



Council of the
European Union

058369/EU XXVI. GP
Eingelangt am 18/03/19

Brussels, 18 March 2019
(OR. en)

7563/19
ADD 2

FISC 200

OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group (Business Taxation)
Subject: Saint Vincent and the Grenadines' International Business Companies - IBC
regime (VC001)
– Final description and assessment

(iii) an asset or liability of the business company; or

(b) assist in determining the financial position of the business company.

(6) A business company that contravenes this section commits an offence and is liable as specified in the Schedule.

Form of records 73.(1) The registers, records and documentation required to be kept by a business company under this Act shall be kept—

(a) in hard copy; or

(b) either wholly or partly as electronic records.

(2) Records kept in electronic form shall be capable of being—

(a) made available at any time for inspection in legible form; and

(b) capable of being reproduced in hard copy;

at the office of the business company's registered agent.

(3) If any document to which subsection (1) applies is kept in hard copy outside the State, the business company shall ensure that the document is provided to the registered agent if requested by the registered agent.

(4) A business company that contravenes this section commits an offence and is liable as specified in the Schedule.”.

Amendment of section 74 of 36. The principle Act is amended in section 74 by inserting after subsection (6) the following—

“(7) A director of a business company is entitled, on giving reasonable notice, to inspect the documents and records of the company—

- (a) in written form;
- (b) without charge; and
- (c) at a reasonable time specified by the director;

and to make copies of or take extracts from the documents and records.”.

Insertion of Divisions 2A and 2B of 37. The principal Act is amended by inserting the following after section 76—

“DIVISION 2A

Financial Reporting

Application of this Division of 76A. (1) Subject to subsection (2), this Division applies to a business company if it is a large company.

(2) This Division does not apply to a business company in relation to a financial year if financial statements of the company are required to be prepared for that financial year under—

- (a) the International Banks Act; or
- (b) the International Insurance Act .

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- (3) A business company to which this Division applies is referred to as a reporting company.
- Preparation of financial statements
- 76B. (1) A reporting company shall ensure that no later than four months after its balance date, financial statements are—
- (a) completed in relation to the company; and
 - (b) dated and signed as approved by two directors of the company or, if the company only has one director, by that director.
- (2) The financial statements of a reporting company shall—
- (a) be prepared in accordance with such accounting standards as may be prescribed;
 - (b) include any additional information with respect to the financial position of the company and the results of its operations that may be required by the articles of the company, its by-laws, or any unanimous shareholder agreement; and
 - (c) comply with any applicable requirements of the Regulations.
- (3) A reporting company shall not issue, publish or circulate copies of its financial statements unless the financial statements are approved

	and signed in accordance with subsection (1)(b).
Exemption for information	76C.(1) A reporting company may omit from its financial statements any information prescribed as information that may be so omitted. (2) The Registrar may, on the application of a reporting company, authorise the company to omit specified information from its financial statements if the Registrar reasonably believes that disclosure of the information would be detrimental to the company.
Financial statements to be filed	76D.(1) A reporting company shall, no later than five months after its balance date, file— (a) a copy of its financial statements; (b) if applicable, a financial return in the prescribed form; and (c) such other documents relating to its financial position as may be prescribed.

DIVISION 2B

Declaration of Solvency

Application of this Division	76E.(1) Subject to subsection (2), this Division applies to a business company if it is not a large company. (2) This Division does not apply to a business company specified in section 76A(2).
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Declaration of
solvency to be
prepared and filed

76F. (1) A business company to which this Division applies shall, no later than five months after its balance date, file a declaration of solvency in the prescribed form that is dated and signed by two directors of the company or, if the company only has one director, by that director, certifying that the directors are satisfied, on reasonable grounds, that the company satisfies the solvency test at the date of the certificate.

(2) For the purposes of this section, "solvency test" means the solvency test specified in section 46(3).

(3) A director of a business company who signs or files or concurs in the filing of a declaration of solvency which contains a statement that is false, misleading or deceptive or an opinion that the director has no reasonable ground to believe to be accurate, commits an offence and is liable as specified in the Schedule.

(4) It is a sufficient defence if the person charged with an offence under this section proves that up to the time of the filing of the declaration the person believed on reasonable grounds that this section had been complied with.

(5) A business company that contravenes subsection (1) commits an offence and is liable as specified in the Schedule."

Amendment of section 85 of 38. Section 85 of the principal Act is amended by inserting after subsection (2), the following subsection—

“(3) If the directors of a company delegate their powers to a committee of directors under subsection (1), they remain responsible for the exercise of that power by the committee, unless the directors—

- (a) believed on reasonable grounds that at all times before the exercise of the power the committee would exercise the power in conformity with the duties imposed on directors of the company by this Act and the articles; and
- (b) have taken reasonable steps to monitor the exercise of the power by the committee.”

Repeal and substitution of section 86 of 39. Section 86 of the principal Act is repealed and the following substituted—

“ P e r s o n s
disqualified for
appointment as
director

86. (1) The following are disqualified for appointment of a business company—

- (a) an individual who is disqualified from incorporating or joining in the incorporation of a business company under section 4(2);
- (b) an individual who is disqualified under section 67 of the Companies Act from being a director of a company incorporated or continued under that Act.

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(2) A person who acts as a director of a business company whilst disqualified under subsection (1) is

nevertheless deemed to be a director of the company for the purposes of any provision of this Act that imposes a duty or obligation on a director.

(3) An individual who accepts appointment as, or acts as, a director of a business company while disqualified under subsection (1)(b) commits an offence and is liable as specified in the Schedule.”.

40. Section 88 of the principal Act is amended by inserting after subsection (1) the following—

Amendment of
section 88

“(1A) If, before a business company has any members, a sole director, or all the directors appointed under subsection (1), resign or die, or in the case of a director that is not an individual, ceases to exist, the registered agent may appoint one or more persons as directors of the company.”.

41. The principal Act is amended by inserting after section 90, the following—

Insertion of
section 91A

“Requirement to
file details of
directors

91A. (1) The registered agent of a business company shall file a notice of appointment of directors in the prescribed form within ten days of appointing one or more directors under section 88.

(2) A business company shall file a notice in the prescribed form of—

- (a) a change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both; or

(b) a change in the name or address of a director of the company.

(3) A notice under subsection (2) shall be filed within ten days of—

(a) the change occurring, in the case of the appointment of a director or a director ceasing to hold office; or

(b) the business company first becoming aware of the change, in the case of the death of a director or a change in the name or address of a director.

(4) A registered agent who fails to comply with subsection (1) commits an offence and is liable as specified in the Schedule.

(5) A business company that fails to comply with subsection (2) or (3) commits an offence and is liable as specified in the Schedule.”.

Amendment of
section 94

42. Section 94 of the principal Act is amended—

(a) by repealing subsection (2); and

(b) in subsection (3), by inserting after “this Act”, the words “or the Regulations”.

Amendment of
section 100

43. Section 100 of the principal Act is amended—

(a) by designating the existing provisions as subsection (1); and

(b) by inserting after the newly designated subsection (1), the following—

“(2) Subsection (1) applies only if the director—

- (a) acts in good faith;
- (b) makes proper inquiry where the need for the inquiry is indicated by the circumstances; and
- (c) has no knowledge that the director's reliance is unwarranted."

44. Section 104(1) of the principal Act is amended by inserting after "meeting of directors", the words "and the notice shall include the date, time and place of the meeting and the matters to be discussed at the meeting". Amendment of section 104

45. Section 139 of the principal Act is amended by repealing subsections (2) and (3). Amendment of section 139

46. Section 172 of the principal Act is amended by repealing subsection (1) and substituting the following— Amendment of section 172

"(1) The Registrar may strike a business company off the Register if—

- (a) the company—
 - (i) does not have a registered agent;
 - (ii) fails to file any return, notice or document required to be filed under this Act or the Regulations;
- (b) the Registrar is satisfied that—
 - (i) the company has ceased to carry on business; or
 - (ii) the company is carrying on business for which a licence, permit or authority is required under the laws of the State without having such licence, permit or authority; or
- (c) the company fails to pay any fee or penalty payable under this Act or the Regulations by the due date.

(1A) If the Registrar is of the opinion that the company is trading or has property or that there is some other reason why the company should not be struck off the Register, the Registrar may, instead of striking the company from the Register, refer the company to the Authority for investigation.”.

Amendment of section 174 47. Section 174 of the principal Act is amended by inserting after subsection (3), the following—

“(4) If the business company has been struck off the Register under section 172(1)(a)(i), the Registrar shall not restore the company to the Register unless he is satisfied that—

- (a) a person who holds a relevant licence has agreed to act as registered agent of the company; and
- (b) it would be fair and reasonable for the company to be restored to the Register.”.

Insertion of Part XIA 48. The principal Act is amended by inserting after section 179, the following—

“PART XIA

Investigation of Business Companies

“Definition of “inspector” 179A.(1) In this Part, “inspector” means an inspector appointed by an order made under section 179B.

Investigation order 179B.(1) A member of a business company or the Registrar may apply to the Court *ex parte* or on the notice that the Court may require, for an order that the company and any of its affiliates be investigated.

(2) If, on an application under subsection (1), it appears to the Court that—

- (a) the business of the company or any of its affiliates is or has been carried on with intent to defraud;
- (b) the company or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
- (c) a person who is concerned with the incorporation, business or affairs of the company or any of its affiliates has in connection with the company or any of its affiliates acted fraudulently or dishonestly; or
- (d) it is in the public interest that an investigation of the company be made;

the Court may make any order it considers appropriate with respect to an investigation of the company and any of its affiliated companies by an inspector, who may be the Registrar.

(3) If a member makes an application under subsection (1)–

- (a) the member shall give the Registrar reasonable notice of the application; and

(b) the Registrar is entitled to appear and be heard at the hearing of the application.

(4) An applicant under this section is not required to give security for costs.

Court's powers

179C.(1) An order under section 179B(2) shall include an order appointing an inspector to investigate the company and an order fixing the inspector's remuneration.

(2) The Court may, make an order it considers appropriate with respect to the investigation, including an order to—

- (a) replace the inspector;
- (b) determine the notice to be given to an interested person, or dispense with notice to a person;
- (c) authorise the inspector to enter any premises in which the Court is satisfied there may be relevant information and to examine anything, and to make a copy of a document or record found on the premises;
- (d) require a person to produce a document or record to the inspector;
- (e) authorise the inspector to conduct a hearing, administer an oath or affirmation and examine a person on oath or

affirmation and prescribe rules for the conduct of the hearing;

- (f) require a person to attend a hearing conducted by the inspector and to give evidence on oath or affirmation;
- (g) give directions to the inspector or an interested person on a matter arising in the investigation;
- (h) require the inspector to make an interim or final report to the Court;
- (i) determine whether a report of the inspector should be published and if so, order the Registrar to publish the report or an extract from the report or send a copy of the report or an extract from the report to a person the Court designates;
- (j) require an inspector to discontinue an investigation; or
- (k) require the company to pay the costs of the investigation in part or in full.

(3) The inspector shall file a copy of each report he makes under this section.

(4) The Registrar may disclose a report filed under subsection (3) to a person only in accordance with an

order of the Court made under subsection (2)(i).

- Inspector's powers** 179D. (1) An inspector—
- (a) has the powers set out in the order appointing him; and
 - (b) shall give an interested person a copy of the order on request.
- Hearing in camera** 179E. (1) An application under this Part and subsequent proceedings including an application for directions in respect of a matter arising in the investigation, shall be heard *in camera* unless the Court orders otherwise.
- (2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part—
 - (a) may appear and be heard at the hearing; and
 - (b) is entitled to be represented by an attorney-at-law appointed by him for the purpose.
 - (3) A person shall not publish a matter relating to proceedings under this Part unless authorised by the Court.
 - (4) A person who contravenes subsection (3) commits an offence and is liable as specified in the Schedule.

Incriminating evidence 179F. A person is not excused from attending a hearing conducted by, and giving evidence and producing documents and records to, an inspector appointed by the Court under this Part solely because the evidence may incriminate that person or subject him to any proceeding or penalty, but the evidence shall not be used or received against that person in any later proceeding instituted against him, other than a prosecution for perjury in giving the evidence.

Privilege 179G (1) An oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.
(2) Nothing in this Part affects the legal privilege that exists in respect of an attorney and the attorney's client."

49. Part XII of the principal Act is repealed and the following substituted— Amendment of Part XII

"PART XII

Exemptions

Exemptions 180. (1) No estate, inheritance, succession or gift tax is payable by persons who are not persons resident or domiciled in the State with respect to any shares, debt obligations or other securities of a business company.

(2) Notwithstanding any provisions of the Stamp Act to the contrary, the

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following are exempt from the payment of stamp duty —

- (a) any instrument relating to a transfer of property other than real property situate in the State to or by a business company;
- (b) any instrument relating to transactions in respect of the shares, debt obligations or other securities of a company incorporated under this Act;
- (c) any instrument relating in any way to the assets or activities of a business company; and
- (d) any instrument relating to the legalisation of any document pertaining to a business company.

(3) Notwithstanding any contrary provisions of the Customs Duties Act, a business company shall be exempt from import duties pertaining to the importation into the State of any office furniture or equipment necessary for conducting its business.

(4) A business company shall, upon its incorporation or continuation, at no additional costs to the company, receive from the Registrar, a certificate confirming that the company shall be exempt from the

import duties specified in this section.

(5) Nothing in this section shall exempt a business company from fees or increases in fees charged under or pursuant to this Act or from any taxes arising by virtue of the company owning real property situate in the State.”.

50. The principal Act is amended by repealing section 184. Repeal section 184
51. The principal Act is amended by inserting after the repealed section 184, the following— Insertion of section 184A
- “Filing of returns, notices and documents 184A. A business company shall file such returns, notices and documents as may be prescribed.”.
52. Section 185(1) of the principal Act is amended by inserting after “in this Act”, the words “or the Regulations”. Amendment of section 197
53. Section 197(1) of the principal Act is amended— Amendment of section 185
- (a) by deleting “but not for the purposes of taxation”; and
- (b) by deleting “an inter-national business company” and substituting “a business company”.
54. The principal Act is amended by inserting after section 199, the following— Insertion of 199A
- “Preservation of existing law for business company incorporated before the 1st day of January 2019 199A. (1) Subject to subsection (2), this Act shall continue to apply up to 30 June 2021 to a business company on the register before 1 January 2019 as if the provisions of this Act have not been amended on the commencement of this section.
- (2) Notwithstanding subsection (1), this act as amended on the commencement of this section shall apply to —
- (a) intellectual property assets acquired, or newly created ,

by a business company on or after 1 January 2019; and

(b) income derived from –

(i) the Intellectual property assets referred to in paragraph (a);

(ii) specific assets acquired by a business company on or after 1 January 2019; or

(ii) specific projects commenced by a business company on or after 1 of January 2019.

(3) In this section “intellectual property asset” means an intellectual property right including a copyright, a design right, patent and trademark and includes technical know-how, service marks, brand or image rights, performers rights.”.

Amendment of
the Schedule

55. The Schedule is amended by inserting the following in the appropriate numerical position in column 1 of the table of “Offences and Penalties” –

COLUMN 1	COLUMN 2	COLUMN 3 \$	COLUMN 4
54A(5)	Business company failing to comply with requirements of section relating to filing details of members	20,000	
68(9)	Business company failing to have a registered agent or appointing a person who does not hold a relevant licence as its registered agent	25,000	

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
70(4)	Business company failing to comply with requirements of subsection (1), (2) or (3) of section	20,000	
71(4)	Business company failing to comply with requirements of subsection (1), (2) or (3) of section	20,000	
72(6)	Business company failing to comply with requirements of section	20,000	
73(4)	Business company failing to comply with requirements of section	20,000	
76F(3)	Director of business company signing or filing or concurring in the filing of a declaration of solvency containing statement that is false, misleading or deceptive or opinion that director has no reasonable ground to believe to be accurate	50,000	
76F(5)	Business company failing to file declaration of solvency as required by subsection (1) of section	20,000	
86(3)	Individual accepting appointment as, or acting as director while disqualified	20,000	

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
91A(4)	Registered agent failing to file notice of appointment of first directors	20,000	
91A(5)	Business company failing to file notice of change of directors within period specified in subsection (2)	20,000	
179E(4)	Person publishing a matter relating to proceedings under Part XIA without being authorised by Court	40,000	

Passed in the House of Assembly this 27th day of December, 2018.

NICOLE HERBERT
Clerk of the House of Assembly.

Printed by the Government Printer at the Government Printing Office,
Campden Park Industrial Estate, St. Vincent and the Grenadines.

2018

[Price \$24.00]