

No. of 2020

VIRGIN ISLANDS

VIRGIN ISLANDS INVESTMENT ACT, 2020

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
NATIONAL ECONOMIC INVESTMENT FUND**

30. National security.

**PART VIII
MISCELLANEOUS**

31. National Economic Investment Fund.
32. Offences
33. Penalties.
34. Opportunity for compliance with law.
35. Power to amend schedule.
36. Regulations.
37. Repeal and savings.

SCHEDULE

No. of 2020

Virgin Islands Investment Act, 2020

Virgin
Islands

I Assent

Governor
, 2020

VIRGIN ISLANDS

No. of 2020

A Bill for

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, reduce unemployment, 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; and to provide for incidental matters..

[Gazetted , 2020]

ENACTED by the Legislature of the Virgin Islands as follows:

PART I PRELIMINARY

1. (1) This Act shall be cited as the Virgin Islands Investment Act, 2020. Short title and commencement.

(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.

2. In this Act, unless the context otherwise indicates Interpretation.

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

UK SI 2007 No.
1678

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

- (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;

“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;

No. 9 of 2020

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

“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 Island 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;

“fund” means the National Economic Investment Fund established under section 30;

“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 immovable 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;

“Minister” means the Minister responsible for investment promotion;

“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” means the fund established under section 30;

“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.

(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. (1) 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 any 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

Performance agreements with investors.

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

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

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

(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.

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.

Economic sectors and business activities not reserved.

PART IV APPLICATION FOR INVESTMENT APPROVAL AND CONTROL OF INVESTMENTS

11. (1) A foreign investor shall not

Application for approval of investments.

(a) invest in the Territory; or

(b) acquire any licence, permit, authorisation or concession in the Territory,

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

Provisional approval of investments.

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

- (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 believer;
- (ii) the employment creation for believers;
- (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.

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. Time period for approval of investment.

16. (1) An investor in any sector which is above the threshold may not Change of ownership and control of investment.

- (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 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.

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

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

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

No. 5 of 2003

(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.

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. Expropriation

(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; and
- (g) the duration of the investment.

(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 belonger 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.

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.

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

(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).

Transfer of funds

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.

(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 and any affected person may seek any redress through the judicial process, or through a fair, non-discriminatory and good faith application of measures, to delay or prevent a transfer

- (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.

**PART VI
DISPUTE SETTLEMENT**

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.

Resolution of post establishment disputes.

(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
NATIONAL ECONOMIC INVESTMENT FUND**

30. (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 monies contributed by investors pursuant to this Act and such other qualifying investments payable to the Fund pursuant to any other legislation.

National Economic Investment Fund.

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

- (a) infrastructure development;
- (b) environmental protection and improvement;
- (c) development programmes; and

(d) social programmes, including education, sports and health.

(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 VIII MISCELLANEOUS

National security.

31. Notwithstanding any other provisions of this Act, the Governor may further regulate investments by making regulations that are necessary for the maintenance of national security and international peace.

Offences.

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

- (a) undertakes, establishes or operates an investment in a manner contrary to sections 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).

33. (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.

Opportunity for compliance with law.

34. (1) Where the Commission has reason to believe that an investor has committed any offence in terms of section 32, the Commission may, when appropriate

(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 Schedules.

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

Regulations.

36. (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 management and administration of the fund established under section 30;

(f) prescribe 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.

37. (1) The following Acts are repealed:

Repeal and savings.

(a) the Pioneer Services and Enterprises Act;

(b) the Hotel Aid Act;

(c) the Encouragement of Industries Act.

(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.

Cap. 297
Cap. 290
Cap. 287

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

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 day of , 2020.

Speaker.

Clerk of the House of Assembly.

OBJECTS AND REASONS

This Bill would provide for the enhancement of the economic development in the Territory through foreign and domestic investments and for incidental and connected purposes.

The Bill is divided into eight parts.

Part I (clauses 1 - 3) sets out the preliminary provisions which would include the short title and commencement, as well as define various terms used throughout the Act. It would also outline the objects of the Act.

Part II (clauses 4-7) would provide for the Administration of the Act.

This part would set out the role of the Minister with respect to policy directions. It would also set out the functions and powers of the Virgin Islands Trade Commission which would be the agency responsible for the administration of the Act. The Commission would be empowered to enter into performance agreements with the foreign investors on behalf of the Government. In addition, the Commission would be required to establish and manage an integrated client service facility in order to facilitate the application and approval process and the sharing of information between government, investors and the public.

Part III (clause 8 - 10) would provide for matters related to investors, economic sectors and business activities.

This part would empower the Cabinet, on the advice of the Minister, to make regulations reserving certain economic sectors and business activities for specified categories of investors, including the Government, Belongers and entities whose majority shareholdings are owned by Belongers, joint ventures between Belongers and foreign investors. It would also provide for specifying monetary thresholds for different economic sectors and investors. This Part would also provide for existing investors who are involved in reserved economic sectors to continue as an investor.

Part IV (clause 11 - 18) would provide for applications for investment approval and control of investments.

This part would provide for the application process for persons seeking to invest in the Territory. The Commission would be empowered to grant provisional approval of investments for a prescribed period. In considering an application under the Act the Commission would be required to consider the net benefit for the Territory and in so doing consider, inter alia, the following:

- (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 towards increasing employment creation in the Territory;
- (d) the contribution of the investment to the transfer of technological and managerial skills, knowledge and innovation;
- (e) the extent to which the investment will procure goods and services from the small to medium enterprises sector and belonger suppliers in general; and
- (f) the impact on the environment and contribution to environmental benefits.

Investors seeking a change of ownership or control of the investment, to transfer any licence, permit, authorisation or concession to a foreign investor through any form of merger, acquisition, direct sale or transfer would be required to obtain approval from the Commission and failure to do so may result in the suspension, withdrawal or cancellation of the existing approval of investment or criminal charges where appropriate. Approval would not be required where a finance contract, mortgage or similar instrument permits the provider of the finance to take control of the financed investment in cases of default by the debtor, bankruptcy or insolvency.

Part V (clause 19 - 28) would provide for the rights and obligations of investors. Investors would be required to comply with the laws of the Territory, register specified investments with the Commission in the prescribed manner. With respect to the management, operation and disposition of investments, the Commission would be required to accord to foreign investors and their investments no less favourable treatment than that accorded to Belonger investors in the like circumstances. The Government would be allowed to take measures expropriating land or property affecting an investment in specified circumstances, including, in the public interest and subject to the prompt payment of just compensation at the fair market value. Investors affected by expropriation would have a right to have the expropriation reviewed by the High Court.

Investors would be required to apply for authorisation to employ persons who are not Belongers to perform scarce key professional and managerial functions or

specialised services or skills required for the operation of the investment. The Minister would be required to facilitate the issuing of visas and residence permits for investors and their dependents and foreign personnel within a reasonable period.

Where the Minister and investor have agreed on positions that may be filled on a temporary basis by foreign personnel the investor would be required to 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.

This Part would also provide for a foreign investor to transfer into and outside the Territory funds relating to his or her investment subject to the laws of the Territory. On the advice of the Commission, the Minister, would be empowered to delay or prevent a transfer in specified circumstances and any affected person may seek any redress through the Court, or through a fair, non-discriminatory and good faith application of measures.

Part VI (clause 29) would provide for dispute settlement.

The Commission would be empowered to assist in the resolution of disputes between the Government and investor by designating a mediator or a mediation panel to mediate disputes referred to it by an investor. The investor would be able to choose whether to approach the Court of use mediation procedures.

Part VII (clause 30) would provide for the establishment of a National Economic Investment Fund into which shall be paid monies contributed by investors pursuant to this Act and such other qualifying investments. The monies in the Fund would be used only for specified purposes including, infrastructure development, development programmes and social programmes.

Part VIII (clause 31 - 37) would provide for miscellaneous matters.

This part would provide for the Governor where necessary to regulate investments for the maintenance of national security and international peace. It would also provide for offences, penalties and for the Minister to make regulations for giving effect to the provisions of this Act.

By this Part, the Pioneer Services and Enterprises Act, Hotel Aid Act and the Encouragement of Industries Act would be repealed.

Premier.