other than proceedings for an offence of perjury or any equivalent offence.

### **Compliance function**

**4I.** (1) A legal entity shall establish and maintain adequate systems and controls for ensuring its compliance with the requirements of, and its obligations under

- (a) this Act and any mutual legal assistance legislation;
- (b) any Guidance or Rules issued by the Authority, that applies to the legal entity;
- (c) any directive issued by the Authority that apply to a legal entity.

(2) [DELETED]<sup>xiii</sup>

### **Compliance inspections**

**4J.** (1) The Authority may, for a purpose or purposes specified in subsection (2)

- (a) inspect the premises and business, whether in or outside the Territory, including the procedures, systems and controls, of a legal entity;
- (b) inspect the assets, including cash, belonging to or in the possession or control

of a legal entity;

- (c) examine and make copies of documents belonging to or in the possession or control of a legal entity that, in the opinion of the Authority, relate to the carrying on of services or business by the legal entity; and
- (d) seek information and explanations from the officers, employees, agents and representatives of a legal entity, whether verbally or in writing, and whether in preparation for, during or after a compliance inspection.

(2) A compliance inspection may be undertaken for the purpose of the supervision of legal entities, including monitoring and assessing a legal entity's compliance with

- (a) this Act and any mutual legal assistance legislation;
- (b) any Guideline or Rules issued by the Authority, that applies to the legal entity; and
- (c) any directives issued by the Authority that apply to the legal entity.

(3) Subject to subsection (4), the Authority shall give reasonable notice to a relevant person of its intention to exercise its powers under subsection (2).

(4) Where it appears to the Authority that the circumstances so justify, the Authority may exercise its powers under subsection (1) without giving notice to the legal entity.

(5) Subject to subsection (6), the Authority may, upon the request of a foreign competent authority, permit the authority to take part in a compliance inspection undertaken by the Authority under this section.

(6) The Authority shall not permit a foreign competent authority to take part in a compliance inspection under subsection (5) unless it is of the opinion that the participation of the foreign competent authority is reasonably required

- (a) for the effective supervision of a legal entity; or
- (b) for the purposes of the regulatory functions of the foreign competent authority.

(7) In deciding whether to permit a foreign competent authority to take part in a compliance inspection under subsection (5), the Authority may take into account, in particular, whether the foreign competent authority is subject to adequate legal restrictions on further disclosure and, in particular, whether it is likely, without the written permission of the Authority

- (a) to disclose information obtained or documents examined or obtained during the compliance inspection to any person other than an officer or employee of the authority engaged in prudential supervision; or
- (b) to take any action on information obtained or documents examined or obtained during the compliance inspection.

(8) The Authority may, by Regulations, specify circumstances in which a legal entity may be required to contribute towards the costs of a compliance inspection, except that a legal entity shall not be required to contribute more than seventy-five per cent of the total costs of any compliance inspection.

(9) Where an inspection is conducted under this section, the Authority shall within a reasonable time, issue a compliance report, notifying any person or legal entity

- (a) of the findings of the Authority;

- (b) of the reasons for its findings;
- (c) of what actions the Authority considers should be taken by any person or legal entity to ensure compliance pursuant to subsection (2) and the date by which such actions need to have been taken; and
- (d) any other information which the Authority deems necessary.

### **Appointment of examiner**

**4K.** (1) The Authority may appoint one or more competent persons as examiners to conduct an investigation on its behalf where it appears to the Authority on reasonable grounds that there are, or may be, grounds for taking enforcement action against a legal entity.

(2) The matters investigated by an examiner appointed under subsection (1) may include one or more of the following:

- (a) the nature, conduct or state of the business of the person under investigation;
- (b) a particular aspect of the business of the person under investigation;
- (c) the ownership or control of the person under investigation; and
- (d) in the case of a legal entity, whether there are grounds for taking enforcement action against the legal entity.

(3) Subject to subsection (4), an examiner appointed under this section shall have the powers of the Authority under sections 4C, 4D, 4E and 4F.

(4) The Authority may give directions to the examiner concerning any one or more of the following:

- (a) the scope of the investigation;
- (b) the period for the conduct of the investigation; and
- (c) the manner in which the examiner shall report to him or her.

(5) An examiner appointed under subsection (1) may, if he or she considers it necessary for the purposes of his or her investigation, also investigate the business of any person who is, or at any relevant time has been

- (a) a member of the group of which the person under investigation is a part; or
- (b) a partnership of which the person under investigation is a member.

(6) Where a person appointed as an examiner under this section is not a member or officer of the Authority he or she shall, unless otherwise agreed between him and her and the Authority be remunerated on such terms as the Authority may determine.

(7) An examiner shall submit a report of his or her investigation to the Authority.

### **Enforcement action**

**4L.** (1) The Authority may take enforcement action against a legal entity if

- (a) in the opinion of the Authority, the legal entity
  - (i) has contravened or is in contravention of this Act or a mutual legal assistance

legislation;

- (ii) has failed to comply with a directive given to it by the Authority;
- (iii) has provided the Authority with any false, inaccurate or misleading information;

(b) in the opinion of the Authority

- (i) a legal entity has refused or failed to cooperate with the Authority on a compliance inspection conducted by the Authority under section 4J; or
- (ii) a legal entity has refused to take such actions as required to comply with the compliance report; or

(c) the legal entity fails to pay an administrative penalty imposed pursuant to regulations made under section 26(2) on or before the date on which the penalty is due to be paid.

(2) The Authority may take enforcement action against any person who

- (a) has contravened or is in contravention of this Act or a mutual legal assistance legislation;
- (b) fails to comply with a directive given to him or her by the Authority; or
- (c) fails to pay an administrative penalty imposed pursuant to regulations made under section 26(2) on or before the date on which the penalty is due to be paid.

(3) If the Authority is entitled to take enforcement action against a legal entity under subsection (1), it may exercise one or more of the following powers:

- (a) appoint an examiner to conduct an investigation under section 4K;
- (b) issue a directive under section 4M(1) and (2);
- (c) initiate such investigation as may be necessary to ensure compliance with this Act, any mutual legal assistance legislation or the Rules;
- (d) where the legal entity is a company, apply to the Court under section 162(1) or section 163(1) of the Insolvency Act, Revised Edition 2020 for the appointment of a liquidator in respect of the company;
- (e) issue a warning letter against the legal entity;
- (f) impose such administrative penalties on the legal entity as may be provided for in regulations made under section 26(2); or
- (g) require the legal entity to pay such costs and expenses as are incurred by the Authority in the taking of enforcement action against the legal entity as the Authority thinks fit.

(4) If the Authority is entitled to take enforcement action against any person under subsection (2), it may

- (a) issue a warning letter against the person;
- (b) appoint an examiner to conduct an investigation under section 4K as if the person were a legal entity, or initiate and conduct such other investigation as the Authority thinks fit;
- (c) issue a directive under section 4M(3);
- (d) impose such administrative penalty on the person as may be provided for in regulations made under section 26(2);

(e) require the person to pay for costs and expenses incurred by the Authority in the conduct of any investigation or the taking of enforcement action against the person as the Authority thinks fit.

(5) Where a power exercisable by the Authority under subsection (3) or (4) is also exercisable by it under a mutual legal assistance legislation, such power may be exercised either under this Act or under the mutual legal assistance legislation, but not both.

(6) The Authority's power under subsection (3)(g) and (4)(e) to require a legal entity to pay costs and expenses incurred by the Authority shall be construed to include the power to require payment of costs and expenses associated with any investigation against or in relation to the legal entity, including the appointment of an examiner, irrespective of whether or not enforcement action has been taken against the legal entity.

(7) Where the Authority takes enforcement action against a legal entity or former legal entity, the Authority shall consider whether to provide the Commissioner with a report of any enforcements taken against the legal entity and any sanctions that the Authority may have imposed.

### **Power to issue directives**

**4M.** (1) Where the Authority is entitled to take enforcement against a legal entity, the Authority may issue a directive

(a) requiring the legal entity to take such other action as the Authority considers may be necessary to address any deficiencies identified during a compliance inspection.

(b) requiring the legal entity to take such actions as the Authority considered may be necessary to address any deficiencies identified during any other assessment or review conducted under this Act or any mutual legal assistance legislation.

(2) A directive issued under subsection (1) may include one or more of the matters set out in paragraphs (a) and (b).

(3) Where it appears to the Authority that a person is carrying on unauthorized tax matters, the Authority may issue a directive to that person requiring him or her to take such other action as the Authority considers may be necessary to protect his or her property, or property in his or her custody, possession or control, or to protect his or her customers or creditors or potential customers or creditors.

### **Approved forms**

**4N.** (1) The Authority may, by publication in such manner as may be specified in the regulations, approve forms for the purposes under the mutual legal assistance legislation.

(2) Where, pursuant to subsection (1), the Authority has published an approved form with respect to a document, the document shall

(a) be in the form of, and contain the information specified in, the approved form; and

(b) have attached to it such documents as may be specified in the approved form.<sup>xiv</sup>

### **Transfer of statutory functions, powers and duties to the Authority**

**5.** The functions, powers and duties that, prior to the coming into force of this Act, vested in, the Financial Secretary or any other officer by virtue of any mutual legal assistance legislation, Agreement or Arrangement signed or extended to the Virgin Islands that deals with exchange of information or the international standards in relation to

cross border tax matters shall, upon the coming into force of this Act, vest in the Authority.

### **Appointment and functions of Director**

6. (1) The Board shall, with the approval of the Minister, appoint a fit and proper person to be the Director on such terms and conditions as it considers appropriate.

(2) The Board may remove the Director from the office pursuant to the terms and conditions of his or her appointment and shall provide in writing the reason for the removal.

(3) The Director is an employee of the Authority and shall—

- (a) be responsible for the day-to-day administration and operation of the Authority and supervision of staff of the Authority;
- (b) subject to any general or special direction of the Board, execute the functions of the Authority outlined in section 4;
- (c) be responsible for identifying and classifying staff positions in the Authority, which are not designated senior management positions under section 4(4)(b) to which he or she shall, subject to the approval of the Board, appoint suitably qualified persons;
- (d) coordinate and ensure timely responses to and delivery of all requests for assistance emanating under an agreement or any mutual legal assistance legislation;
- (e) bring to the attention of the Board any matter that requires policy decision or guidance with regard to the functions of the Authority;
- (f) perform such other duties as may be assigned or delegated to him or her by the Board; and
- (g) ensure that the Virgin Islands is in compliance with its international obligations in relation to tax matters and other related matters concerning international cooperation for tax purposes.

(4) In discharging his or her functions, the Director shall use his or her best endeavors to ensure that—

- (a) the resources of the Authority are utilized economically and efficiently;
- (b) the internal financial and management controls of the Authority are adequate;
- (c) the Authority is operated in accordance with principles of good governance; and
- (d) the Authority fulfils its statutory obligations and properly discharges its functions.

### **Appointment of other staff**

7. (1) Subject to section 26 and without prejudice to the powers granted under sections 4(4)(b) and 6(1), the Board may appoint such officers, employees and agents as it considers necessary and proper for the administration, management and performance by the Authority of its functions under this Act.

(2) Appointments under this Act shall be on such terms as to remuneration, expenses, pensions and other conditions of service as the Board thinks fit.

(3) Subject to subsection (4), the Authority may establish and maintain such plans or make such other arrangements as it thinks fit for the payment of pensions and other



benefits in respect of its officers and employees.

(4) The Minister, with the approval of the Cabinet, may approve the establishment and maintenance of such plans or other arrangements.

### **Immunity of officers from suit**

8. No action shall lie against the Authority, the Director, officers or personnel of the Authority or any person acting under the direction of the Authority or the Director for anything done or omitted to be done in good faith in the discharge or purported discharge of any functions, duties or powers under this Act.

### **No criminal or civil liability for providing information**

9. (1) No proceeding for breach of banking or professional confidentiality may be instituted against any person or against any director or employee of an entity or other legal arrangement who in good faith transmits information or submits reports in accordance with the provisions of this Act or any mutual legal assistance legislation to the Authority.

(2) No civil or criminal action may be brought, nor any professional sanction taken against any person who, or against any director or employee of an entity or other legal arrangement that, in good faith transmits information to the Authority.

### **Confidentiality**

10. (1) Any person who obtains information in any form as a result of his or her connection with the Authority shall not disclose that information to any person except so far as it is required or permitted under this Act or any other enactment.

(2) Any person who communicates any information in breach of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year, or to both.

### **Duty to take oath**

11. (1) The members of the Board, the Director and the staff of the Authority shall, prior to assuming office with the Authority, subscribe to the Oath of Confidentiality set out in Schedule 3.

(2) The Oath of Confidentiality referred to in subsection (1) shall be taken before a Magistrate, Additional Magistrate, Registrar of the High Court or a Justice of the Peace.

(3) The Director shall keep a record of all Oaths of Confidentiality taken pursuant to this section.

### **Annual report**

12. (1) The Director shall prepare and submit to the Board on or before the 30th day of June in each year an annual report of the Authority during the previous year.

(2) The Chairperson shall forward a copy of every annual report to the Minister, who shall cause the report to be laid on the table of the House of Assembly before the end of the year immediately following the year to which the annual report relates.

## **Funds and resources**

- 13.** (1) The funds and resources of the Authority shall comprise—
- (a) fees and penalties (excluding penalties imposed by a court) payable under this Act and the mutual legal assistance legislation;
  - (b) such monies as may be appropriated by the House of Assembly for the purposes of the Authority;
  - (c) monies paid and property provided to the Authority by way of grants, fees, charges, rent, interest and other income derived from the investment of the Authority's funds;
  - (d) monies derived from the disposal of or dealing with real or personal property held by the Authority; and
  - (e) any property lawfully received or made available to the Authority.

(2) The Authority shall open and maintain with a reputable bank licensed and operating in the Territory and approved by the Minister, an account into which the funds and resources of the Authority shall be paid, and such account shall be for the exclusive use of the Authority.

(3) Where there is a surplus on the budget approved for the Authority's expenditure for any financial year, such surplus shall be paid into a reserve account to be established by the Authority, unless otherwise agreed upon with the Minister.

(4) The Authority may charge a fee in respect of costs incurred in the performance of its duties under this Act or the mutual legal assistance legislation or any agreement or arrangement signed by or extended to the Virgin Islands.

## **Annual budget**

**14.** The Board 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 Minister, estimates of the expected expenditure and expected income of the Authority.

## **Accounts and audit**

**15.** (1) The Authority shall keep proper accounts and other records in relation thereto and shall prepare in respect of each financial year a statement of accounts.

(2) The accounts of the Authority for each financial year shall be audited by the Auditor General or such other auditor as he or she may designate to perform the auditing functions.

(3) The financial year of the Authority shall be the period commencing on 1st January and ending on 31st December in each year.

(4) As soon as the accounts have been audited, the Authority shall submit a copy thereof to the Minister together with a copy of any report made by the Auditor General or other auditor.

(5) The Minister shall lay on the table of the House of Assembly before the 31st of December of the following year a copy of every such audited accounts, together with a copy of any report made by the Auditor General or such other auditor designated by the Auditor General.

### **Annual meeting between Cabinet and Board**

**16.** The Minister may require the Board to attend a meeting of the Cabinet to apprise the Cabinet of its operations.

### **Exemption from taxation, etc.**

**17.** The Authority is exempt from the payment of all taxes, levies and license fees on its income and operations and from the payment of all taxes, duties and rates on its property and documents.

### **Exemption from work permit requirement**

**18.** A person who is employed by the Authority, whether on a permanent or contractual basis, and who would be required to obtain a work permit pursuant to the Labour Code Act, is exempted from applying for and holding a work permit for the purpose of his or her employment with the Authority.

### **Secondment of public officers, members of the Financial Service Commission and members of the Financial Investigation Agency to the Authority**

**19. (1)** A public officer may, with his or her own consent and the approval of the Governor, be seconded to the Authority.

(2) A member of Financial Services Commission may, with his or her own consent and with the approval of the Managing Director, be seconded to the Authority.

(3) A member of the Financial Investigation Agency may, with his or her own consent and with the approval of the Director, be seconded to the Authority.

(4) A person who is seconded to the Authority shall draw the full pay of the post to which he or she is seconded and is eligible for any increment that is normally payable in that post.

(5) During the period that a person is seconded to the Authority, he or she shall be deemed to remain on—

- (a) the establishment of the Government department from which he or she is seconded, in the case of a public officer; or
- (b) the establishment of the Commission, in the case of a member of the Financial Services Commission; or
- (c) the establishment of the Agency, in the case of a member from the Financial Investigation Agency,

and he or she shall be eligible for promotion *in absentia* on the basis of the performance evaluation reports submitted under subsection (6).

(6) The Board shall cause the performance evaluation reports of a person who is seconded to the Authority to be forwarded to—

- (a) the Managing Director of the Financial Services Commission, in the case of a member of the Commission; or
- (b) the Director of the Financial Investigation Agency, in the case of a member of the Agency.

(7) The service of a person who is seconded to the Authority shall—

(a) in the case of a member of the Commission, count as service with the Financial Services Commission for the purposes of the Financial Services Commission Act; or

(b) in the case of a member from the Agency, count as service with the Financial Investigation Agency for the purposes of the Financial Investigation Agency Act.

(8) A person who is seconded to the Authority is eligible for leave applicable to the post to which he or she is seconded and while on such leave he or she shall be paid the pay of that post.

### **Authority to issue guidelines**

**20.** (1) The Authority may issue guidance and rules on how the requirements outlined in mutual legal assistance legislation may be met, including but not limited to guidance and rules on the interpretation and meaning of any expression used in this Act or in mutual legal assistance legislation or in any regulations made under this Act or mutual legal assistance legislation.

(2) Regard shall be had to any guidance or rules made under subsection (1) concerning the interpretation of any expression.

(3) The authority may revise the guidance or rules issued under subsection (1) from time to time and a reference to published guidance or rules includes a reference to revised rules.

(4) The guidance or rules issued under subsection (1) shall be published by the Authority in a manner which the competent authority considers will bring the guidance or rules to the attention of the public and to persons most likely to be affected by them.<sup>xv</sup>

### **Consultation of proposed guidelines**

**21.** [REPEALED]<sup>xvi</sup>

### **Authority to make guidelines available**

**22.** [REPEALED]<sup>xvii</sup>

### **Fees**

**23.** (1) Where fees are chargeable under this Act or any mutual legal assistance legislation, the Minister with the approval of the Cabinet may impose or amend such fees in the manner prescribed in this Act or in any other mutual legal assistance legislation.

(2) Any fee imposed or amended by the Minister pursuant to subsection (1) shall be subject to a negative resolution of the House of Assembly.

(3) Where the Authority prepares a manual or other documentation pursuant to the performance of its functions or for the purposes generally of ensuring the efficient administration of the purposes of this Act or any mutual legal assistance legislation, it may charge such fee for use of the manual or documentation as it may consider necessary to defray its costs.

(4) Any fee received pursuant to subsection (3) shall be paid into the Authority's reserve account.

### **Transitional provisions: Officers and employees**

24. (1) Subject to subsection (2), every officer or employee of the International Tax Authority unit shall, upon the coming into force of this Act, be deemed to be transferred from the service of the Government to the service of the Authority upon terms and conditions not less favourable in aggregate than those which were attached to the appointments held by such officers and employees under the Government.

(2) Every officer and employee of the International Tax Authority Unit who is deemed to have been transferred under subsection (1) shall, within six months of the coming into force of this Act, have the option of electing—

- (a) to continue in the service of the Authority, in which case such service shall be retrospective from the date of his or her transfer and he or she shall be entitled to such pension, gratuity and other allowances and rights, if any, as he or she would have received had he or she been retired from the service of the Government on the abolition of his or her office on the date of his or her transfer to the Authority;
- (b) to be transferred to another department of Government, subject to a suitable vacancy existing, with his or her service with the Authority counting as service with the Government in respect of his or her pension, gratuity and other allowances and rights, if any; or
- (c) to be deemed to have retired from the service of the Government on the abolition of his or her office on the date he or she ceases to be in the service of the Authority.

(3) Where any officer or employee referred to in this section fails to elect as provided under subsection (2), he or she shall be deemed to have elected under subsection (2)(a) and he or she shall be so treated accordingly.

(4) Nothing in this section shall be deemed to affect the right of the Authority—

- (a) to terminate the employment of an officer or employee transferred to the service of the Authority; or
- (b) to vary the rate of pay or conditions of service of an officer or employee, in the manner and to the extent that the Government could have done had he or she continued in the service of the Government.

(5) Where any officer or employee has elected to continue in the service of the Authority under subsection (2) or has been deemed to so continue under subsection (3), he or she shall not be entitled to be paid any pension, gratuity or other allowance that may have accrued to him or her whilst in the service of the Authority, until the time when he or she would have qualified for a pension, gratuity or other allowance under the Pensions Act had he or she continued in the service of the Government.

### **Power to amend the Schedules**

25. (1) The Minister with the approval of the Cabinet may, amend the Schedules by Order published in the *Gazette*.

(2) An order made under subsection (1) shall be subject to a negative resolution of the House of Assembly.

## Regulations

26. (1) The Minister with the approval of the Cabinet may, make such regulations as he or she considers necessary or expedient for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may in particular—

- (a) require financial and other institutions as may be prescribed to establish and maintain procedures relating to the keeping of records and the making of reports;
- (b) create criminal offences and penalties triable summarily for failing to comply with the regulations;
- (c) provide that in determining whether a person has complied with the regulations the trial court shall take account of any relevant guidelines issued by the Authority;
- (d) provide for the imposition by the Authority of administrative penalties on any person that contravenes a provision of this Act, any mutual legal assistance legislation or any Notice issued by the Authority;
- (e) prescribe all matters required or permitted by this Act to be prescribed.

(3) Any regulations made under subsection (1) shall be subject to a negative resolution of the House of Assembly.

## Exclusion of local Companies

27. (1) On application, a local company may be permitted to file directly with the competent authority

- (a) in the form as prescribed by the Authority;
- (b) within the prescribed time periods and frequency as may be required for the purposes of satisfying their obligations under any mutual legal assistance legislation,

and accompanied by the requisite supportive documents.

(2) Where the Authority accepts the application of the local company a certificate confirming their exclusion from the reporting obligations under any mutual legal assistance legislation shall be issued to the local company.<sup>xviii</sup>

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## SCHEDULE 1

(Section 2)

### MUTUAL LEGAL ASSISTANCE LEGISLATION

1. Mutual Legal Assistance (Tax Matters) Act.
2. Beneficial Ownership Secure Search System Act, (Revised Edition 2020).<sup>xix</sup>
3. Economic Substance (Companies and Limited Partnership) Act, Revised Edition 2020.<sup>xx</sup>

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**SCHEDULE 2**  
*(Section 3(3))*

**PROVISIONS RELATING TO THE MEETINGS OF THE BOARD, THE  
ADMINISTRATION AND PROCEEDINGS OF THE AUTHORITY AND THE  
DIRECTOR OF THE AUTHORITY**

**Meetings of the board**

1. (1) The Board shall meet at least once every quarter at such place and time as may be designated by the Chairperson.

(2) The Chairperson shall preside at meetings of the Board but where the Chairperson and the Executive Director of International Business Regulations are both absent members, present members may select one of their members to act as Chairperson.<sup>xxi</sup>

(3) The quorum of the Board shall be three.

(4) At any meeting for the conduct of its business, the Board shall take its decision by a majority vote of the members present.

(5) The Chairperson shall at any time convene a special meeting of the Board upon receipt of a request signed by at least three members calling upon him to do so, and such meeting shall be held not later than fourteen days after receipt of the request.

(6) No act or proceeding of the Board shall be invalid by reason only of the existence of a vacancy among its members or of any defect in the appointment of a member.

(7) Notwithstanding, anything contained in this paragraph, the Chairperson may, in any matter he or she considers exceptional, make arrangements for a decision of the Board to be taken on such matter through a process of consultation without the need for an actual meeting.

(8) Subject to the provisions of this Act, the Board shall establish its own rules of procedure for the purposes of the conduct of its meetings.

**Official seal of the Authority**

2. (1) The Authority shall have an official seal for the authentication of documents issued by the Authority and the application of the seal of the Authority shall be authenticated by the signature of the Chairperson or a person authorized to do so by the Board.

(2) The Board shall appoint a fit and proper person to be the Secretary to the Board who shall have custody of the Seal.

(3) A document purported to be executed under the seal of the Authority, or signed on its behalf, shall be received in evidence and, unless the contrary is proved, shall be taken to be so executed or signed.

### **Things required to be done**

3. Anything permitted or required to be done by the Authority under this Act may be done by any member of the Board or any employee of the Authority who is authorized for that purpose by the Authority either generally or specifically.

### **Ad hoc committees**

4. The Board may establish committees which may include persons who are not members of the Board.

### **Director not to hold other office etc.**

5. (1) The Director shall not, hold any other office or employment, without the prior approval of the Board.

(2) Subject to subparagraph (1), a person may not be appointed or remain Director who—

- (a) is a member of the House of Assembly;
- (b) is a public officer; or
- (c) is director, officer or employee of, or has a controlling interest in, any financial institution.

### **Deputy Director and Acting Director**

6. The Board may appoint a Deputy Director or any person eligible to be appointed as Director to act temporarily in the place of the Director whenever the Director is absent or is unable to act.

### **Resignation of Director**

7. The Director may by giving three months' notice in writing to the Chairperson resign his or her office.

### **Vacancy of office of Director**

8. If the Board is satisfied that the Director—

- (a) has become bankrupt or made arrangements with his or her creditors;
- (b) is incapacitated by physical or mental illness;
- (c) has been convicted of an offence and sentenced to a penalty of a fine or imprisonment; or
- (d) is otherwise unable or unfit to discharge the functions of Director, the Board may declare the office of Director vacant and shall notify that fact in such manner as the Board thinks fit, and thereupon that office shall become vacant.



**SCHEDULE 3**  
*(Section 11)*

**OATH OF CONFIDENTIALITY**

I, ..... , being a Board member / the Director / an officer / an employee / an agent / an adviser\* of the International Tax Authority solemnly swear / affirm\* that I shall keep confidential all information which comes to my knowledge in my capacity as a Board member / the Director / an officer / an employee / an agent / an adviser\* of the Authority and I shall not divulge such information except as authorized by and in accordance with law.

So help me God! (omit if affirming)

Sworn / Affirmed before me, a Magistrate / Additional Magistrate / Registrar of the High Court / Justice of the Peace\* this .....day of ..... ,..... .

\_\_\_\_\_  
(Name of person swearing / affirming)  
Registrar of the High Court/ Justice of the Peace)\*

\_\_\_\_\_  
(Magistrate / Additional Magistrate/  
Registrar of the High Court/ Justice of the Peace)\*

\*Delete as appropriate

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- <sup>i</sup> Inserted by the International Tax Authority (Amendment) Act, 2022 (No.3/2022)
  - <sup>ii</sup> Inserted by the International Tax Authority (Amendment) Act, 2022 (No. 3/2022)
  - <sup>iii</sup> Inserted by the International Tax Authority (Amendment) Act, 2022 (No. 3/2022)
  - <sup>iv</sup> Inserted by the International Tax Authority (Amendment) Act, 2023 (No. 17/2023)
  - <sup>v</sup> Inserted by the International Tax Authority (Amendment) Act, 2022 (No. 3/2022)
  - <sup>vi</sup> Inserted by the International Tax Authority (Amendment) Act, 2022 (No. 3/2022)
  - <sup>vii</sup> Inserted by the International Tax Authority (Amendment) Act 2022 (No. 3/2022)
  - <sup>viii</sup> Inserted by the International Tax Authority (Amendment) Act 2022 (No. 3/2022)
  - <sup>ix</sup> Inserted by the International Tax Authority (Amendment) Act 2023 (No. 17/ 2023)
  - <sup>x</sup> Substituted by the International Tax Authority (Amendment) Act 2023 (No. 17/2023)
  - <sup>xi</sup> Substituted by the International Tax Authority (Amendment) Act 2022 (No. 3/2022)
  - <sup>xii</sup> Inserted by the International Tax Authority (Amendment) Act 2022 (No.3/2022)
  - <sup>xiii</sup> Deleted by the International Tax Authority (Amendment) Act 2023 (No. 17/2023)
  - <sup>xiv</sup> Inserted by the International Tax Authority (Amendment) Act 2022 (No. 3/2022)
  - <sup>xv</sup> Repealed and replaced by the International Tax Authority (Amendment) Act 2023 (No. 17/ 2023)
  - <sup>xvi</sup> Repealed by the International Tax Authority (Amendment) Act 2023 (No.17/ 2023)
  - <sup>xvii</sup> Repealed by the International Tax Authority (Amendment) Act 2023 (No. 17/ 2023)
  - <sup>xviii</sup> Inserted by the International Tax Authority (Amendment) Act 2023 (No. 17 / 2023)
  - <sup>xix</sup> Inserted by the International Tax Authority (Amendment) Act 2022 (NO. 3/2022)
  - <sup>xx</sup> Inserted by the International Tax Authority (Amendment) Act, 2022 (No. 3/2022)
  - <sup>xxi</sup> Substituted by the International Tax Authority (Amendment) Act 2023 (No. 17/2023)