

**VIRGIN ISLANDS RULES AND REGULATIONS**  
**VIRGIN ISLANDS CODE**  
**TITLE 9- BANKING**  
**CHAPTER 25, SUBCHAPTER I- INTERNATIONAL BANKING ENTITIES**

*TO IMPLEMENT THE PROVISIONS OF ACT NO. 7390, KNOWN AS "THE  
INTERNATIONAL BANKING CENTER REGULATORY ACT"*

**SUBCHAPTER I: International Banking Entities**

**SECTION 1. AMENDING OF TITLE 9 VIRGIN ISLANDS CODE**

Title 9, Virgin Islands Code, is amended in the following instances:

- (a) Chapter 1, section 4 is amended by:
  - (1) striking "exempt"; and
  - (2) striking "facility" and inserting in its place, "entity".
  
- (b) Chapter 25 is added, with the following Rules and Regulations attached thereto.

**SUBSECTION 715-1. SHORT TITLE**

These regulations shall be known and may be cited as the Rules and Regulations of the International Banking Center Regulatory Act" (hereinafter referred to as the "Rules and Regulations").

**SUBSECTION 715-2. AUTHORITY**

These Rules and Regulations are promulgated pursuant to the authority granted to the U.S.

Virgin Islands Office of the Lieutenant Governor, Division of Banking and Insurance, pursuant to the authority conferred by Bill No. 29-03-08, approved August 28, 2012 (“Act 7390”), known as “The International Banking Center Regulatory Act” (the “Act”).

**SUBSECTION 715-3. PURPOSE AND SCOPE OF THE RULES AND REGULATIONS**

These Rules and Regulations are adopted with the purpose of complementing and clarifying the provisions of the Act, and shall apply to all International Banking Entities (IBE) established or to be established in the future in the U.S. Virgin Islands under the Act.

The Rules and Regulations supply the provisions required by law regarding the faculties and activities authorizing the international banking entities.

**SUBSECTION 715-4. AGENCY INTERPRETATIONS AND CONFORMITY TO INTERPRETATIONS**

(a) The Director is authorized to issue interpretations regarding the Act and related regulations. The courts are required to afford due deference to such interpretations.

(b) An act or omission does not violate the Act if the act or omission conforms to an interpretation of the Act that is in effect at the time of the act or omission that was made by the Director, an appellate court of Virgin Islands, or an appellate court of the United States.

**SUBSECTION 716-1. DEFINITIONS**

For purposes of this Regulation:

(a) “Act” means Act No. 7390: “The International Banking Center Regulatory Act.”

(b) "Applicant" means any person, partnership, corporation, or any other juridical or business entity including trusts that has submitted an application for a license and benefits under this Program.

(c) "Beneficiary" means any person, partnership, corporation, company, or other business entity possessing a valid certificate presently in effect. Where the context so requires, a member of a juridical entity shall be considered a Beneficiary.

(d) "Benefits" means the tax exemptions and reductions in tax liability described

(e) "Branch" means a staffed banking facility established by an IBE outside of the U.S. Virgin Islands where core banking functions are conducted including paying checks and lending money. An IBE facility that does not include these core banking activities is an Office and does not require the preapproval of the Division of Banking.

(f) "Certificate" means the Certificate granted pursuant to the Act.

(g) "Code" refers to the Virgin Islands Code.

(h) "Director" means the Director of Banking and Insurance of the Office of the Lieutenant Governor of the U.S. Virgin Islands.

(i) "Disciplinary Action" means any written warning, assessed fine, or other action undertaken by the Director in response to a failure to comply with these Rules and Regulations.

(j) "Domestic Person" means any natural person who is a resident of the Virgin Islands or a person, trust or other juridical entity incorporated or organized under the laws of the Virgin Islands, or a person whose principal place of business is located in the Virgin Islands, or the Government or any political subdivision or agency of the Territory of the Virgin Islands.

(k) "Economic Development Benefits", or "benefits" means the various tax exemptions and reductions in tax liability for which beneficiaries may qualify under the Code.

(l) "Employee" means either a fulltime employee (minimum 32 hours per week) of the IBE or a Virgin Islands service provider that the IBE has paid in excess of thirty thousand dollars (\$30,000.00) in any single calendar year. Such service providers shall be listed on the VIESA report.

(m) "Foreign Person" means any person who is not a Virgin Islands resident.

(n) "Governor" means the Governor of the United States Virgin Islands.

(o) "International Banking Entity" (or "IBE") means any person, other than an individual, incorporated or organized under the laws of the Virgin Islands, the United States, or a

foreign country, or a unit of such person, to which a bank license has been issued pursuant to 9 VIC §721.

(p) "Insolvency" means the financial condition in which an IBE may find itself or the person of which an IBE is a unit, when it is unable to pay its debts when they become due or when its paid-in capital has been reduced to less than one-third (1/3).

(q) "Legislature" means the Legislature of the United States Virgin Islands.

(r) "Office" means the IBE site in the Virgin Islands on which all permitted activities under 9 VIC § 726 are allowed to take place. IBEs may also establish offices outside the Virgin Islands without approval of the Division of Banking. However, if core banking functions are conducted in offices outside the Virgin Islands then the non Virgin Islands offices are considered bank branches and the IBE must first obtain approval from the Division of Banking. See definition of "Branch" in this section. Pursuant to 9 VIC 726 (a)(20)(b), IBEs are authorized to establish a Virgin Islands office or service unit where all banking activities authorized by 9 VIC 726 are permitted without the necessity of approval by the Division of Banking. This Virgin Islands office or service unit is not considered a branch of the IBE as 9 VIC 726 (b) prohibits the IBEs from conducting banking activities with Virgin Islands residents except as specified in 9 VIC 726 (a)(6), 726 (a)(15), 726 (a)(19) and 744(c). Activities permitted by the aforementioned sections may be conducted in the IBE's office or service unit.

(s) "Parent Company" means any person or entity who directly or indirectly controls twenty five percent (25%) or more of the interest in the capital of an IBE or who controls in any manner the election of the majority of the ruling body of such IBE.

(t) "Person" means an individual, corporation, partnership, company, association, unit, trust or estate, syndicate or enterprise of any kind, government or political subdivision or agency thereof.

(u) "Principal Office" means the site where the offices in which the IBE carries out its business are located, and where operational and administrative policies are set forth.

(v) "Recipient" means an enterprise, the owner of which is a Beneficiary.

(w) "Regulations of the Director" means the regulations adopted by the Director, under 9 VIC §717.

(x) "Related Retail Customer" means either a company that has a longstanding

relationship with the owner of the IBE in which mutuality of ownership in both entities exists, or customers who are themselves accredited investors.

(y) “Resident of the Virgin Islands” has the meaning that appears in title 26 U.S.C. 932 and subsequent regulations enacted by the U.S. Department of the Treasury. A Virgin Islands juridical entity (including Virgin Islands trusts) is a resident of the Virgin Islands for the purposes of Act 7390 and these rules and regulations.

(z) “Service Unit” has the same definition as a Virgin Islands IBE “office” as defined in these definitions.

(aa) “Subsidiary” means any IBE whereby twenty five percent (25%) or more of its capital is controlled by another person or any IBE in which the election of the majority of the ruling body is controlled by another person.

(bb) “The United States” means the United States of America, any state of the United States, the District of Columbia, and every possession, territory, political subdivision, and agency thereof, excluding the Virgin Islands.

(cc) “Trust” means either a revocable or irrevocable trust. An IBE may be owned by a Trust. A Virgin Islands Trust is a United States Trust and a United States Trust is a Virgin Islands Trust.

(dd) “Unit” means a subdivision or branch of any person other than an individual, whose business and operations are segregated from the other business and operations of such person, as required by this chapter.

(ee) “Virgin Islands” means the territory of the United States as defined in section 2 of the Revised Organic Act and each of its political subdivisions and agencies.

## **SUBSECTION 717-1. AUTHORITIES AND DUTIES OF THE DIRECTOR**

(a) The Director shall:

(1) adopt, and may thereafter, from time to time, repeal, amend, or supplement regulations in order to comply with the provisions of this chapter;

(2) collect fees for examinations and audits, receive monies and make disbursements according to its budget or as otherwise provided by law or regulations;

(3) open and maintain such bank accounts as may be necessary and appropriate to carry out the purposes of this chapter;

(4) review and carry out investigations with regard to all applications for licenses to operate international banking entities;

(5) approve, grant conditional approval, or deny applications for permits and licenses to operate international banking entities; provided, that any person whose applications has been denied or conditionally approved may request a hearing pursuant to the regulations provided in §749 of this title;

(6) supervise, inspect, and audit international banking entities and require from them periodic reports and other information specified in the regulations of the Director;

(7) require periodic auditing of the accounts of each IBE at least once a year, which must include an audit of the financial condition of each IBE, its compliance with the requirements of this chapter and the regulations of the Director, and such other matters as the Director may consider appropriate;

(8) ascertain the financial security and operating soundness of IBEs and ensure that they comply with applicable laws and regulations and with any other provision or requirement that the Director may require by order or regulation;

(9) revoke or suspend a license to operate an IBE or impose any sanctions the Director may consider necessary and convenient pursuant to regulations, subject to the requirements of section 749; and

(10) carry out such other activities incidental to the performance of duties under this chapter.

(b) The Director may summon witnesses and request the production of such documents as the Director considers necessary to carry out any investigation under this chapter. The information obtained through this process must be kept confidential.

(c) If a person fails to comply with a summons issued by the Director, the Director may seek whatever remedy may be legally applicable, from the Superior Court of the Virgin Islands; and the court may order such person to comply with the summons of the Director, under admonition of contempt of court.

(d) Within the term of 90 days after the closing of each fiscal year of the Virgin Islands, the Director shall remit to the Department of Finance, to be covered into the Tap Roots Program, described in §756, Five (5) percent of the net income obtained from his functions related to this chapter for such fiscal year and ten (10) percent to the Cancer Care Fund administered by the Department of Human Services.

#### **SUBSECTION 718-1. INTEREST RATES AND RESERVES**

(a) IBE's may never bear interest at an interest rate of less than five percentage points above the Federal Home Loan Mortgage Corporation's posted yield on the last business day of the month on thirty-year standard conventional fixed-rate mortgages committed for delivery within sixty days, rounded to the nearest one-fourth percent, which rate shall take effect (a) on the first day of the immediately subsequent month and continue in effect for the remainder of the month, and (b) apply to all commitments made by a beneficiary during such month. If for any reason, the Federal Home Loan Mortgage Corporation ceases its auction, temporarily or permanently, the index in the preceding sentence must be based on the Federal Home Loan Bank Board's average monthly contract rate.

(b) The Director may not establish interest rates to be paid or charged by an IBE.

#### **SUBSECTION 719-1. ORGANIZATION**

Every IBE must meet the following requirements in its organization:

(a) An IBE may be:

(1) any person, other than an individual, incorporated or organized under the laws of Virgin Islands, of the United States, or of any other country, or

(2) constituted as a unit of another person, other than an individual, incorporated or organized under the laws of Virgin Islands, of the United States, or of any other

country.

(b) The name of the IBE must include one of the following words or phrases: “International”, “Foreign”, “Overseas”, or “Limited Purpose Bank”, “Venture Capital Bank”, “Family Office Bank”, or other similar words which connote that it is not a full service depository bank.

(c) An IBE must occupy an acceptable office location in the U.S. Virgin Islands wherein it will conduct its business with the required personnel and will maintain the necessary records, documents and equipment.

(d) The articles of incorporation, the partnership agreement or any other written document establishing an IBE must specify:

(1) The name by which it is to be known.

(2) The street, number and town where its principal place of business is to be established in the Virgin Islands.

(3)(A) In the case of a corporation:

(i) the amount of its authorized capital stock, which must not be less than 5,000,000 and of which at least \$250,000 must be fully paid at the time the license is issued in accordance with 9 VIC § 721, but the Director may authorize a lesser authorized or paid-in capital, by request of the interested party, when the type of business or power that the IBE intends to exercise or other circumstances thus merits it, in the criterion of the Director;

(ii) the number of shares into which it is to be divided and the par value of each share. If the shares are to be issued in series, the date of issue of each series, as well as the manner and term in which payment thereof is to be made.

(B) In the case of a person other than an individual or a corporation:

(i) the amount of the proposed capital, which must not be less than \$5,000,000 and of which at least \$250,000 must have been fully paid at the time the license is issued in accordance section 721, but the Director may authorize a lesser proposed or paid-in capital, by request of the interested party, when the

type of business or power that the IBE intends to exercise or other circumstances merits it, in the criterion of the Director; and

(ii) the name and address of its partners and other owners.

(iii) Upon request of a party, the Director may approve an authorized and/or paid capital smaller than the above amount.

(4) The term of its existence, which in the case of a corporation may be perpetual.

(5) The purposes for which it is organized.

(6) Any other provisions required by the regulations of the Director.

(e) An IBE that intends to operate as a unit shall provide certification executed by the person of which it is a unit in the form prescribed by the regulations of the Director, which must specify:

(1) The name by which the unit is to be known.

(2) The street, number, and town where its principal place of business in the Virgin Islands is to be established.

(3) The amount of the authorized or proposed paid-in capital of the person of whom the IBE is to be a unit, whose capital must not be less than \$5,000,000, of which at least \$250,000 must have been fully paid at the time the license is issued, but the Director may authorize a lesser authorized, proposed, or paid-in capital, by petition of the interested party, when the type of business or power that the IBE intends to exercise or other circumstances thus merits it, in the criterion of the Director;

(4) The purposes for which the unit is organized, including a specific limitation of its operations to carry out only those services authorized in §726; and

(5) Such other provisions as may be required by the regulations of the Director.

## **SUBSECTION 719-2. GENERAL REQUIREMENTS AND PROCEDURES**

(a). *Asset requirements.* An IBE shall possess and maintain in the U.S. Virgin Islands at least three hundred thousand dollars (US \$300,000) in unencumbered assets or financial guarantees acceptable to the Director. Such guarantees may consist of deposits in

banks authorized to conduct business in the U.S. Virgin Islands, subject to withdrawal with the written consent of the Director, or bonds and obligations of the Government of the U.S. Virgin Islands, its municipalities or instrumentalities. The Director may establish other financial instruments, terms and conditions for compliance with this requirement. Upon request of a party, the Director may approve the withholding of unencumbered assets or guarantees in the U.S. Virgin Islands for an amount less than \$300,000.

*(b) Procedure to request an authorized capital of less than five million dollars (US \$5,000,000) and/or paid capital of less than two hundred and fifty thousand dollars (US \$250,000):* Every IBE may request the Director, and he, upon his sole discretion, may approve or deny, the commencement of operations with an authorized or proposed capital of less than five million dollars (US \$5,000,000) and/or paid capital of less than two hundred and fifty thousand dollars (US \$250,000), as provided by this Section.

*(c) General Requirements to Apply for an Authorized Capital of an Amount Less Than Five Million Dollars (US \$5,000,000) and/or Paid Capital of less than Two Hundred and Fifty Thousand Dollars (US \$250,000).* Every IBE that is interested in commencing operations with an authorized capital of less than five million dollars and/or paid capital of less than two hundred and fifty thousand dollars, shall file a written application before the Director, in the forms prepared by him, which shall be sworn by the applicant before a notary public authorized to practice in The U.S. Virgin Islands. Such application must contain the information which is required by the Director in the forms.

*(d) Period to Approve or Deny an Application.* Every application for an authorized capital of an amount less than five million dollars and/or paid capital of less than two hundred and fifty thousand dollars shall be approved or denied by the Director, upon his sole discretion, as part of the determination he may make regarding the IBE's request to organize, according to the provisions of Section 9(4) of this Regulation.

*(e) Procedure to apply for withholding of unencumbered assets or guarantees*

*in the U.S. Virgin Islands for an amount less than three hundred thousand dollars (US \$300,000).* Every IBE may apply, to the Director, and he, upon his sole discretion, may approve or deny, the withholding of unencumbered assets or guarantees in the U.S. Virgin Islands for an amount less than \$300,000. Such application shall be filed as provided in this SUBSECTION.

(f) *General Requirements.* Every IBE that applies for the withholding of unencumbered assets or guarantees in the U.S. Virgin Islands for an amount less than \$300,000 shall file a written application before the Director, in the forms prepared by him, which shall be sworn by the applicant before a notary public authorized to practice in the U.S. Virgin Islands. Such application shall include the information required by the Director in the forms.

(g) *Period to Approve or Deny an Application.* Every application for the reduction of the amount of unencumbered assets or guarantees to be physically withheld in the U.S. Virgin Islands shall be approved or denied by the Director, upon his sole discretion, as part of the determination he may make regarding the application of an IBE of a permit to organize, pursuant to the provisions of Section 720-1 of these Rules and Regulation.

(h) *Procedure to hire less than three full-time employees in the U.S. Virgin Islands.* Every IBE may apply to the Director, and he, upon his sole discretion, may approve or deny any application to hire less than three full-time employees in its offices in the U.S. Virgin Islands. Such application shall be filed pursuant to this Section.

(1) Every IBE which requests to hire less than three (3) full-time employees in its offices in the U.S. Virgin Islands shall file a written application before the Director, in the forms prepared by him, which shall be sworn by the applicant before a notary public authorized to practice in the U.S. Virgin Islands. Such application shall include the information required by the Director in the forms.

(2) *Period to Approve or Deny the Application.* Every application to hire less than three (3) full-time employees in the offices of the IBE in the U.S. Virgin Islands shall be approved or denied by the Director, upon his whole discretion, as part of the determination he may make regarding the application of the

IBE for a permit to organize, pursuant to the provisions of SUBSECTION 720-1 of these Rules and Regulations.

(i) The securities or other financial instruments held by an IBE, shall have, at all times, an aggregate market value equal to or greater than the amount of unencumbered assets that the IBE shall be physically held in the U.S. Virgin Islands. The books of the IBE shall reflect, at all times, the marked to market value of such securities or financial instruments. In case of detriment or loss of value of such instruments, the IBE shall immediately provide for this deficiency.

(j) Within one year of commencement of operations, every IBE earning one million dollars or less of net income shall employ in its offices a minimum of three (3) full-time residents of the U.S. Virgin Islands. Upon request by a party, the Director may approve a lesser number of full-time employees. Each IBE earning at least two million dollars of net income shall employ in its offices a minimum of four (4) full-time residents of the U.S. Virgin Islands. Each IBE earning at least three million dollars of net income shall employ in its offices a minimum of five (5) full-time residents of the U.S. Virgin Islands. Each IBE earning at least four million dollars of net income shall employ in its offices a minimum of six (6) full-time residents of the U.S. Virgin Islands. Each IBE earning at least five million dollars of net income shall employ in its offices a minimum of seven (7) full-time residents of the U.S. Virgin Islands. In no event shall an IBE be required to hire more than seven full-time employees. In the event that an IBE's income goes to less than one million dollars of net income in a calendar year, the IBE must maintain three full-time employees in that year.

**SUBSECTION 719-3. OPERATIONAL AND MANAGERIAL STANDARDS**

(a) An IBE shall establish and maintain operational and managerial standards as set forth in this Subsection as amended from time to time.

(b) Internal controls and information systems. Each IBE should have internal controls and information systems that are appropriate to the size of the institution and the nature, scope and risk of its activities and that provide for:

- (1) An organizational structure that establishes clear lines of authority and responsibility for monitoring adherence to established policies;
- (2) Effective risk assessment;
- (3) Timely and accurate financial, operational and regulatory reports;
- (4) Adequate procedures to safeguard and manage assets; and
- (5) Compliance with applicable laws and regulations.

(c) Internal audit system. Each IBE should have an internal audit system that is appropriate to the size of the institution and the nature and scope of its activities and that provides for:

- (1) Adequate monitoring of the system of internal controls through an internal audit function. For an institution whose size, complexity or scope of operations does not warrant a full scale internal audit function, a system of independent reviews of key internal controls may be used;
  - (2) Independence and objectivity;
  - (3) Qualified persons;
  - (4) Adequate testing and review of information systems;
  - (5) Adequate documentation of tests and findings and any corrective actions;
  - (6) Verification and review of management actions to address material weaknesses; and
  - (7) Review by the institution's audit committee or board of directors of the effectiveness of the internal audit systems.

**SUBSECTION 720-1. APPLICATION PROCEDURE AND GRANTING OF PERMIT**

(a) *Application for a Permit.* Every application for a permit to organize an IBE shall be in

writing in the forms prescribed by the Director and shall be sworn by the applicant before a notary public authorized to practice in the U.S. Virgin Islands. Said application shall be submitted together with the additional documents required in the Application Form and a ten thousand dollars (\$10,000) non-refundable fee in the form of a money order, official check or certified check payable to Government of the U.S. Virgin Islands.

(b) *Investigation.* The Director shall investigate all the data and information furnished in the application and all other additional information which he may deem relevant, such as, the financial capacity and experience of the applicant, as well as the character, integrity and experience in, or knowledge of, banking or international business of applicant's management. In every application, the Director shall investigate any natural or juridical person who holds or controls or intends to hold or control ten percent (10%) or more of the interest in the capital of the IBE without this being understood as a limitation to the investigative power of the Director.

(c) *Investigation Expenses.* The expenses that the Director may incur due to an investigation provided herein shall be paid for by the applicants, including but not limited to: \$3000.00 for the Due Diligence Investigator and \$1000.00 for the Division of Banking's Tax Counsel. In such cases that the Director deems that such expenses exceed the amount of ten thousand dollars (\$10,000), the applicant shall be so notified. The Director shall make such claim for investigation expenses by the filing of a duly filed Requisition for Reimbursement in the form that the Director may design for such purposes.

(d) *Approval or Denial of Permit.* After the required investigation and the payment of the costs of investigation as set forth in the aforementioned subsection (c), the Director shall approve or deny the permit to organize an IBE, which permit, if approved, shall contain the permitted activities in which a proposed IBE may engage in once the license is issued and may include any conditions which the Director may deem necessary. If the Director declines to issue a permit to organize the IBE, the applicant has an immediate right to appeal the decision to the Lt. Governor, who shall issue a decision within 30 days of the appeal.

(e) *Non-transferability of Permit.* The permit cannot be sold, transferred, assigned, encumbered or in any way pledged in favor of another person. The granting of a permit pursuant to this section does not give a right to commence operations until a license is issued under Section 10 of these Rules and Regulations.

(f) *Term of the Permit.* Every permit granted by the Director shall be in effect for a period of eighteen (18) months from the date it was granted, during which time the IBE shall be organized and the application for the corresponding license filed. Upon request of a party, in meritorious or exceptional cases, the permit may be renewed at the Director's discretion.

(g) *Continuous Obligation to Inform.* The holder of the permit shall have the continuous obligation to inform the Director of any material change in the information submitted with the application for a permit. Failure to notify any material change shall constitute just cause to revoke the permit.

(h) *Suspension or Revocation.* The Director may suspend or revoke a permit for just cause. If suspended or revoked, the applicant may apply for an adjudicative hearing, which shall take place pursuant to the federal Administrative Procedure Act, 5 U.S.C. § 551 et seq.

#### **SUBSECTION 721-1. GRANTING OF A LICENSE TO OPERATE AN IBE**

(a) *Filing of Documents.* Once the permit is granted to organize an IBE, the applicant shall file the following documents with the Division of Banking and Insurance, Office of the Lieutenant Governor of the U.S. Virgin Islands.

(1) The Sections of incorporation, the partnership agreement or any other written document which establishes the legal status of the IBE or of the person of which the IBE will be a unit, together in the latter case, with the certification specified in Section 5(c) of the Act.

(2) Copy of the permit to organize an IBE granted by the Director. The

Lieutenant Governor's Office of the U.S. Virgin Islands shall issue, under its official seal, a certification specifying that such documents have been filed. It is the responsibility of the applicant to submit such certification to the Director before the license is granted.

(b) *Approval or Denial of the License.* The Director may grant (or if deemed pertinent, conditionally grant) or deny the requested license after receiving and approving the following documents and evidences:

(1) The certification from the Division of Corporations and Trademarks, referred to in 9 V.I.C. § 720;

(2) Evidence of payment of the annual license fee in the amount of five thousand dollars (US \$5,000). An additional annual fee of \$10,000 shall be paid by the IBE once the IBE has exceeded \$1,00,000 in annual net income.

(3) Copy of all the documents filed at the Division of Banking and Insurance, Office of the Lieutenant Governor of the U.S. Virgin Islands, in compliance with SUBSECTION 721-1(a) of these Rules and Regulations;

(4) Copy of the internal company resolutions, operating agreement or other necessary entity documents approved by the manager, owners, or Board of Directors;

(5) Evidence that the capital of the IBE has been subscribed, issued and paid or assigned in the case of a unit, and that the IBE complies with the minimum requirement of unencumbered assets in accordance with the provisions of SUBSECTION 719-2 of these Rules and Regulations, as the case may be;

(6) Evidence that the person of which the IBE is a unit or a subsidiary has complied with all the requirements of any regulatory agency responsible for supervising the activities of such person in the jurisdiction of its origin with respect to the establishment of a branch or subsidiary outside of said jurisdiction. Such evidence may consist of a certification issued by the regulatory agency or a legal opinion acceptable to the Director;

(7) A statement authenticated before a notary public, by the Secretary of the Board of Directors, or the ruling body, or the person who acts in a similar capacity, of the IBE or of the person of which the IBE is a unit, to the

effect that the IBE has complied with all the terms and conditions of the Act and these Rules and Regulation and that it is ready to commence operations; and

(c) *Effective date.* Once the license is granted, it shall be effective on the date of its issue by the Director until the expiration thereof, unless the same is suspended, revoked or renounced. A copy of the license shall be filed in the Division of Banking and Insurance, Office of the Lieutenant Governor of the U.S. Virgin Islands, by the IBE no later than ten (10) days after it has been granted. A license issued to operate an IBE may not be sold, assigned, transferred, pledged, used as a guarantee or in any other way encumbered.

(d) *Denial review.* Every denial made by the Director shall be subject to review pursuant to the provisions of the federal Administrative Procedure Act, 5 U.S.C. § 551 et seq.

(e) *Suspension, Revocation, or Denial of a License.* The license issue under this SUBSECTION is subject to revocation or suspension by the Director, or subject to fines, upon previous notice and hearing pursuant to these Rules and Regulations, if:

(1) An IBE submits false evidence, documents or information during the application process

(2) An IBE or the person of which the IBE is a unit, contravenes or fails to comply with any of the provisions of this chapter, any regulation of the Director, or any of the terms or conditions of the license to operate and IBE.

(3) An IBE fails to pay the annual license fee.

(f) *Burden of proof.* In all hearings commenced under these Rules and Regulations, the IBE has the burden of proof, and the standard of proof is by clear and convincing evidence. The Director may not undertake any arbitrary or discriminatory enforcement action.

(g) *Surrender.* Any IBE or the person of which the IBE is a unit, may surrender its license by filing with the Director a statement sworn before a notary public clearly expressing its decision to surrender such license no later than forty-five (45) days prior to the date in which it intends to cease operations and surrender the license. After receipt of the license by the

Director or by the designated official, the Office of the Lieutenant Governor will proceed to perform the investigations, audits and examinations which may be deemed necessary or convenient to authorize the cessation of operations of said IBE. After the investigations have been completed, the Director may postpone or authorize the cease of operations of the IBE with or without conditions. Any IBE which surrenders its license shall comply with each and every one of the conditions imposed by the Director to cease operations.

(h) *Dissolution.* If deemed necessary or convenient, the Director shall order the dissolution and/or liquidation of the IBE whose license has been suspended, revoked or surrendered pursuant to Section 731 of the Act.

(1) The Director may appoint a receiver and order the dissolution of an IBE if the license of the IBE or of the person of which the IBE is a unit, is revoked or surrendered under this SUBSECTION.

(2) The receiver appointed must be a person of recognized moral qualities, with vast experience in the field of banking or finance, and the receiver's performance with the IBE must be secured by an adequate bond, to be paid by the IBE itself.

(3) The receiver shall manage the IBE in accordance with the provisions of the Act and shall:

(A) take possession of the assets and liabilities, books, records, documents and files which belong to the IBE;

(B) collect all loans, charges and fees owed to the IBE;

(C) pay all obligations and debts of the IBE, after having paid the necessary costs of the receivership; and

(D) supervise the dissolution and liquidation of the IBE.

#### **SUBSECTION 722-1. AMENDMENTS TO ARTICLES OF INCORPORATION**

(a) *Amendments to documents establishing an IBE after granting of license.* The articles of incorporation, partnership agreement or other written document establishing an IBE or to any

license executed in accordance with this SUBSECTION may not be amended, unless the amendment has been previously approved, in writing, by the Director, which approval will not be unreasonably withheld.

(b) *Filing with Division of Corporations and Trademarks.* After the adoption of any amendment to the articles of incorporation, partnership agreement or other written document establishing an IBE or to any certification executed in accordance with SUBSECTION 722-1(a) of these Rules and Regulations, the amended document must be filed with the Division of Corporations and Trademarks.

#### **SUBSECTION 723-1. UNENCUMBERED ASSETS, CAPITAL**

Every IBE shall possess not less than \$300,000 of unencumbered assets or acceptable financial securities, or that lesser sum that, by request of the interested party, the Director authorizes, when the type of business or power that the IBE intends to exercise or other circumstances thus merits it, in the judgments of the Director. The unencumbered assets must be physically located in the Virgin Islands.

#### **SUBSECTION 723-2. ISSUANCE OF ADDITIONAL CAPITAL/SHARES**

(a) Any issuance of additional shares of capital stock or issuance of additional capital by an IBE not made directly to the stockholders or owners identified in the application for a permit originally filed with the Director, shall require the Director's prior written approval. Such approval shall be requested from the Director at least thirty (30) days prior to the proposed issuance.

(b) Every issuance of additional shares of capital stock or issuance of additional capital made directly to the shareholders or owners of an IBE previously identified in the application for permit shall be notified to the Director within ten

(10) business day from the date of such issuance.

#### **SUBSECTION 724-1. CHANGE IN CONTROL**

(a) *Transactions which involve 10% or more of the stock (to a single entity).* Every IBE, except those organized as a unit of another person, shall obtain the prior written approval of the Director for any sale, encumbrance, assignment, merger, barter, exchange or other transfer of ten percent (10%) or more of the stock, interest or participation in the capital of said IBE, to a person or group of persons acting in concert, in a single transaction or a series of transactions for that purpose, or which results in the ownership or control by any person or group of persons acting in concert, of ten percent (10%) or more of the stock, interest or participation in the capital of said IBE. Said authorization shall be requested at least thirty (30) days prior to the proposed date of such transaction.

(b) *Transactions among affiliated entities.* A parent company may sell, transfer, encumber, merge, exchange or otherwise negotiate all or any of its stock, interest or capital participation in such IBE to any other person, that is not an individual, that is owned by, owns, or is under common ownership or control with such parent company with prior notification to the Director. The IBE shall notify the Director no less than twenty (20) days prior to the date of the proposed transaction. Such notification shall contain the details of the proposed transaction. If the Director does not object to the proposed transaction within the term of 20 days, it may be carried out in the way it was notified to the Director.

(c) Any sale, encumbrance, assignment, merger, barter, exchange or other transfer made in violation of this Section, shall be cause for disciplinary action.

**SUBSECTION 725-1. NO TRANSFER OF LICENSE**

No licenses issued in accordance with this Act may be sold, assigned, transferred, pledged, used as security, or otherwise encumbered, except under the provisions of subsection 748.

**SUBSECTION 726-1. PERMITTED ACTIVITIES AND TRANSACTIONS**

(a) Upon receipt of a license to operate an IBE under section 721, an IBE may:

(1) accept transaction-related funds from foreign persons in accounts as well as demand or fixed term deposits and interbank deposit of funds. For purposes of this chapter, ‘transaction-related funds’ means monies, funds, credits, securities or properties accepted by an IBE in connection with a loan or other transaction, good or service provided by the IBE under the Act. An IBE is authorized to take “transaction-related deposits” under § 726(a)(1) of the Act. Though this deposit-taking activity is limited in scope, an IBE is a “state bank” under the Federal Deposit Insurance Act, 12 U.S.C. § 1813(a)(2), and eligible for FDIC insurance as receiving deposits other than trust funds. 12 U.S.C § 1813(l) and § 1815(a)(1). At the same time, since an IBE is a foreign bank for purposes of the International Banking Act of 1978, 12 U.S.C. § 3107(7), an IBE is not required to obtain FDIC insurance unless the IBE accepts retail deposits at domestic branches in the 50 states or the District of Columbia, 12 C.F.R. § 347.202(e). “Branch” (only for purposes of the International Banking Act of 1978) means “any office or any place of business of a foreign bank located in any State of the United States at which deposits are received.” 12 U.S.C. § 3101(3).

(2) accept or provide wholesale or retail repurchase agreements, or otherwise borrow money from IBE’s and from any foreign persons, subject to any regulations adopted by the Director.

(3) make, procure, place, arrange guarantee, secure, bond, or service, loans or other financial undertakings; provided, that none of such loans or financial undertakings may be granted to a domestic person, except as provided in paragraph 3 of this

subsection, and in the case of financial securities for debt, issue transactions in the Virgin Islands;

(4) (A) issue, confirm, give notice, negotiate or refinance letters of credit; if the client (other than a dual situs trust) and the beneficiary requesting the letter of credit is not a domestic person, or

(B) issue, confirm, give notice, negotiate, or refinance letters of credit in transactions for the financing of exports, even if the beneficiary is a domestic person.

(5) engage in money services, money transmission, payment services, bill-payment services, payment systems, check cashing, sale of instruments or other payment devices, currency exchange, or other financial and business management services, including, without limitation, providing, discounting, rediscounting, dealing or otherwise trading in money orders, stored value, bills of exchange, drafts, or other instruments or payment devices, provided that the purchaser, payee, or beneficiary is not a domestic person. An IBE engaged in money transmission must maintain at all times security consisting of a surety bond, an irrevocable letter of credit, or a deposit instead of a bond in such amount and upon such terms as reasonably determined by the Director.

(6) Invest securities of the Government of the Virgin Islands, its public agencies and instrumentalities, its municipalities, and its political subdivisions, or in other local securities, if there exist any, exempted from the payment of taxes in the Virgin Islands; make commercial loans in excess of \$1,000,000 made to Virgin Islands borrowers or borrowers in the Virgin Islands that

(A) have been rejected by, or not approved within 30 days from the date a written loan application has been made to, any licensed Virgin Islands financial institution; or

(B) bear interest at an interest rate of not less than five percentage points above the Federal Home Loan Mortgage Corporation's posted yield on the last business day of the month on thirty-year standard conventional fixed-rate mortgages committed for delivery within sixty days, rounded to the nearest one-fourth percent, which rate must take effect on the first day of the immediately subsequent month and continue in effect for the remainder of the month, and

apply to all commitments made by a beneficiary during such month; make capital contributions in excess of \$1,000,000 made to Virgin Islands business entities or business entities in the Virgin Islands;

(7) carry out any banking transactions permitted by this chapter in the currency of any country, or in gold or silver, and participate in foreign currency trade.

(8) underwrite, issue, distribute, and otherwise deal in securities, notes, debt instruments, drafts, bills of exchange, issued by the IBE, or by a foreign person, for final purchase by a person outside of the Virgin Islands;

(9) engage in insurance brokerage for risks or objects that reside, are located or that will be executed outside of the Virgin Islands, subject to regulations established by the Director.

(10) underwrite insurance for risks or objects that reside, are located or that will be executed outside of the Virgin Islands, subject to regulations established by the Director.

(11) engage in trade financing of import, export, barter and exchange of raw materials and finished products activities with domestic persons, when the Director has determined through regulations or order, that the international aspects of the underlying transaction override any involvement of the local financial and business community, and that such activities would be appropriate for the IBE;

(12) engage in any activity of a financial nature for clients outside of the Virgin Islands which would be allowed to be done, directly or indirectly, by a bank holding company or by a foreign office or subsidiary of a United States bank under applicable United States law. Under the Bank Holding Company Act of 1956, as amended (the "BHC Act"), a bank holding company ("BHC") in the United States, and thus a Virgin Islands IBE pursuant to the IBE statute, may engage directly in—or establish or acquire subsidiaries that engage in—non-banking activities determined by the Federal Reserve Board to be closely related to banking as to be a proper incident thereto. See 12 U.S.C. 1843(c)(8). Non-banking activities that the Federal Reserve Board by regulation has determined to be permissible include mortgage banking, consumer and commercial finance and loan servicing, leasing, collection agency, asset management, trust company, real estate appraisal, financial and investment advisory activities, management

consulting, employee benefits consulting, career counseling services, and certain insurance-related activities. *See generally* 12 C.F.R. 225.28(b)(1)-(14). Non-banking activities that the Federal Reserve by order has determined to be permissible include mutual fund administration, owning a securities exchange, digital signature certification and check cashing and wire services. *See, e.g.,* 84 Fed. Res. Bull. 680 (1998); 86 Fed. Res. Bull. 61 (2000); 86 Fed. Res. Bull. (2000); and 76 Fed. Res. Bull. 860 (1990). A Bank Holding Company may also make equity investments in companies not engaged in activities closely related to banking, provided that these investments do not exceed 5 percent of the target company's outstanding voting stock. *See* 12 U.S.C. 1843(c)(6). Amendments to the BHC Act in 1999 allowed for a BHC to declare itself a financial holding company ("FHC") and thereby engage in a broader set of non-banking activities that are "financial in nature", including securities underwriting and dealing, insurance agency and underwriting activities, and merchant banking activities. 12 U.S.C. 1843(k). However, for a BHC to be eligible to declare itself an FHC, all of the BHC's depository institution subsidiaries must be well-capitalized and well-managed and have satisfactory or better ratings under the Community Reinvestment Act of 1977. 12 C.F.R. 225.84.

(13) after obtaining a special permit from the Director, act as fiduciary, executor, administrator, registrar of stocks and bonds, property custodian, assignee, trustee, agent or in any other fiduciary capacity; but, such fiduciary services may not be offered to, nor inure to the benefit of domestic persons;

(14) acquire and lease personal property to a person who is a foreign person, including any transactions, at the request of a lessee or seller/lessee who is a foreign person, pursuant to a financial lease agreement, rent-to-own, or sale/leaseback agreement, subject to any regulations adopted by the Director.

(15) buy and sell securities and non-life insurance annuities for clients outside the Virgin Islands, and provide investment advice in relation to such transactions or separate therefrom, to such persons, and in addition offer these services and products to the Government of the Virgin Islands and any of its instrumentalities, agencies, and investment vehicles.

(16) act as a clearinghouse in relation to financial contracts or instruments of

foreign persons, subject to any regulations adopted by the Director.

(17) organize, manage and provide management services to international financial entities, such as investment companies and mutual funds, on the condition that the stock or participation in the capital of such companies is not distributed directly by the IBE to domestic persons.

(18) engage in such other activities as are expressly authorized by the regulations or order of the Director, or are incidental to the execution of the services authorized by this chapter and the regulations of the Director;

(19) participate in the granting and securing of loans that originate or are secured by the Economic Development Authority of the Virgin Islands or for the University of the Virgin Islands Research and Technology Park.

(20) (A) establish, with the Director's authorization, branches outside of Virgin Islands, in the United States mainland and its possessions, or in other foreign countries. The Director may provide, through regulations, the procedure to obtain the authorization, and the amount payable for application investigation expenses and annual quota fees for each one of the branches.

(B) The IBE is authorized to establish a service unit or office in the Virgin Islands, in which only specific operations related to the services of the IBE are conducted, in the manner and form provided through regulations, but by no means may the service unit or office constitute a branch.

(21) With the prior authorization of the Director, provide to other international banking entities or to foreign persons or entities outside of the Virgin Islands, those services of financial nature, as these are defined and generally accepted in the banking industry of the United States and the Virgin Islands and which are not listed in this section. This paragraph does not apply to activities otherwise authorized by this chapter.

(22) The Virgin Islands international banking entities may conduct their permitted activities on the Internet. If the international banking entities use a computer server located in the Virgin Islands, the transaction is considered to occur in the Virgin Islands and venue for any disputes must be in the local and federal courts of the Virgin Islands.

(b) *Additional Activities.* In addition to the aforementioned activities, upon previous

authorization of the Director and subject to the provisions of the Act, an IBE may provide to other international banking entities or to foreign entities or persons outside of the U.S. Virgin Islands, such financial services as they may be defined and generally accepted in the banking industry of the United States, including the U.S. Virgin Islands, and that are not mentioned in this SUBSECTION.

(c) Each activity authorized by this section includes transactions whether for commercial, business, investment or agricultural purposes, or for personal, family or household purposes.

(d) In connection with the making, procuring, placing, arranging, guaranteeing, securing, bonding, or servicing, of any loan or other financial undertaking by an IBE, the IBE may require and accept as security any type of property, whether provided by the borrower or a third person, including, without limitation, any real property or personal property purchased with the proceeds of the loan or other financial undertaking by the IBE, and without requiring any adjustment to the principal balance of the loan or other financial undertaking for interest or other purposes. However, in connection with any loan or financial undertaking in which security for the loan or financial undertaking is purchased or acquired with proceeds of the transaction, the borrower or third person shall provide a written certification that it considers the use of proceeds for purposes of security for the loan or financial undertaking to be beneficial to the borrower or third person.

(e) In connection with the activities of an IBE under this chapter, the Director may establish reasonable regulations and reporting requirements with respect to an IBE's compliance with any applicable federal anti-money laws of the United States, including, without limitation, the following: the Bank Secrecy Act (31 U.S.C. §5311 et seq.), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272. In order to limit additional costs to the Virgin Islands Government, the Director shall outsource anti money laundering due diligence compliance programs to Virgin Islands companies, and the IBE is responsible for paying any reasonable costs, as determined by the Director.

## **SUBSECTION 726-2                    PROHIBITED ACTIVITIES AND TRANSACTIONS**

(a) The IBE may not:

(1) accept deposits or borrow money from domestic persons, except from the Government Development Bank of the Virgin Islands, the Economic Development Bank of the Virgin Islands and from other international banking entities.

(2) make, procure, arrange, place, guarantee, secure, bond, or service, loans or other financial undertakings, unless all loan proceeds are to be used outside of the Virgin Islands, with the exception of a dual situs trust and the cases permitted in paragraphs (20) and (21) of subsection (a) or subsection (e).

(3) issue, confirm, or give notice of letters of credit, unless all proceeds of the letter of credit are to be used outside of the Virgin Islands, and that both the issuer and the beneficiary are foreign persons, with the exception of export financing transactions in which the beneficiary is a domestic person.

(4) discount bills of exchange, unless all the proceeds of the bills of exchange would be used outside of the Virgin Islands and that both, the drawer and the beneficiary, are foreign persons.

(5) purchase or hold any of its own capital stock, or the capital stock of or the interest in the capital of the person of which it is a unit, except when previously authorized by the Director.

(6) grant any kind of financing or credit to any of its Directors, officers, employees or stockholders, except when previously authorized in writing by the Director.

(7) directly or indirectly place, underwrite, insure or reinsure risks or objects that reside, are located or will be executed in the Virgin Islands, or participate in reciprocity or retrocession arrangements or agreements covering or relating to such risks or objects, or assign insurance to, or assume reinsurance from any insurer authorized to do or who is doing insurance business in Virgin Islands.

(b) An IBE that is a unit of another person shall segregate and keep separated all transactions made or conducted by the unit, from every other transaction made or conducted by the person of which the IBE is a unit.

### **SUBSECTION 726-3. PROCEDURE TO ESTABLISH BRANCHES**

Every IBE may request the Director, and the latter, may approve or deny the permit to establish branches outside of the U.S. Virgin Islands, including the United States, its possessions and territories or in any foreign country, as provided by this SUBSECTION.

(a) *General Requirements of the Application to Establish Branches.* Every application for the establishment of a Branch shall be submitted in writing, before the Director, in the forms prepared by him, which shall be sworn by the president, or by an officer duly authorized to carry out these endeavors through a company resolution of the applicant IBE. The application shall contain all such information required by these Rules and Regulations.

(b) *Investigations.* After having submitted an application for the establishment of a Branch in the manner specified by this Regulation and having paid the corresponding fees, the Director or his representatives shall carry out the investigation necessary to determine whether such application should be granted or denied.

(c) *Charges for Study and Annual Fee.* The expenses in which the Director incurs due to the aforementioned investigation shall be borne by the applicants. The Director shall claim such investigation expenses through the filing of a duly filled Requisition for Reimbursement on the form that the Director designs for such purposes.

(d) *Information Contained in the Application Form to Establish a Branch.* Every application to establish a Branch of an IBE shall be filed with a copy thereof in the forms prescribed by the Director and shall contain:

(1) Financial Condition of the IBE.

Copy of the last financial statement of the IBE. The Director may require additional reports if the Director deems them to be necessary.

(2) Location.

Exact location, if known, or the area where the proposed Branch is to be established.

(3) Certification of other Necessary Authorizations

The applying IBE shall submit a certification of authorization to establish the Branch by the regulatory agencies of the country or State where such branch is proposed to be set. In those cases in which the IBE shall not be subject to the regulatory agencies, the IBE shall so certify.

(4) Additional Information

The Director may require any other information he deems necessary for an adequate assessment of the application. The applicant may submit any other additional information deemed appropriate and necessary to sustain the application.

(e) *Denial review.* Every denial for the establishment of a branch made by the Director shall be subject to review according to the provisions of the federal Administrative Procedure Act 5 U.S.C. § 551 et seq.

(f) *Branch Transfer*

(1) No IBE shall transfer the location of its Branches without previously notifying the Director of such transfer at least sixty (60) days prior to the date in which the Branch begins operating in the new location. If no objection to the transfer is received from the Director, within the referred period, it shall be deemed as authorized by the Director. Nevertheless, such authorization by the Director should not be deemed to extend to such other permits or authorizations by other foreign agencies which are necessary for the transfer.

(2) Copy of such other permits or authorizations of other foreign agencies which are necessary for the transfer.

(3) The notice of transfer of localization of any Branch, shall be signed by the President or officer authorized to perform such endeavors.

(4) The IBE shall submit any other information the Director may require regarding the proposed transfer of a Branch.

(g) *Closing or Merger of Branches.* No IBE shall close or merge a Branch without notifying the Director, in writing, thirty (30) days prior to the date of the proposed

merger or closing.

(h) *Reasons to Deny a License to Establish a Branch.* The Director may deny an application to establish a Branch for any of the reasons listed below:

(1) In the opinion of the Director, the financial and economic condition of the applicant IBE does not allow the establishment of the proposed Branch.

(2) The officers who shall direct or manage the proposed Branch do not have, in the opinion of the Director, sufficient experience, moral solvency or financial or commercial ability to carry out the business of the Branch.

(3) The IBE is not complying with the applicable provisions of law or refuses to abide by any order issued by the Director pursuant to the powers conferred to him by the IBE Act.

(i) *Confidentiality.* Any study, indication, conclusions and recommendations the Director or his representatives may make in regard to any application to establish a Branch shall be considered privileged and confidential in nature and shall not be disclosed.

(j) *Granting of the License.* If the establishment or transfer of a Branch is approved, the Director shall issue a license to the applicant IBE, which shall indicate the exact address where it will be located and its issue date and effective period.

(k) *Period to Begin Operations in Branches.* Every Branch shall begin operating within three hundred and sixty-five (365) days after the date in which the Director approved its establishment. If, for any justified reason, the IBE could not begin operating the Branch within the period herein established, it may request the Director for an extension for the commencement of such operations. Such application must specify the term of such extension.

(l) *Cancellation of Authorization and License to Operate Branches.* The Director may order the cancellation of an authorization or license to operate one or more Branches, for any of the reasons set forth in this Regulation or for any established non compliance of the IBE as

established by the hearing procedures listed in Subsection 734-1 of these rules.

(m) *Annual Licenses, Fees.* At the anniversary of each year, every IBE shall obtain from the Director a license for its Principal Office and one for each Branch outside of the U.S. Virgin Islands, after payment of an annual fee of five thousand dollars (\$5,000.00) for the Main Office and one thousand dollars (\$1,000.00) per Branch.

(n) *Information and Investigation.* The IBEs, their officers and employees are bound to furnish and facilitate to the Director or his authorized representatives, all the information they request in any investigation regarding the operations and services of Branches outside of the U.S. Virgin Islands, or for the implementation of the provisions of the Act, as amended, and this Regulation.

**SUBSECTION 726-4. PROCEDURE TO APPLY FOR AUTHORIZATION TO PROVIDE OTHER FINANCIAL SERVICES TO INTERNATIONAL BANKING ENTITIES OR FOREIGN ENTITIES OUTSIDE OF THE U.S. VIRGIN ISLANDS**

(a) *Authorization to Offer other Financial Services to International Banking Entities or Foreign Entities Outside of the U.S. Virgin Islands.* Every IBE may apply to the Director for authorization to offer other types of financial services which are not set forth in the IBE Act pursuant to the provisions of this SUBSECTION. The authorization of the Director to offer financial services which are not set forth in the IBE Act, as amended, may extend to all other IBEs or be limited to those which comply with the requirements that may be established by the Director by means of a circular letter.

(b) *General Requirements of the Application to Offer other Financial Services.* Every IBE interested in offering other types of financial services shall file an application, in writing, before the Director, signed by a person duly authorized to carry out such endeavors on behalf of the IBE.

(c) *Information Contained in the Application Form.* Every application to offer other types of financial services shall be filed with a copy thereof in the forms prescribed by the Director and shall contain:

(1) A copy of the last financial statement of the IBE.

(2) A detailed description of the type of financial service the IBE wishes to offer.

(3) A certification signed by an authorized officer of the IBE stating that the rendering of the requested type of financial service shall be performed according to applicable laws and regulations.

(4) The Director may require, and the applicant shall submit, any other information the Director deems necessary for an adequate assessment of the application.

(d) Every denial made by the Director shall be subject to review according to the provisions of the federal Administrative Procedure Act, 5 U.S.C. § 551 et seq.

(e) The IBEs, their officers, and employees shall furnish to the Director or his authorized representatives, all of the information requested in any investigation regarding the implementation of the provisions of this SUBSECTION.

#### **SUBSECTION 727-1. PERSONNEL**

(a) The IBE shall employ on a full-time basis a minimum of three persons at its business office or offices in the Virgin Islands. However, the Director may authorize a lesser number of employees upon request of the interested party. In considering such authorization the Director shall evaluate factors, such as the powers conferred by the license granted under this chapter, and the nature and complexity of its operations in the Virgin Islands.

(b) The full-time employees of a person of which an IBE is a unit which render some services to such entity, are considered to be full-time employees of such entity for purposes of the employment requirements set for the in subsection (a) of this Section.

(c) An IBE may engage other persons to act as its agent in the exercise of the IBE's authorized activities (as described in Section 726-1) whether on or off its premises, and, in connection therewith:

(1) Such performance must be treated to the same extent as if the services were being performed by the IBE itself on its own premises, and

(2) The IBE shall notify the Director of the existence of the service relationship no later than sixty (60) days after the making of the service contract or the performance of the service, whichever comes first.

#### **SUBSECTION 728-1. ACCOUNTS AND RECORDS**

(a) *Accounts and Records.* Every IBE must maintain accounts and records of all the transactions performed by it in the normal course of its operations. The records of the IBE shall consist of entries written in ink or typewritten, computerized printouts and other legible printed forms. The original accounting books and records shall be kept in the IBE's place of business in the U.S. Virgin Islands. Nevertheless, in the event that the IBE is a unit or subsidiary of a foreign person, the original accounting books and registers of the IBE may be recorded and kept in duplicate in the country of origin. The accounting books and records of the IBE shall be separate and apart from the accounting books of any other person, including the person of which the IBE is a unit or subsidiary.

(b) The records of lending transactions and other extensions of credit must include original documents, photocopies or scanned copies or any other electronic media and must contain account number, the name, physical and postal address and occupation of the debtor, a statement of the proposed use of the loan and the terms and conditions of the same. The IBE shall have the flexibility to manage and identify investor accounts (if applicable) in its possession as it may deem appropriate, provided it maintains in its files a record of every account available for examination by the Director or his authorized representatives, which includes at least the account number and the name, physical and mailing address and the occupation of

any investors.

(c) Every IBE shall be subject to the inspection and supervision of the Director who will examine the operations of the IBE. An examination fee of three hundred fifty dollars (\$350.00) per day or fraction thereof shall be charged to each IBE per examination, for each examiner who participates in the examination. Such payment shall be made by check issued to the order of "the Government of the U.S. Virgin Islands" no later than thirty (30) days following the date of the invoice. The records of the IBE and the working documents of the external auditors must be available for examination by the Director's examiners for a period of at least five (5) years after the closing of the fiscal year of the IBE in which the records were made.

#### **SUBSECTION 729-1. REPORTS AND SUPERVISION**

Every IBE must remit to the Director:

(a) A report of its condition and results of operations as of the last day of each quarter of the year, in the form prescribed by the Director, within thirty (30) days after the close of each quarter, and,

(b) Its annual financial statements at the closing of its fiscal year or of the person of which the IBE is a unit, prepared consistently with the reports of condition filed quarterly. Together with said financial statements, a statement shall be included stating that the IBE is complying with the Act and this Regulation, by duly filling the Form which the Director may design from time to time and circulate by means of a Circular Letter for such purposes. Such Form shall be certified by an independent Certified Public Accountant authorized to practice under the laws of the U.S. Virgin Islands. The financial statements shall be received by the Director no later than ninety (90) days after the end of the fiscal year of the IBE and the same must comply with the Generally Accepted Accounting Principles or, with equivalent reliable accounting principles and procedures.

**SUBSECTION 730-1. REVOCATION, SUSPENSION OR SURRENDER**

(a) The license issued under §721 is subject to revocation or suspension by the Director, upon previous notice and hearing pursuant to the regulations under this chapter, if:

(1) An IBE or the person of which the IBE is a unit, contravenes or fails to comply with any of the provisions of this chapter, any regulation of the Director, or any of the terms or conditions of the license to operate an IBE.

(2) An IBE fails to pay the annual license fee.

(3) The Director finds that the business or affairs of an IBE are conducted in a manner that is not consistent with the public interest.

(b) In all hearings commenced under this chapter, the Director must establish a prima facie case that the IBE is in violation of a statute or rule and is subject to revocation or suspension. Upon a prima facie showing, the burden of proof shifts to the IBE to establish that it did not violate statute and/or rule and should not be suspended or revoked.

(c) An IBE or the person of which the IBE is a unit, may at any time, and in the manner provided by the regulations of the Director, surrender its license to operate an IBE.

**SUBSECTION 730-2. INVESTIGATIONS**

(a) An investigation shall have been conducted before the Director acts to revoke, suspend or modify a certificate pursuant to these Rules and Regulations. Such investigation may be conducted by the Director on his own initiative. The goal of such investigation shall be to determine all the facts which the Director shall consider in determining whether grounds exist to commence a proceeding to revoke, suspend or modify a Certificate.

(b) The expenses of any investigation or any proceeding by the Director to determine compliance by any Beneficiary shall be borne by the Beneficiary in the event of a finding of non-compliance by the Beneficiary.

(c) Upon receipt of a report from the Director of an investigation conducted on his own initiative, upon receipt of a petition from the Attorney General of the U.S. Virgin Islands for an order to show cause why a certificate should not be revoked, modified or suspended, or upon its own initiative, the Director initiate proceedings to investigate whether grounds exist to revoke, suspend, or modify a certificate.

(d) In case the Director has conducted an investigation and reported on it, the Director may request further investigation, and the Director is authorized to schedule a hearing to show cause why the certificate of the Beneficiary should not be revoked, suspended, or modified.

(e) The order of investigation, which shall generally be in the form of an order to show cause why a certificate should not be revoked, suspended, or modified, shall state with particularity the grounds, or possible grounds, for revocation, suspension, or modification of a certificate.

(f) Notice to Beneficiary. Upon issuance of an order to show cause why a certificate should not be revoked, suspended, or modified by the Director, the Director shall serve on the Beneficiary, promptly, but in no event less than thirty (30) days prior to the hearing to show cause, notice of the Director's proposed action.

(1) The notice shall include a copy of the order to show cause, the date, place, and time of the public hearing to show cause, and a copy of this subchapter.

(2) The notice shall be by hand delivery to the Beneficiary or its designated representative, or by certified mail, return receipt requested, to the Beneficiary at its last address reported to the Director.

(g) A copy of the notice described in (b) above shall be mailed or delivered in

person, at least eight (8) days prior to the date of the public hearing to show cause, to any person whose name appears on the list required to be kept pursuant to Section 717-204(d) as having requested to be served with notice of public hearings and to such other persons as the Director may deem appropriate.

#### **SUBSECTION 731-1. DISSOLUTION**

(a) The Director may appoint a receiver and order the dissolution of an IBE if the license of the IBE or of the person of which the IBE is a unit, is revoked or surrendered under §730.

(b) The receiver appointed must be a person of recognized moral qualities, with vast experience in the field of banking or finance, and the receiver's performance with the IBE must be secured by an adequate bond, to be paid by the IBE itself.

(c) The receiver shall manage the IBE in accordance with the provisions of this chapter and shall:

- (1) take possession of the assets and liabilities, books, records, documents and files which belong to the IBE;
- (2) collect all loans, charges and fees owed to the IBE;
- (3) pay all obligations and debts of the IBE, after having paid the necessary costs of the receivership; and
- (4) supervise the dissolution and liquidation of the IBE.

#### **SUBSECTION 732-1. REMEDIES AND PENALTIES**

(a) *Cease and Desist Orders.* The Director may issue cease and desist orders and

orders of immediate action when, in the Director's opinion, there has been a violation or an attempt to violate the Act or this Regulation or an action has been taken which may jeopardize the public interest in general or a particular person. If an order to cease and desist is issued, the IBE or the person to whom the order is issued may request an adjudicative hearing pursuant to the provisions of Subsection 751-1 of these rules.

(b) *Penalties.* If any Director, official or individual acting in a similar capacity of an IBE or of a person of which the IBE is a unit, violates, or voluntarily or negligently permits any Director officer, agent, or employee of the IBE or of the person of which the IBE is a unit, to violate the Act or these regulations, the Director shall schedule and summon the interested parties to an administrative hearing pursuant to Section 31. Once the hearing is held and after the Director determines that a provision mentioned in this subsection has been violated, the Director may take the corresponding action.

(1) Any official or employee of an IBE, or of a person of which it is a unit, who on behalf of such IBE receives any investor funds with the knowledge that the IBE is insolvent, is subject to a civil penalty of \$5,000 and is also liable to make restitution for any losses suffered by any victim.

(2) Any Director, official or employee of the IBE or of the person of which the IBE is a unit, who illegally appropriates, embezzles, removes or voluntarily misuses any moneys, funds, credits or securities of an IBE, or who, without due authorization, issues or draws any certificate of deposit, draws any order or bill of exchange, carries out any type of acceptance or assignment of a note, bond, money order, bill of exchange, and any person who, with the same intention, aids or abets any Director, official or employee to violate any provision of this section, is subject to a civil penalty of not less than \$5,000 nor more than \$10,000 and is also liable to make restitution for any losses suffered by any victim. While the Act and these Rules do not create any additional criminal offenses under Virgin Islands laws, all relevant criminal laws apply and the additional civil penalty does not immunize the offender from potential criminal liability.

(3) Any Director, official, or employee of an IBE or of the person of which the IBE is a unit, who voluntarily misrepresents the financial condition of an IBE or about any transaction to be carried out by, or carried out by the IBE, or who declines to provide

information legally requested by the Director, is subject to a civil penalty of not more than \$5,000.

(4) This section may not be construed in any manner to limit the power of the Director to impose reasonable administrative fines for violations of this chapter or the regulations of the Director.

#### **SUBSECTION 733-1. CONFIDENTIALITY**

(a) The information obtained by the Director as a result of any investigation or report or provided by the IBE or its organizers, stockholders or owners with the purpose of obtaining permit or license or to comply with any provision of the Act, shall be kept confidential and shall not be disclosed to any person, except when:

(1) the disclosure of such information is required by law or judicial order,  
or

(2) there is a formal request of a domestic or foreign government agency in the course of its supervisory duties accompanied by appropriate court order and the Director determines that such disclosure is in accordance with the public interest.

(b) The information related to the identity, financial statements, transactions and client's accounts obtained by the Directors, officers, employees and agents of the IBE or persons involved with its business such as lawyers, auditors or accountants and others, shall be kept confidential, except when requested by the Director or consented by the client or to comply with a judicial summon legally issued by a court of competent jurisdiction in the U.S. Virgin Islands.

(c) When the Director understands that the confidentiality provisions herein contained have been violated or that there has been an attempt to disclose confidential information, the Director will take the necessary action pursuant to SUBSECTION 20 of these Rules and

Regulations, including the suspension of the offending officer or employee of the IBE involved in said violation, and shall impose upon the IBE the corresponding administrative fines pursuant to the Act and in accordance with the magnitude of the violation, not to exceed five thousand dollars (US \$5,000) per violation.

(d) The Director may make public the statistical facts regarding the activities of the IBE as an industry, as long as such information is revealed in a consolidated or aggregated manner.

#### **SUBSECTION 734-1. ADMINISTRATIVE HEARINGS; ADJUDICATION PROCEEDINGS AND JUDICIAL REVIEW**

(a) All matters related to administrative hearings procedure, adjudicatory proceedings and juridical review must substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C. § 551 et seq.

(b) Appointment and Duties of Hearing Counsel. The Director may request the Attorney General of the U.S. Virgin Islands to appoint an Assistant Attorney General, or may hire a licensed U.S. Virgin Islands attorney, to act as Hearing Counsel. Hearing Counsel must have the same qualifications listed for contracting tax attorneys listed in these rules, Subsection 736-5(b)(6)(C).

(1) Hearing Counsel shall be a party to the proceedings as of the date the hearing to show cause is announced.

(2) Hearing Counsel shall be responsible for advancing the case for revocation, suspension, or modification before the Director at the public hearing to show cause.

(3) At no time may Hearing Counsel discuss with the Director the substance of the proceeding, except in a formal meeting or hearing of the Director of which the Beneficiary has been given notice and an opportunity to be present. The Beneficiary and its attorney shall likewise refrain from any such discussions. This rule may be waived only upon written stipulation of the Parties.

(4) The Hearing Counsel will have quasi judicial immunity for his or her role in the Hearing. Quasi judicial immunity for purposes of these rules means complete judicial immunity equal to the same immunity sworn judges are given under Virgin Islands law.

(c) Hearing Procedures

(1) Public hearings under this subchapter shall be conducted in accordance with this section and with applicable provisions of Division of these Rules and Regulations.

(2) The Director shall preside unless the Director designates another person to act in his stead. Such designation must be in writing to be effective.

(3) The Director shall arrange for the hearings to be recorded by a stenographic process and for transcripts to be prepared within thirty (30) days.

(4) Hearing Counsel shall present its case first. The Beneficiary shall have the burden of proof by the preponderance of evidence standard but Hearing Counsel shall have the burden of going forward and must make a prima facie case of a violation before the burden of proof shifts to the Beneficiary.

(5) Hearing Counsel and Beneficiary shall be entitled to call and question witnesses, to have process to compel the attendance of witnesses, to cross-examine witnesses, and to resent documentary evidence.

(6) All witnesses shall be sworn before testifying .

(7) The order of the hearing shall be as follows:

A. Call to order and reading of the relevant orders by the Director.

B. Opening statement by the Hearing Counsel.

C. Opening statement by the Beneficiary .

D. Presentation of evidence by Hearing Counsel  
(including cross- examination by Beneficiary).

E. Presentation of evidence by Beneficiary (including cross-  
examination by Hearing Counsel).

F. Closing Arguments by Hearing Counsel.

G. Closing Arguments by Beneficiary .

(8) The Director shall have the right to question witnesses.

(9) Except where they are inconsistent with the Director rules, the Federal

Rules of Civil Procedure, including discovery rules therein, shall apply to Show Cause Hearings.

(10) The Director may require briefs or statements and/or proposed findings of fact and conclusions of law to be filed by the parties. Generally, reply briefs will not be allowed except upon good cause shown and approved by the Director.

(d) Decision and Findings of Fact:

- (1) The Director shall, after receipt of all briefs or statements, meet and, on the basis of the evidence presented at the hearing or hearings, decide whether or not to revoke, suspend, or modify a certificate.
- (2) If the Director decides to suspend, revoke or modify a certificate, it shall specify the date or dates (which may be retroactive in appropriate cases) when such action shall take effect.
- (3) Any decision shall be in writing and shall set forth the findings of fact upon which the decision is based .

(e) Action by the Lieutenant Governor

- (1) If the Director decides to suspend, revoke or modify the benefits, it shall promptly transmit a copy of its decision and findings to the Lt. Governor.
- (2) The Lt. Governor's approval is required before any such decision may take effect.
- (3) After the Lt. Governor approves or disapproves the decision of the Director, he shall transmit evidence of his approval or disapproval to the Director.
- (4) After receipt of the Lt. Governor's action, the Director shall promptly serve on the Beneficiary a copy of the decision and the Governor's action.

(f) Service of Documents. All documents connected with a proceeding under this subchapter that are filed with the Director or by the Director shall be simultaneously served on all parties by hand delivery or by first class mail, postage prepaid. A Certificate of Service to this effect shall be attached to all such documents.

(g) Summary Procedure. The Director may summarily revoke, suspend, or modify certificates in accordance with the Rules and Regulations in the following instances:

- (1) If a Beneficiary is no longer in active operation of the enterprise for which benefits were granted; or
- (2) If within five (5) years after the date on which the Director signed the certificate, the Beneficiary has failed to commence the active conduct of, the business for which benefits have been granted.

(h) Upon a report from the Director that a certificate should be revoked, suspended or modified pursuant to any item listed above, the Director may immediately arrange to schedule a hearing on no less than thirty (30) days notice to the Beneficiary. Such notice shall include a copy of the Director's report. Delivery of such notice shall be by hand delivery to the Beneficiary or by certified mail, return receipt requested, to the Beneficiary at his last address reported to the Director.

(i) A Beneficiary's failure to appear at such hearing may be taken as an admission of the grounds for revocation, suspension or modification.

(j) The Director may make its determination on the matter immediately following the hearing, but its determination shall be supported by findings, and be subject to the approval of the Lt. Governor.

#### **SUBSECTION 734-2. AGENCY EXAMINATIONS**

(a) Authority. The Director is authorized to conduct examinations of an IBE as determined by the Director from time to time. Examinations may be full-scope examinations or limited-scope examinations. The Director is authorized to have access to all books, records, and other information; and all employees, agents, and persons employed or engaged by, related to, or providing services to an IBE. The Director is authorized to make copies, take extracts, issue subpoenas, and take statements under oath.

(b) Procedures. Examinations may be conducted onsite or through self-reporting and offsite analysis and monitoring. The examination staff shall conduct a preliminary interview at the start of an examination and an exit interview at the conclusion of the examination. The Director shall issue an examination report. To the extent practicable, the report shall be issued within sixty days of the conclusion of the examination. To the extent practicable, the Director will endeavor to utilize procedures that incorporate technology, cost-savings, and self-reporting.

(c) Rationale. The Director conducts onsite and offsite examinations to ensure public confidence in international banking entities and to assess compliance with laws and regulations. Examinations and self-reporting play a key role in the supervisory process by helping the Director identify the nature, severity, and cause of an IBE's potential problems; to recognize emerging risks in the financial services industry; and to develop effective corrective measures.

(d) Examination documentation. Examiners should document their findings through a combination of brief summaries, source documents, report comments, and other work papers that clearly describe financial examination conclusions. At a minimum, summary comments should: Detail examination findings and recommendations; describe supporting facts and logic, and document management responses. Although examination documentation may be maintained in various ways, examiners must securely retain appropriate supporting records of all major examination conclusions, recommendations, and assertions detailed in the report of examination.

(e) Safeguarding Examination Information. Examination information may contain non-public customer information as defined in Section 501(b) of the Gramm-Leach-Bliley Act. Therefore, examiners must exercise a high degree of care to safeguard information and control the access, storage and transport of information stored on laptops, retained on other storage media, or paper copies. Examiners must protect agency property and data and respond quickly to any security breach. Examiners should: Protect computer equipment and data in transit; track data in transit, and secure unattended equipment and data. Examiners must immediately report unauthorized access to data and equipment to the Director. The Director must develop procedures for accessing, transporting, storing, and disposing of electronic and paper

information. The procedures should include minimum technical, physical, and administrative safeguards, and include an incident response program.

(f) Confidentiality of Examinations. Examinations are confidential, shall not be subject to open-records disclosure, and shall not be disclosed to any person other than the IBE and its owners, subject to any applicable laws requiring disclosures with respect to criminal procedures.

#### **SUBSECTION 735-1. INAPPLICABILITY OF EXISTING LAWS**

Neither the provisions of §§ 1 et seq. of this title, known as the "Banking" title, nor the provisions of §§ 951 et seq. of this title, which fix the maximum interest rates or charges permitted on loans, are applicable to the operations of international banking entities established under this chapter.

#### **SUBSECTION 736-1. FILING OF IBE APPLICATION**

(a) Applications for permits and licensure of international banking entities shall be filed on forms to be designed, printed, and provided by the Division of Banking and Insurance.

(b) The Applicant must file an original and one copy of the application and all supporting documents in hard copy must be bound and deliver an electronic or digital copy of the application to the Division.

(c) Upon filing, the Director shall:

- (1) stamp the date of filing on the cover sheet of the original application and each copy, and
- (2) assign and write thereon a file number

(d) The Director shall not accept an application for filing unless it contains all of the items set forth below.

(e) Upon accepting an application, the Director shall notify the Applicant in writing or by email that the application has been accepted, the date of such acceptance, and any items temporarily waived.

#### **SUBSECTION 736-2. CONTENTS OF IBE APPLICATION**

Except as provided in Subsections (d) and (e) below, all applications shall contain the following:

- (a) A cover sheet indicating the type of application and the name of the Applicant.
- (b) The mailing address of the Applicant
- (c) The specific type of business to be conducted by the Applicant, making reference to the eligible business activities in 9 V.I.C. § 726. It is permissible for the Applicant to state “all business activity” permitted by 9 V.I.C. § 726, however, a specific business description is also required.
- (d) If the Applicant's business is not listed, then the application shall also contain a brief statement as to how the enterprise will advance the economic well-being of the United States Virgin Islands and its people.
- (e) The location or proposed location, if known at the time of application. In the case of leased premises, one copy of the lease shall be attached to the original application only. If the location is unknown at the time of application, the Beneficiary shall inform the Director of the location immediately upon making a determination as to location.
- (f) The name, address, and telephone number of the licensed Virgin Islands attorney or representative of the Applicant, if any.

(g) Evidence of payment of the non-refundable application fee in the amount of ten thousand dollars (US \$10,000). The license issued by the Director shall specify all of the permitted activities pursuant to 9 V.I.C. §726;

(h) Evidence of payment of the non-refundable due diligence fee in the amount of four thousand dollars (US \$4,000). This fee includes \$3000.00 for the Due Diligence Investigator and \$1000.00 for the Division of Banking's Tax Counsel, each of which is outsourced pursuant to the requirements and qualifications contained in these rules. By making this non refundable payment, Applicant understands that if Applicant's past history requires additional investigation, the Investigator will apply to the Director for an increase in the due diligence budget and if the Director authorizes the additional expense, Applicant is required to pay the additional fee prior to the Director's consideration of the application.

(i) Copy of the internal company resolutions, operating agreement or other necessary entity documents approved by the manager, owners, or Board of Directors including a statement or resolution in which the Board of Directors, or the ruling body, or the person who acts in a similar capacity, of the IBE or of the person of which the IBE is a unit, indicates that the IBE has complied with all the terms and conditions of the Act and this Regulation and that, upon issuance of the Certificate, it is ready to commence operations

(j) Evidence that the capital of the IBE has been subscribed to, issued and paid-in, to the extent and under such condition as the Director may establish at the Director's sole discretion;

(k) Evidence that the person of which the IBE is a unit or a subsidiary has complied with all the requirements of any regulatory agency responsible for supervising the activities of such person in the jurisdiction of its origin with respect to the establishment of a branch or subsidiary outside of said jurisdiction. Such evidence may consist of a

certification issued by the regulatory agency or a legal opinion acceptable to the Director;

(l) The following additional information: the name, residence and business address, occupation, and country of citizenship of each partner;

(1) in the case of each partner who is a resident of the United States Virgin Islands, the date on which such residency commenced;

(A.) a copy of the partnership agreement;

(B.) in the case of each partner which is a corporation, all of the information required of corporation Applicants.

(2) In the case of a corporation: The names and addresses of all persons, firms, corporations, etc., owning five (5%) percent or more of the stock or equitable interest of the Applicant and the percentage owned by each.

(A.) in the case of any listed stockholder which is a corporation, the names and addresses of the directors and the principal officers of such stockholder corporation.

(B.) in the case of a stockholder which is a partnership, the names and addresses of all the partners.

(C.) In the case of a stockholder which is a trust, the names and addresses of all the trustees.

(D.) The place of incorporation.

(E.) The date of incorporation.

(F.) A certified copy of the certificate of incorporation.

(G.) A copy of the Articles of Incorporation and all amendments thereto.

(H.) A current Certificate of Good Standing from the U.S.V.I. Lieutenant Governor's Office;

(3) In the case of a foreign corporation, evidence that the corporation is authorized to do business in the United States Virgin Islands.

(4) In the case of a Limited Liability Company, Corporation or Partnership, or other legal entity in addition to the appropriate information required above, a list of the names and addresses of the members.

(m) Whether Applicant, or any one or more of its stockholders or partners have, or have had any proprietary interest in any other enterprise which is or was a Beneficiary under the Code or any predecessor Code.

(n) Whether or not the Applicant is operating in the United States Virgin Islands as of the date of application, and if so, the date the operation began.

(o) The number of persons presently employed full-time (or to be employed full-time upon start-up of operations) and the number the Applicant intends to employ full-time one year later, categorized into supervisory, administrative, and other. The wages in each category and in total shall also be provided for both points in time. Part-time employees may be included. Two part time employees working in excess of 20 hours per week shall be counted as one fulltime employee.

(p) For each of the total employment figures required, the number who are residents of the United States Virgin Islands.

(q) Submit plans for a management-training program for approval by the Director. The plan shall establish a program through which the Beneficiary shall have as managers and officers, residents of the Virgin Islands, as defined in 29 V.I.C. § 703.

(r) A letter from the United States Virgin Islands Bureau of Internal Revenue (VIBIR) indicating the status of all United States Virgin Islands tax obligations of the Applicant. In the event the Applicant entity has not done business in the Virgin Islands, there shall be no requirement to produce a letter from the VIBIR.

(s) Bank reference letter or letters or indication that such letter has been requested. If such letter(s) is not included in the application, the Beneficiary shall provide the Director with a copy as soon as it becomes available.

(t) Copy of the Applicant's audited financial statements for each of the three (3) years preceding the application. Profit and loss statement and balance sheet for the most recent three (3) fiscal years of the Applicant, except that in the case of an Applicant which has been in business for less than one (1) year, a balance sheet including a statement of assets and liabilities may be substituted for profit and loss statements. In the event that the Applicant is a new company, audited financial statements are not required.

(u) Projected income and expense statements for two (2) years.

(v) Copies of income tax returns for the most recent three (3) taxable years of the Applicant and its principals who hold more than a five percent ownership interest in the Applicant entity. In the case of a partnership, a copy of the partnership information return is required.

(w) If the Applicant, or any corporate stockholder which holds five (5%) Percent or more of the Applicant's stock, or any corporate partner, is publicly traded, a copy of the most recent annual report of each such corporation.

(x) Submit details regarding employee health insurance, retirement plans, vacation and sick leave policies and whether the IBE will have an employee stock ownership plan.

(y) Submit amounts and plans for scholarships and/or educational assistance programs for approval by the Director.

(z) Whether, after obtaining a certificate, Applicant intends to conduct any business not subject to benefits, and if so, the nature of such business.

(aa) A brief narrative statement in support of the application.

(bb) Any additional information or documents in support of the application which Applicant wishes to submit.

(cc) A business plan for the IBE. The business plan may contain many of the enumerated application requirements contained in this section.

(dd) A company manual that lays out the policies, employment regulations, and benefit plans of the company. Each company may design its own plan and these rules do not mandate particular requirements or a formed template for the company manual.

(ee) Signed and notarized due diligence forms for use by the background investigator to initiate the due diligence background investigation by the Division of Banking and Insurance or its outsourced subcontractor.

(ff) A tax analysis prepared by the Applicant's V.I. lawyer certifying that the attorney has a) read the IRS' Virgin Island sourcing rules; b) has analyzed the Applicant's proposed IBE business and c) and demonstrates that based on the representations of the Applicant the income qualifies as Virgin Islands source income. If the Applicant plans on engaging a transfer pricing study pursuant to IRC 482, the tax analysis letter should so state, providing however, that the Director shall not require that the Applicant produce the transfer pricing study unless the Virgin Islands Government enters into a pre filing agreement with the Applicant. The Division of Banking's outsourced Tax Counsel shall issue an analysis that either concurs, rejects, or questions the Applicant's tax analysis. Both of these tax analyses are Virgin Islands requirements designed to ensure that competent counsel has reviewed the IRS sourcing rules for the Virgin Islands and should not be confused with an IRS requirement. It is therefore, the intention of the Division of Banking and Insurance not to require that the tax analysis be governed by the standards in IRS Circular 230.

(gg) The signature of the Applicant or a responsible officer, partner or agent of the Applicant attesting to the truth, accuracy, and completeness of the application and any documents submitted in support thereof.

**SUBSECTION 736-3. WAIVER OF APPLICATION MATERIALS**

The Director may waive receipt of:

(a) Any or all of the clearance letters or certificates required to be obtained from local and/or federal government departments or agencies pursuant above, provided that the Applicant submits proof that such letters and certificates have been requested.

(b) The copy of any lease required to be submitted, if such lease has not been executed at the time of application.

**SUBSECTION 736-4. WAIVER OF EMPLOYMENT REQUIREMENT**

(a) If, at the time of application, an applicant does not expect to be able to meet the employment requirements of Subsection 727-1 above, it shall:

- (1) So state in its application,
- (2) State the number of full-time employees it does expect to employ,
- (3) State whether it expects to increase that number and when,
- (4) State the reason why employment of a greater number of employees in its particular enterprise would not be economically feasible or practical, and
- (5) State why it believes that the desirability of the enterprise outweighs the fact that it is not labor intensive.

(b) The Director may lower the employee requirement for the entire period of the benefits granted or for such shorter period as it shall find necessary and reasonable, provided, however, that the Director shall as a condition of a grant of benefits:

(1) Require the applicant to employ at least the number of full time employees that the applicant stated in its application that it expects to employ; and

(2) Make findings of fact on the record and state the reasons therefore that employment of ten or more persons in the applicant's enterprise would not be economically feasible or practical; and that the desirability of the applicant's enterprise outweighs the fact that it is not labor intensive.

(c) The minimum employment requirements shall be met by the Beneficiary within one (1) year of the date on which the Director signs its certificate.

#### **SUBSECTION 736-5. CONTRACTORS AND SUBCONTRACTORS**

(a) An Applicant or Beneficiary shall agree in writing to employ or contract, and to require all Contractors retained by him to employ or subcontract, for services with and from those persons, firms and corporations who are residents of the U.S. Virgin Islands, or incorporated under the laws of the U.S. Virgin Islands, and who are duly licensed to do business in the U.S. Virgin Islands so long as there are Virgin Islands service providers that offer the particular services the IBE requires.

(b) A responsible contractor or subcontractor shall be a service provider that meets the following minimum requirements:

(1) Have adequate financial resources or the ability to perform the required services of a contract; and

(2) Be able to comply with reasonably required or proposed delivery and/or performance schedules (taking into consideration all existing business commitments); and

(3) Have a satisfactory record of performance and all current business licenses

as may be required by U.S. Virgin Islands law.

(4) Contractors who are or have been seriously deficient in current or recent contract performance when the number of contracts and the extent of the deficiency of each are considered (in the absence of evidence to the contrary or circumstances properly beyond the control of the contractor) may be presumed by the Beneficiary to be unable to meet this requirement.

(5) Past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility; and debarment or suspension by the federal or U.S.V.I. Government shall justify a finding of non-responsibility.

(6) Where service provider contracts involve legal advice, background applications or compliance work concerning fulfilling the rules and regulations imposed herein, a contractor must:

(A) Have the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them.

(B) With respect to contractors performing due diligence background investigations and compliance audits, such contractors must have prior federal or local law enforcement experience which includes police officers, prosecutors, federal agents, and others with peace officer status. Accountants and other former non law enforcement regulators also qualify as appropriate background investigators. Virgin Islands companies that wish to perform such due diligence background investigations or ongoing compliance must have at least one employee, principal or contractor that holds such qualifications.

(C) With respect to attorney contractors performing tax analysis in connection with either the due diligence background investigations or the ongoing compliance audits, such attorney contractors must be a licensed Virgin Islands attorney, have prior federal or local law enforcement or regulatory experience which includes former tax counsel to the IRS, BIR, any state taxing authority, former prosecutors with tax case experience, private tax counsel that represented clients in the United States Tax Court, the Virgin Islands District Court on a tax matter or who have represented a party in an IRS or BIR audit, Virgin Islands attorneys who have written economic development legislation for the VI Senate

or who have testified before the Legislature on tax issues or any Virgin Islands Attorney that has been awarded either an LLM in tax or who has successfully completed a tax certification educational program.

(D) Such contractors are required to complete an application with the Division of Banking and Insurance or furnish a written letter wherein the above described requirements and qualifications are set forth in clear and concise terms. Once a contractor makes a prima facie case that the contractor is qualified to perform the services based on the qualification requirements set forth in these rules, the Division of Banking and Insurance shall grant the contractor a letter certifying that the contractor is qualified and eligible to perform such services. The Division of Banking and Insurance is not required to conduct an independent audit of the contractor's qualifications but if the Division learns that there are any material false statements in the contractor's representations in the application (or letter), the Director is authorized to terminate the contractor's eligibility to perform such services upon a hearing before the Director. At such hearing the contractor shall have the burden of proof by the preponderance of evidence standard to demonstrate the contractor's qualifications.

#### **SUBSECTION 736-6. ANTI-MONEY LAUNDERING (AML) PLAN**

The IBE must establish an Anti-Money Laundering (AML) Plan that must:

- (a) establish policy, procedures, and internal controls to prevent money laundering;
- (b) provide a mechanism for independent testing of the system by in house or qualified third party;
- (c) designate a compliance officer. The IBE may outsource this function to a qualified Virgin Island company. Qualifications for that company are the same qualifications

that are required for either the Virgin Island tax attorney (See Subsection 736-5(b)(6)(C)) or the Background Investigator (see Subsection 736-7 below); and

(d) provide for ongoing training to necessary personnel.

(e) include both Know-Your-Customer (KYC) rules and rules governing suspicious activity. Note, however, that KYC requirements that are typical of most banking AML plans will typically not be an essential element of an IBE AML Plan because IBEs do not take deposits other than transaction-related deposits. IBEs, however, may invite investors to invest in particular ventures of the IBE. In that case, a “know your investor” section and “proof of funds” section of an AML will be required. The know your investor and proof of funds sections should address potential Foreign Account Tax Compliance Act (FATCA) issues whereby a foreign entity might be actually owned by a U.S. person, triggering a reportable FATCA transaction.

(f) Each IBE is required to be familiar and comply with the U.S. Treasury regulations under Internal Revenue Code Sections 1471-1474 (the “final FATCA regulations”).

#### **SUBSECTION 736-7. INVESTIGATION AND REPORT ON APPLICATIONS BY CONTRACTOR**

(a) The Director shall, upon acceptance of an application and prior to submitting his recommendations:

(1) Shall contract to conduct a due diligence applicant background investigation. Such investigations may include, the reputation, business background and experience of the applicant and its principals.

(2) In addition to the Application Fee and Annual Compliance Fees, the Director may also assess against an applicant or Beneficiary any extraordinary costs and expenses incurred to process the application or monitor the Beneficiary's performance of the terms and conditions of its Certificate. The cost and expenses may include but are not limited to

the services of outside consultants necessitated by the Application or the Compliance Investigation

(3) The Director shall, within ten (10) working days after receiving an application for an IBE Certificate, refer the due diligence background investigation to a contractor to conduct the investigation. The contractor must complete the investigation and submit a written report to the Director within three calendar weeks of receiving the referral from the Director. The standard contract cost for such investigation shall be three thousand dollars payable in advance by the Applicant. This is in addition to the Application fee. The Director, at his discretion may assign the investigation to in house staff. In such event, the Division of Banking is permitted to retain the due diligence fee.

(b) Said report and recommendation shall contain the following (in the order listed):

**(1) BACKGROUND INVESTIGATION OF (Name of Company) AND (Individual Owners)**

The Government of the Virgin Islands Division of Banking and Insurance (hereafter GVI) hired the undersigned firm to conduct a background investigation into the \* (name of entity) and its owner, (name of owner).

**(2) Description of IBE Business**

(reprint from Application and/or Business Plan)

**(3) Methodology**

Contractor's experience as Investigator; include sub-contractor's used on the assignment and list their law enforcement or regulatory experience. The inquiry focused on the following subject areas:

(A) Is the applicant's business proposal consistent with the IBE Rules and the enabling legislation?

(B) Is the corporate and personal background of \* and \* acceptable for admittance into the IBE program?

(C) Has the Applicant provided a compliant anti money laundering program to comport with local and federal law to prohibit use of the IBE as a vehicle for money laundering?

(D) List the major group of databases used to conduct investigation as

well as any supplemental personal interviews.

**(4) Content Questions:**

**1. Is the applicant's business proposal consistent with the IBE Rules and the enabling legislation?**

**Finding:**

- Investigator must analyze the statute and rules to determine whether the proposed business comports with the rules, regulations and intent of the program)
- A positive finding should be accompanied by the following statement: (Name of Entity)'s proposed business is consistent with the statute and the rules governing IBEs.

**2. Is the corporate and personal background of (Entity) and (Individual Owners) acceptable for admission as an IBE?**

**Finding:**

- Investigator must state what the investigator has done to analyze the business and personal background of the entity and its owner(s).
- Investigator must state that he/she "has conducted a thorough background inquiry concerning the Owner's business and personal life."
- "Over \_\_\_ databases were queried.
- "No/Yes material negative information was revealed during the inquiry.
- "Owner does/does not have a criminal record and appears not to have (or has had) had problems with any regulatory entity.

**3. Has the Applicant provided a compliant anti money laundering (AML) program to comport with local and federal law to prohibit use of the IBE as a vehicle for money laundering?**

**Finding:**

- Investigator must review AML Plan and state whether it is creates a satisfactory framework to prevent the use of the IBE as a vehicle for money laundering.

**4. Conclusion**

- Investigator must state whether Entity and Owner have good reputations, whether it appears that IBE applicant has taken its regulatory responsibilities seriously; whether the Investigator believes the IBE will be a lawful compliant entry into the program.
- Investigator must recommend IBE for admission or rejection. If Investigator recommends rejection, Investigator must itemize the reasons and document the evidence for rejection.

(c) In the case of a recommendation for denial, the Director may recommend specific changes in the application, which might result in a change in the Director's decision.

(d) At any time the Director may make further investigations and may submit a revised report and recommendation, which shall include the reason for the revision.

(e) In the event that the Investigator must conduct substantial follow up field investigation to complete his/her investigation he/she may apply for additional funds in excess of \$3000.00 which must be submitted to the Director. If the Director concurs, the Director shall require the Applicant to deposit such sums as are necessary for the investigation prior to the IBE certificate being approved or denied.

#### **SUBSECTION 736-8. REPORTS BY BENEFICIARIES; ONGOING COMPLIANCE PROGRAM**

(a) After benefits have been granted, beneficiaries shall annually file with the Director the following:

- (1) Employer's Quarterly Wage and Contribution Report: A copy of all quarterly reports for the calendar year delivered to the Director on the annual compliance date.

(2) Affidavit of Residency of Employees: The International Banking Entity (IBE) Affidavit of Residency Form, with employee listing attached, must be delivered to the Director on the annual compliance date.

(3) An Annual Report (see subsection (b) below) along with a copy of the Beneficiary's Financial Statement or Income Tax Return must be submitted to the Director either the annual compliance date or, with the permission of the Director, within 30 days of the filing deadline of the Beneficiary's Income Tax return and any extensions thereto. Request for extensions must be submitted to the Director with a copy of proof of extension of filing tax return with the V.I. Bureau of Internal Revenue.

(4) Annual Filing to Lieutenant Governor: A copy of the Annual, Franchise Tax Report, Report on Stockholders of Tax Exempt Entities, and supporting financial documents, as filed with the Division of Corporations and Trade Names of the Office of the Lieutenant Governor of the U.S. Virgin Islands, delivered to the Director on the annual compliance date;

(5) Certificate of Good Standing or Existence: A copy of a Certificate of Good Standing or Certificate of Existence from the Office of the Lieutenant Governor of the U.S. Virgin Islands must be submitted following the annual filing and by July 30<sup>th</sup> of each year.

(b) The Annual Report must:

(1) declare the fiscal/calendar year covered by the report ("Covered Year").

(2) certify that the person signing the Annual Report is the duly authorized agent of the Beneficiary, with the authority to sign and the personal knowledge of the matters set forth therein; and that the Annual Report is binding on the Beneficiary.

(3) certify that the IBE has:

(A) established policy, procedures, and internal controls to prevent money laundering (Anti-Money Laundering (AML) Plan as describe in Section 736-6);

(B) provided a mechanism for independent testing of the system by in house or qualified third party and the system was tested on : (list dates of testing);

(C) designated an AML compliance officer or company - (include name of compliance officer and an affidavit from compliance officer asserting his or her

roles and responsibilities with regards to AML compliance);

(D) provided ongoing training regarding the AML Plan to necessary personnel (list the personnel and the dates the trainings took place)

(E) implemented a source of funds due diligence procedure for investor funds

(4) list a complete and accurate list of all the employees who worked for the IBE during the covered year (excluding persons owning 5% or more of the IBE's ownership interests). The list of employees shall include each employee's dates of service, whether the employee is/was a full time (meaning worked 32 or more hours per week) or part time employee of the Company, whether the employee also worked in any capacity for an affiliated company, and whether the employee currently is, and was on his/her date of hire, a resident of the U.S. Virgin Islands as defined in these regulations. The IBE must also provide a schedule listing the IBE's total payroll-cost of all employees (excluding persons owning 5% or more of the IBE's ownership interests) for each calendar month during the Covered Year and the number of employees employed for that month included within such total payroll amount.

(5) list a projection of the IBE's employment needs for the twelve months following the Covered Year, including the number and types of jobs as well as the related skills requirements for those jobs that are anticipated to become available during the projections period.

(6) certify that the IBE advertised all employee vacancies with the Virgin Islands Department of Labor in order to inform qualified residents of the Virgin Islands of employment opportunities.

(7) certify that during the Covered year, no Approved Owner of the IBE has been (i) arrested or charged with any crime or offense, other than a minor traffic infraction (minor traffic infractions include parking tickets, not wearing a seat belt, blocking the flow of traffic and those moving violations that are assessed eight or less points under the USVI Moving Violations Point System-20 V.I.C §803), in any jurisdiction; (ii) indicted, plead guilty or plead no contest in any criminal proceeding other than a minor traffic infraction; or (iii) the subject of an investigation conducted by any governmental agency/organization, court, commission, committee, grand jury or investigatory body

(local, state, county, provincial, territory, federal, national, etc.) other than in connection with a minor traffic infraction or (iv) has committed, conspired to commit, aided in the commission of, or compounded any crime, other than a minor traffic infraction. If an Approved Owner has been arrested, charged, indicted or subject to any of the foregoing, then details of such action are described in and attached schedule to the Annual Report.

(8) sign and swear the document before a registered and validly commissioned Notary Public.

(c) The Beneficiary may petition the Director or his designee for extensions prior to the deadline for submission of reports. Petitions for extension will be determined on a case-by-case basis.

(d) Any Beneficiary shall immediately report in writing to the Director any significant change affecting the solvency of the IBE.

(e) A corporate Beneficiary shall immediately notify the Director, in writing, of any change in ownership of more than ten (10%) percent of the voting stock of the corporation and any change in ownership of voting stock of the corporation which results in a change in majority control.

(f) Any other forms and/or reports required by these regulations, the Beneficiary's certificate, the request of the Director, or the request of the Director shall be filed, in writing, immediately.

#### **SUBSECTION 736-9. "FINANCIAL INSTITUTION" DESIGNATION**

IBEs that choose C corporation entity status must analyze whether they or affiliated corporations are "financial institutions" within the meaning of Title 26 U.S.C. 864(e)(5)(C). To the extent that the IBE has any interest expense, the interest expense that is incurred by each of the financial and nonfinancial subgroups must be allocated separately based on the assets of each

subgroup. See IRS Temp. reg. section 1.861-11T(d)(4). To qualify as a financial institution for this purpose, the corporation must be a financial institution described in either 26 USC Section 581 or Section 591, whose business is predominantly with persons other than related persons or their customers; and that is required by state or federal law to be operated separately from any other entity that is not such an institution. Note that because IBEs are non-depository institutions (except to the extent that the IBE receives transaction-related funds as that term is defined in the IBE statute - §726(a)(1)) IBEs may be exempt from the aforementioned IRS regulations to the extent that the IBEs business involves related persons or their customers.

#### **SUBSECTION 736-10. GUIDELINES FOR INFORMATION SECURITY STANDARDS**

An IBE shall establish and maintain information security standards that comply with this subsection, as amended from time to time. These Guidelines for Information Security Standards (“Guidelines”) set forth standards with respect to sections 501 and 505(b), 15 U.S.C. 6801 and 6805(b), of the Gramm-Leach-Bliley Act. These Guidelines address standards for developing and implementing administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information. These Guidelines also address standards with respect to the proper disposal of consumer information pursuant to sections 621 and 628 of the Fair Credit Reporting Act (15 U.S.C. 1681s and 1681w). These Guidelines also address response programs for unauthorized access to customer information and customer notice. **To the extent that an IBE neither has deposits nor unrelated retail customers the IBE is not required to implement this subsection.**

(a) Scope. The Guidelines apply to customer information maintained by or on behalf of, and to the disposal of consumer information by or on behalf of, entities over which the Director has authority.

(b) Preservation of Existing Authority. These Guidelines do not in any way limit the authority of the Director to address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices. The Director may take action with respect to these

Guidelines independently of, in conjunction with, or in addition to, any other enforcement action available to the Director.

(c) Definitions.

(1) Except as modified in the Guidelines, or unless the context otherwise requires, the terms used in these Guidelines have the same meanings as set forth the Act and §§ 715 *et seq.*

(2) For purposes of the Guidelines, the following definitions apply:

(A) “Board of directors,” in the case of a branch or agency of an IBE, means the managing official in charge of the IBE.

(B) “Consumer information” means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the IBE for a business purpose. Consumer information also means a compilation of such records. The term does not include any record that does not personally identify an individual.

(C) “Consumer information” includes:

- (i) A consumer report that an IBE obtains;
- (ii) Information from a consumer report that the IBE obtains from its affiliate after the consumer has been given a notice and has elected not to opt out of that sharing;
- (iii) Information from a consumer report that the IBE obtains about an individual who applies for but does not receive a loan, including any loan sought by an individual for a business purpose;
- (iv) Information from a consumer report that the IBE obtains about an individual who guarantees a loan (including a loan to a business entity); or
- (v) Information from a consumer report that the IBE obtains about an employee or prospective employee.

(D) “Consumer information” does not include:

(i) Aggregate information, such as the mean score, derived from a group of consumer reports; or

(ii) Blind data, such as payment history on accounts that are not personally identifiable, that may be used for developing credit scoring models or for other purposes.

(E) “Consumer report” has the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. 1681a(d).

(F) “Customer” means any customer of the IBE.

(G) “Customer information” means any record containing nonpublic personal information about a customer, whether in paper, electronic, or other form, that is maintained by or on behalf of the IBE.

(H) “Customer information systems” means any methods used to access, collect, store, use, transmit, protect, or dispose of customer information.

(I) “Service provider” means any person or entity that maintains, processes, or otherwise is permitted access to customer information or consumer information through its provision of services directly to the IBE.

(d) Standards for Information Security

(1) Information Security Program. Each IBE shall implement a comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the IBE and the nature and scope of its activities. While all parts of the IBE are not required to implement a uniform set of policies, all elements of the information security program must be coordinated.

(2) Objectives. An IBE’s information security program shall be designed to:

(A) Ensure the security and confidentiality of customer information;

(B) Protect against any anticipated threats or hazards to the security or integrity of such information;

(C) Protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer; and

- (D) Ensure the proper disposal of customer information and consumer information.
- (e) Development and Implementation of Information Security Program
  - (1) Involve the Board of Directors. The board of directors or an appropriate committee of the board of each IBE shall:
    - (A) Approve the IBE's written information security program; and
    - (B) Oversee the development, implementation, and maintenance of the IBE's information security program, including assigning specific responsibility for its implementation and reviewing reports from management.
  - (2) Assess Risk. Each IBE shall:
    - (A) Identify reasonably foreseeable internal and external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of customer information or customer information systems.
    - (B) Assess the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information.
    - (C) Assess the sufficiency of policies, procedures, customer information systems, and other arrangements in place to control risks.
- (f) Manage and Control Risk. Each IBE shall:
  - (1) Design its information security program to control the identified risks, commensurate with the sensitivity of the information as well as the complexity and scope of the IBE's activities. Each IBE must consider whether the following security measures are appropriate for the IBE and, if so, adopt those measures the IBE concludes are appropriate:
    - (A) Access controls on customer information systems, including controls to authenticate and permit access only to authorized individuals and controls to prevent employees from providing customer information to unauthorized individuals who may seek to obtain this information through fraudulent means.

(B) Access restrictions at physical locations containing customer information, such as buildings, computer facilities, and records storage facilities to permit access only to authorized individuals;

(C) Encryption of electronic customer information, including while in transit or in storage on networks or systems to which unauthorized individuals may have access;

(D) Procedures designed to ensure that customer information system modifications are consistent with the IBE's information security program;

(E) Dual control procedures, segregation of duties, and employee background checks for employees with responsibilities for or access to customer information;

(F) Monitoring systems and procedures to detect actual and attempted attacks on or intrusions into customer information systems;

(G) Response programs that specify actions to be taken when the IBE suspects or detects that unauthorized individuals have gained access to customer information systems, including appropriate reports to regulatory and law enforcement agencies; and

(H) Measures to protect against destruction, loss, or damage of customer information due to potential environmental hazards, such as fire and water damage or technological failures.

(2) Train staff to implement the IBE's information security program.

(3) Regularly test the key controls, systems and procedures of the information security program. The frequency and nature of such tests should be determined by the IBE's risk assessment. Tests should be conducted or reviewed by independent third parties or staff independent of those that develop or maintain the security programs.

(4) Develop, implement, and maintain, as part of its information security program, appropriate measures to properly dispose of customer information and consumer information in accordance with each of the requirements of this paragraph.

(g) Oversee Service Provider Arrangements. Each IBE shall:

(1) Exercise appropriate due diligence in selecting its service providers;

(2) Require its service providers by contract to implement appropriate measures designed to meet the objectives of these Guidelines; and

(3) Where indicated by the IBE's risk assessment, monitor its service providers to confirm that they have satisfied their obligations. As part of this monitoring, an IBE should review audits, summaries of test results, or other equivalent evaluations of its service providers.

(h) Adjust the Program. Each IBE shall monitor, evaluate, and adjust, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the IBE's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to customer information systems.

(i) Report to the Board. Each IBE shall report to its board or an appropriate committee of the board at least annually. This report should describe the overall status of the information security program and the IBE's compliance with these Guidelines. The report, which will vary depending upon the complexity of each IBE's program should discuss material matters related to its program, addressing issues such as: risk assessment; risk management and control decisions; service provider arrangements; results of testing; security breaches or violations, and management's responses; and recommendations for changes in the information security program.

(j) Response Programs for Unauthorized Access to Customer Information and Customer Notice

(1) Background. This part of the Guidance describes response programs, including customer notification procedures, that an IBE should develop and implement to address unauthorized access to or use of customer information that could result in substantial harm or inconvenience to a customer. An IBE should take preventative measures to safeguard customer information against attempts to gain unauthorized access to the information. For example, IBE's should place access controls on customer information systems and conduct background checks for employees who are authorized to access customer information. However, every IBE should also develop and

implement a risk-based response program to address incidents of unauthorized access to customer information in customer information systems that occur nonetheless. A response program should be a key part of an IBE's information security program. The program should be appropriate to the size and complexity of the IBE and the nature and scope of its activities.

(2) In addition, each IBE should be able to address incidents of unauthorized access to customer information in customer information systems maintained by its service providers. Therefore, consistent with the obligations in the Guidelines that relate to these arrangements, an IBE's contract with its service provider should require the service provider to take appropriate actions to address incidents of unauthorized access to the IBE's customer information, including notification to the IBE as soon as possible of any such incident, to enable the IBE to expeditiously implement its response program.

(3) Components of a Response Program. At a minimum, an IBE's response program should contain procedures for the following:

(A) Assessing the nature and scope of an incident, and identifying what customer information systems and types of customer information have been accessed or misused;

(B) Notifying the Director and other authorities as applicable as soon as possible when the IBE becomes aware of an incident involving unauthorized access to or use of sensitive customer information, as defined below;

(C) Notifying appropriate law enforcement in situations involving federal criminal violations requiring immediate attention, such as when a reportable violation is ongoing;

(D) Taking appropriate steps to contain and control the incident to prevent further unauthorized access to or use of customer information, for example, by monitoring, freezing, or closing affected accounts, while preserving records and other evidence; and

(E) Notifying customers when warranted.

(4) Where an incident of unauthorized access to customer information involves customer information systems maintained by an IBE's service providers, it is the responsibility of the IBE to notify the IBE's customers and the Director. However, an

IBE may authorize or contract with its service provider to notify IBE's customers or the Director on its behalf.

(k) **Customer Notice.** IBEs have an affirmative duty to protect their customers' information against unauthorized access or use. Notifying customers of a security incident involving the unauthorized access or use of the customer's information in accordance with the standards set forth below is a key part of that duty. Timely notification of customers is important to manage an IBE's reputation risk. Effective notice also may reduce an IBE's legal risk, assist in maintaining good customer relations, and enable the IBE's customers to take steps to protect themselves against the consequences of identity theft. When customer notification is warranted, an IBE may not forgo notifying its customers of an incident because the IBE believes that it may be potentially embarrassed or inconvenienced by doing so.

(l) **Standard for Providing Notice.** When an IBE becomes aware of an incident of unauthorized access to sensitive customer information, the IBE should conduct a reasonable investigation to promptly determine the likelihood that the information has been or will be misused. If the IBE determines that misuse of its information about a customer has occurred or is reasonably possible, it should notify the affected customer as soon as possible. Customer notice may be delayed if an appropriate law enforcement agency determines that notification will interfere with a criminal investigation and provides the IBE with a written request for the delay. However, the IBE should notify its customers as soon as notification will no longer interfere with the investigation.

(m) **Sensitive Customer Information.** Under the Guidelines, an IBE must protect against unauthorized access to or use of customer information that could result in substantial harm or inconvenience to any customer. Substantial harm or inconvenience is most likely to result from improper access to sensitive customer information because this type of information is most likely to be misused, as in the commission of identity theft. For purposes of this Guidance, sensitive customer information means a customer's name, address, or telephone number, in conjunction with the customer's social security number, driver's license number, account number, credit or debit card number, or a personal identification number or password that would permit

access to the customer's account. Sensitive customer information also includes any combination of components of customer information that would allow someone to log onto or access the customer's account, such as user name and password or password and account number.

(n) **Affected Customers.** If an IBE, based upon its investigation, can determine from its logs or other data precisely which customers' information has been improperly accessed, it may limit notification to those customers with regard to whom the IBE determines that misuse of their information has occurred or is reasonably possible. However, there may be situations where the IBE determines that a group of files has been accessed improperly, but is unable to identify which specific customers' information has been accessed. If the circumstances of the unauthorized access lead the IBE to determine that misuse of the information is reasonably possible, it should notify all customers in the group.

(o) **Content of Customer Notice.** Customer notice should be given in a clear and conspicuous manner. The notice should describe the incident in general terms and the type of customer information that was the subject of unauthorized access or use. It also should generally describe what the IBE has done to protect the customers' information from further unauthorized access. In addition, it should include a telephone number that customers can call for further information and assistance. The notice also should remind customers of the need to remain vigilant over the next twelve to twenty-four months, and to promptly report incidents of suspected identity theft to the IBE. The notice should include the following additional items, when appropriate:

(1) A recommendation that the customer review account statements and immediately report any suspicious activity to the IBE;

(2) A description of fraud alerts and an explanation of how the customer may place a fraud alert in the customer's consumer reports to put the customer's creditors on notice that the customer may be a victim of fraud;

(3) A recommendation that the customer periodically obtain credit reports from each nationwide credit reporting agency and have information relating to fraudulent transactions deleted;

(4) An explanation of how the customer may obtain a credit report free of charge; and

(5) Information about the availability of the FTC's online guidance regarding steps a consumer can take to protect against identity theft. The notice should encourage the customer to report any incidents of identity theft to the FTC, and should provide the FTC's Web site address and toll-free telephone number that customers may use to obtain the identity theft guidance and report suspected incidents of identity theft. Currently the FTC's Website for identity theft is <http://www.consumer.ftc.gov/features/feature-0014-identity-theft>. The IBE may also refer customers to any materials developed pursuant to section 151(b) of the FACT Act (educational materials developed by the FTC to teach the public how to prevent identity theft). The Director encourages IBEs to notify the nationwide consumer reporting agencies prior to sending notices to a large number of customers that include contact information for the reporting agencies.

(p) Delivery of Customer Notice. Customer notice should be delivered in any manner designed to ensure that a customer can reasonably be expected to receive it. For example, the IBE may choose to contact all customers affected by telephone or by mail, or by electronic mail or text message for those customers for whom it has a valid e-mail address or text messaging capability and who have agreed to receive communications using those methods.

(q) Identity Theft Detection, Prevention, and Mitigation. This part of the Guidelines requires each IBE to develop and provide for the continued administration of a written program to detect, prevent, and mitigate identity theft in connection with the opening or maintenance of a "covered account." For this purpose, a "covered account" means any loan, extension of credit covered account, or other account for personal, family, or household purposes that the IBE offers or maintains for which there is a reasonably foreseeable risk to customers from identity theft, including financial, operational, compliance, reputation, or litigation risks.

(r) The Program. In designing its program, an IBE may incorporate, as appropriate, its existing policies, procedures, and other arrangements that control reasonably foreseeable risks to customers or to the safety and soundness of the IBE from identity theft.

(s) Identifying Relevant Red Flags

(1) Risk Factors. An IBE should consider the following factors in identifying relevant Red Flags for covered accounts, as appropriate:

- (A) The types of covered accounts it offers or maintains;
- (B) The methods it provides to open its covered accounts;
- (C) The methods it provides to access its covered accounts; and
- (D) Its previous experiences with identity theft.

(2) Sources of Red Flags. IBEs should incorporate relevant Red Flags from sources such as:

- (A) Incidents of identity theft that the IBE has experienced;
- (B) Methods of identity theft that the IBE has identified that reflect changes in identity theft risks; and
- (C) Applicable supervisory guidance.

(3) Categories of Red Flags. The program should include relevant Red Flags from the following categories, as appropriate:

- (A) Alerts, notifications, or other warnings received from consumer reporting agencies or service providers, such as fraud detection services;
- (B) The presentation of suspicious documents;
- (C) The presentation of suspicious personal identifying information, such as a suspicious address change;
- (D) The unusual use of, or other suspicious activity related to, a covered account; and
- (E) Notice from customers, victims of identity theft, law enforcement authorities, or other persons regarding possible identity theft in connection with covered accounts held by the IBE.

(4) Detecting Red Flags. The program's policies and procedures should address the detection of Red Flags in connection with the opening of covered accounts and existing covered accounts, such as by:

- (A) Obtaining identifying information about, and verifying the identity of, a person opening a covered account; and

(B) Authenticating customers, monitoring transactions, and verifying the validity of change of address requests, in the case of existing covered accounts.

(t) Preventing and Mitigating Identity Theft. The program's policies and procedures should provide for appropriate responses to the Red Flags the IBE has detected that are commensurate with the degree of risk posed. In determining an appropriate response, an IBE should consider aggravating factors that may heighten the risk of identity theft, such as a data security incident that results in unauthorized access to a customer's account records held by the IBE, or third party, or notice that a customer has provided information related to a covered account held by the IBE to someone fraudulently claiming to represent the IBE or to a fraudulent Website. Appropriate responses may include the following:

- (1) Monitoring a covered account for evidence of identity theft;
- (2) Contacting the customer;
- (3) Changing any passwords, security codes, or other security devices that permit access to a covered account;
- (4) Reopening a covered account with a new account number;
- (5) Not opening a new covered account;
- (6) Closing an existing covered account;
- (7) Not attempting to collect on a covered account or not selling a covered account to a debt collector;
- (8) Notifying law enforcement; or
- (9) Determining that no response is warranted under the particular circumstances.

(u) Updating the Program. IBEs should update the program (including the Red Flags determined to be relevant) periodically, to reflect changes in risks to customers or to the safety and soundness of the IBE from identity theft, based on factors such as:

- (1) The experiences of the IBE with identity theft;
- (2) Changes in methods of identity theft;
- (3) Changes in methods to detect, prevent, and mitigate identity theft;

- (4) Changes in the types of accounts that the IBE offers or maintains; and
- (5) Changes in the business arrangements of the IBE, including mergers, acquisitions, alliances, joint ventures, and service provider arrangements.

(v) Methods for Administering the Program

(1) Oversight of Program. Oversight by the board of directors, an appropriate committee of the board, or a designated employee at the level of senior management should include:

- (A) Assigning specific responsibility for the program's implementation;
- (B) Reviewing reports prepared by staff regarding compliance by the IBE with these Guidelines with respect to identity theft; and
- (C) Approving material changes to the program as necessary to address changing identity theft risks.

(2) Reports. Staff of the IBE responsible for development, implementation, and administration of its program should report to the board of directors, an appropriate committee of the board, or a designated employee at the level of senior management, at least annually, on compliance with these Guidelines dealing with identity theft. The report should address material matters related to the program and evaluate issues such as: the effectiveness of the policies and procedures of the IBE in addressing the risk of identity theft in connection with the opening of covered accounts and with respect to existing covered accounts; service provider arrangements; significant incidents involving identity theft and management's response; and recommendations for material changes to the program.

(3) Oversight of service provider arrangements. Whenever an IBE engages a service provider to perform an activity in connection with one or more covered accounts the IBE should take steps to ensure that the activity of the service provider is conducted in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft. For example, an IBE could require the service provider by contract to have policies and procedures to detect relevant Red Flags that may arise in

the performance of the service provider's activities, and either report the Red Flags to the IBE, or to take appropriate steps to prevent or mitigate identity theft.

(w) **Supplemental Information Regarding Red Flags.** In addition to incorporating Red Flags from the sources recommended in these Guidelines, each IBE may consider incorporating into its program, whether singly or in combination, Red Flags from the following illustrative examples in connection with covered accounts:

Alerts, Notifications or Warnings from a Consumer Reporting Agency

- (1) A fraud or active duty alert is included with a consumer report.
- (2) A consumer reporting agency provides a notice of credit freeze in response to a request for a consumer report.
- (3) A consumer reporting agency provides a notice of address discrepancy.
- (4) A consumer report indicates a pattern of activity that is inconsistent with the history and usual pattern of activity of an applicant or customer, such as: A recent and significant increase in the volume of inquiries; an unusual number of recently established credit relationships; a material change in the use of credit, especially with respect to recently established credit relationships; or an account that was closed for cause or identified for abuse of account privileges by an IBE.

Suspicious Documents

- (5) Documents provided for identification appear to have been altered or forged.
- (6) The photograph or physical description on the identification is not consistent with the appearance of the applicant or customer presenting the identification.
- (7) Other information on the identification is not consistent with information provided by the person opening a new covered account or customer presenting the identification.
- (8) Other information on the identification is not consistent with readily accessible information that is on file with the IBE, such as a signature card or a recent check.

- (9) An application appears to have been altered or forged, or gives the appearance of having been destroyed and reassembled.

#### Suspicious Personal Identifying Information

- (10) Personal identifying information provided is inconsistent when compared against external information sources used by the IBE. For example: The address does not match any address in the consumer report; or the Social Security Number (SSN) has not been issued, or is listed on the Social Security Administration's Death Master File.
- (11) Personal identifying information provided by the customer is not consistent with other personal identifying information provided by the customer. For example, there is a lack of correlation between the SSN range and date of birth.
- (12) Personal identifying information provided is associated with known fraudulent activity as indicated by internal or third-party sources used by the IBE. For example: The address on an application is the same as the address provided on a fraudulent application; or the phone number on an application is the same as the number provided on a fraudulent application.
- (13) Personal identifying information provided is of a type commonly associated with fraudulent activity as indicated by internal or third-party sources used by the IBE. For example: The address on an application is fictitious, a mail drop, or a prison; or the phone number is invalid, or is associated with a pager or answering service.
- (14) The SSN provided is the same as that submitted by other persons opening an account or other customers.
- (15) The address or telephone number provided is the same as or similar to the address or telephone number submitted by an unusually large number of other persons opening accounts or by other customers.
- (16) The person opening the covered account or the customer fails to provide all required personal identifying information on an application or in response to notification that the application is incomplete.

- (17) Personal identifying information provided is not consistent with personal identifying information that is on file with the IBE.
- (18) For IBEs that use challenge questions, the person opening the covered account or the customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.

Unusual Use of, or Suspicious Activity Related to, the Covered Account

- (19) Shortly following the notice of a change of address for a covered account, the institution receives a request for a new, additional, or replacement card or a cell phone, or for the addition of authorized users on the account.
- (20) A new revolving credit account is used in a manner commonly associated with known patterns of fraud. For example: The majority of available credit is used for cash advances or merchandise that is easily convertible to cash (e.g., electronics equipment or jewelry); or the customer fails to make the first payment or makes an initial payment but no subsequent payments.
- (21) A covered account is used in a manner that is not consistent with established patterns of activity on the account. There is, for example: Nonpayment when there is no history of late or missed payments; a material increase in the use of available credit; a material change in purchasing or spending patterns;
- (22) A material change in electronic fund transfer patterns in connection with a covered account; or
- (23) A material change in telephone call patterns in connection with a cellular phone account.
- (24) A covered account that has been inactive for a reasonably lengthy period of time is used (taking into consideration the type of account, the expected pattern of usage and other relevant factors).
- (25) Mail sent to the customer is returned repeatedly as undeliverable although transactions continue to be conducted in connection with the customer's covered account.

- (26) The IBE is notified that the customer is not receiving paper account statements.
- (27) The IBE is notified of unauthorized charges or transactions in connection with a customer's covered account.
- (28) The IBE is notified by a customer, a victim of identity theft, a law enforcement authority, or any other person that it has opened a fraudulent account for a person engaged in identity theft.

(x) Implementing the Standards. Each IBE must develop a written information security program pursuant to these Guidelines within one year of its license. These Guidelines do not limit the responsibility of an IBE to comply with any Federal or territorial laws dealing with these subjects as applicable.

#### **SUBSECTION 736-11. CONFIDENTIALITY OF RECORDS**

The records and information submitted by the IBE Applicant shall be kept confidential, unless disclosure is otherwise ordered by a court of competent jurisdiction, or such information is requested by the Governor or any regulator or fiscal enforcement entities of the Government of the Virgin Islands including the Department of Finance, the Bureau of Internal Revenue, or the Attorney General, or by a person duly authorized by law to release such information or required in accordance with a legally issued investigative subpoena of the Office of the Attorney General or of the Inspector General. Such confidential records include:

(a) Confidential, proprietary information, books and records of the Applicant, royalty arrangements, financing, patents, financial and commercial information and other trade secrets which are recognized and protected as such by law.

(b) Information or records provided by the Applicant pursuant to a confidentiality agreement where such information and records could not otherwise be obtained by the Division of Banking without a pledge of confidentiality.

(c) Records that represent and constitute the work product of an attorney.

(d) Information which, if released, would give a competitive advantage to competitors of the Applicant.

(e) Any taxpayer information is confidential and is to be treated with the same privacy rights as if it were submitted to the Virgin Islands Internal Revenue Bureau.

Financial information and the provisions of agreements between the Division of Banking and its IBEs and IBE Applicants are privileged.

#### **SUBSECTION 737-1. CONTRACT**

Each certificate granting tax incentive benefits issue under the Act is in the nature of a contract between the Beneficiary and the Government of the Virgin Islands. Should the Government adopt any legislation impairing or limiting the obligations going forward, existing contracts must be honored. A breach of the contract can result in the forfeiture of the benefits.

#### **SUBSECTION 738-1. QUALIFICATION**

(a) The Director may not require an applicant to meet qualifications or requirements in excess of the conditions listed in this chapter for the granting of an initial certificate.

(b) In order to qualify and remain eligible for tax incentive benefits under this chapter, an applicant must fulfill the following qualifications or requirements:

(1) Invest at least \$50,000, exclusive of inventory, in the business related to banking;

(2) Be the actual investor in the enterprise for which tax incentive benefits are sought, and not a contractor, subcontractor, or other person or corporation acting as an agent or a similar capacity to the investor, provided that corporate affiliates who are actual investors may qualify for benefits;

(3) Employ at least three full time persons; however, the IBE shall hire one (1) additional employee, for every \$1,000,000 of net income prior to salaries up to a total of seven employees;

(4) Comply with all federal and local laws;

(5) Agree in writing to employ or contract with Virgin Islands businesses and Virgin Islands residents.

(6) Meet any time restraints or deadlines imposed by the Director with respect to the initiation of operations or activity, provided that the Director may extend any such time restraints or deadlines upon good cause shown by the beneficiary;

(7) Agree in writing to notify the Virgin Islands Department of Labor to the availability of employment by it or its subcontractors, the number of employees required, the occupational classification of such workers, and the applicable wage rate;

(8) Provide educational assistance to residents of the Virgin Islands which is acceptable to the Director or provide a financial contribution to an educational fund established by the Director or by the Virgin Islands Legislature. As used in this subsection, educational assistance includes all types of educational assistance including vocational and other job training programs, including Taproots, Inc;

(9) Agree in writing to submit plans for a management-training program for approval by the Director. Provide its employees additional leave from work, other than time applied to their annual leave, to participate and represent the Virgin Islands in athletic and sporting events; and

(10) Agree in writing and require all contractors retained by it to purchase all insurance from resident insurance companies, agents, or brokers licensed to operate in the Virgin Islands, and if a particular type of insurance is not available in the Virgin Islands, submit to the Director written certification from the Office of Banking and Insurance that the insurance is unavailable.

(c) The Director may impose a monetary penalty for delinquent reports as prescribed by law. Any monetary penalty imposed by the Director pursuant to this section must be deposited into the Territorial Scholarship Fund.

**SUBSECTION 739-1.        DISCRIMINATION,        HEARING,        CERTIFICATE  
REVOCAATION**

If after notice and hearing the Commissioner of Labor finds that the Beneficiary or any contractor or any other agent of the beneficiary has willfully practiced discrimination in employment based on age, sex, race, national origin or religion, the Commissioner shall certify the finding to the Director, who shall revoke the beneficiary's certificate upon clear and convincing evidence at a hearing in compliance with local and federal due process requirements. The beneficiary has a right to seek immediate judicial review to the Virgin Islands Superior Court of any adverse decision.

**SUBSECTION 740-1.        EMPLOYMENT OF RESIDENTS BY IBE; TEMPORARY  
PERMITS**

(a) After the third year of operation, an IBE shall have at least 60% of its management, supervisory or technical positions filled by residents of the Virgin Islands as defined in 29 V.I.C. § 703, unless granted a waiver by the Director.

(b) A waiver may be granted only when:

- (1) The Commissioner of Labor has certified that:
  - (A) The Beneficiary has not been able to recruit individuals to fill the positions; or
  - (B) The Beneficiary has not been able to train individuals to fill the positions; or
  - (C) The beneficiary has demonstrated to the Commissioner of Labor that the Beneficiary's training program has failed to provide the individuals capable of filling the positions and that the beneficiary has made a public effort to recruit

personnel for the positions; or

(2) The Director has made a finding that the economic position of the Beneficiary is such that the beneficiary cannot comply with the requirement without further erosion of its financial position or that the beneficiary cannot comply for such other practical reasons that the Director has established by these regulations.

#### **SUBSECTION 742-1. TAX EXEMPTIONS**

(a) Every applicant granted benefits shall receive all of the tax exemptions and reductions in tax liabilities listed in this subchapter subject to the limitations imposed by 26 USC 934 and 937 as those statutes appear as of the date of the IBE's certificate.

(b) Each applicant or Beneficiary granted an IBE certificate as hereunder provided shall be exempted from the payment of the following taxes:

(1) *Real Property Tax.* The real property tax exemption shall apply only to real property actually owned by the Beneficiary and only to the extent that such real property is utilized in the enterprise for which a certificate is granted. This exemption shall apply to lessees, to the extent that the lessee, through a ground lease or otherwise, holds title to all or part of the improvements on the property on which the Beneficiary does business.

(2) *Gross Receipts Taxes.*

(A) The gross receipts tax exemption shall apply to the gross receipts of the enterprise for which a certificate is granted, including the gross receipts of related businesses (as determined by the Director) which are operated on the business premises of and as part of the enterprise for which the certificate is granted .

(B) Such exemption shall not apply to the gross receipts of businesses operated by a concession or rental agreement on the premises of beneficiaries, including hotels, for which businesses separate licenses are required or which, as determined by the Director, are not ordinarily related to, or do not constitute an

essential part of, the operation of the Beneficiary, and which businesses are not otherwise eligible for benefits as a distinct enterprise.

(C) Payments to a Beneficiary pursuant to rental or concession agreements from businesses operated on the Beneficiary's premises which are related to or which constitute an essential part of the operation of the Beneficiary, shall be subject to the exemption from gross receipt taxes., except that this exemption shall not apply to the gross receipts of businesses operated by a concession or rental agreement on the premises of beneficiaries, including hotels, for which businesses separate licenses are required or which, as determined by the Director, are not ordinarily related to, or do not constitute an essential part of the operation of the Beneficiary, and which businesses are not otherwise eligible for economic development benefits as a distinct enterprise.

(3) *Excise Taxes.* The excise tax exemption shall apply to all excise taxes on building materials, tools, pipes, pumps, conveyor belts or other appliances, materials and supplies brought into the United States Virgin Islands, necessary for use in the construction, alteration, reconstruction or extension of the physical plant or facilities of the applicant or Beneficiary. However, the excise tax exemption shall apply only to the extent that the physical plant or facilities are utilized in the enterprise for which a certificate is granted.

(4) *Corporate Income Taxes*

(5) *Personal Income Taxes* as specified in section 743-1 below.

#### **SUBSECTION 743-1. INCOME TAX REDUCTION; BENEFIT OPTIONS**

(a) Each applicant granted a tax incentive benefit certificate shall have its income tax liability for income derived from the business for which the certificate is granted, and income from investment described in this section reduced on a current basis, as provided in this section.

(b) All exemptions granted under 9 V.I.C. § 742 must be made available to the applicant.

(c) The option to choose the term and percentage of its tax exemptions granted under subsection (e) of this Section below must be made available to the applicant.

(d) An applicant may obtain tax benefits only commencing with the first day of the applicant's taxable year for income tax purposes, or commencing one day after the due date for the payment of an installment of estimated taxes by the applicant. If no payment of an installment of estimated income taxes by the applicant is due, then the date of commencement of the benefits under this section shall be the due date of such a payment if one were due by the applicant

(e) An IBE is entitled to reduce the amount of each payment of estimated income tax by 100% if it is a corporation. For all other types of entities, an IBE is entitled to reduce the amount of each payment of estimated income tax by seventy-five percent if its principal place of business is located on St. Thomas, by ninety percent if its principal place of business is located on St. Croix or St. John, by ninety-five percent if its principal place of business is located within the town limits of Christiansted, St. Croix as defined by the Christiansted Town Limits map recorded in the Cadastral Section of the Office of the Tax Assessors, and by one hundred percent if the principal place of business is located within the town limits of Frederiksted, St. Croix, as defined by the Frederiksted Town Limits map recorded in the Cadastral section of the Office of the Tax Assessor. In the case of estimated income taxes, such reduction must be prorated over the quarterly payments due, or constructively due by the applicant, or in the case of the determination of its income tax liability, by the entire amount of the subsidy thus constructively calculated.

(f) Tax exemptions and benefits shall be granted when the applicant can provide certification from the Internal Revenue Bureau and Department of Finance that the applicant has filed and paid all taxes, penalties and interest and from the Office of the Lieutenant Governor that the applicant has filed its required annual report or has satisfactorily made agreement to pay the taxes or file the required reports.

(g) Any existing Beneficiary presently participating in the IBE Program may apply for a ten (10) year extension of benefits and the Director shall grant such extension so long as the Applicant establishes that the extension will result in a positive impact on the economy of the Virgin Islands. The Applicant has the burden of proof by the preponderance of evidence standard to establish the positive economic effect on the Virgin Islands.

(h) The reduction of income tax liability on a current basis of, r the reduction of income taxes otherwise payable by, applicants entitled to such reduction is applicable with respect to all of the computations, assessments, and collection of such income taxes, as provided by the 26 U.S.C. § 934(b)(1), the Internal Revenue Code of 1986, as amended, as applicable to the Virgin Islands.

(i) Income Tax

(A) The reduction in income tax liability shall apply to income taxes paid to the Government of the United States Virgin Islands during the taxable year of the Beneficiary and derived from the enterprise for which a certificate is granted.

(B) Each applicant or Beneficiary, who is granted a certificate, shall have his/her/ its income tax liability, for income derived from the business or industry for which the certificate is granted, and income from investments described in 9 V.I.C. § 726, reduced on a current basis, as provided in this section.

(C) An applicant may obtain the benefits effective only commencing with the first day of said applicant's taxable year for income tax purposes, or commencing one day after the due date for the payment of an installment of estimated income taxes by said applicant. If no payment of an installment of estimated income taxes by the applicant is due, then the date of commencement of the benefits under this section shall be the due date of such a payment if one were due from the applicant.

(j) An individual whose permanent residence is in the United States Virgin Islands; a corporation or other legal entity, which is organized under the laws of the United States Virgin Islands; or a corporation, or other legal entity, organized under the laws of the United States, or one of the States, Territories or Commonwealth thereof, whose principal office is located in the

United States Virgin Islands, is presumed to continue to be permanently domiciled in the United States Virgin Islands for purposes of this section, unless it is established that such residency or domicile has been superseded by a new residence or domicile.

(k) The provisions of this section shall apply only to shareholders, members, partners, grantors, beneficiaries, or other owners who are bona fide residents of the U.S. Virgin Islands pursuant to Section 932(c) of the Internal Revenue Code of 1986, as amended and applicable to the United States Virgin Islands. Such shareholders, members, partners, grantors, beneficiaries, or other owners shall be entitled to the appropriate reduction on income taxes payable with respect to income derived from the dividends or distributions paid to them by the Beneficiary and which dividends or distributions are attributable to income derived from the business or industry for which the certificate is granted and income from investments described in 9 V.I.C. § 726. Shareholders of Virgin Islands corporations who are not residents of the Virgin Islands shall pay the appropriate qualified dividend rate set by Congress on any dividend income from the IBE corporation.

#### **SUBSECTION 743b-1. EXEMPTION ON WITHHOLDING TAX**

(a) Every person who receives a payment of dividends or interest subject to the tax imposed by *section 871(a)(1) or 881 of the Internal Revenue Code*, as it applies in the United States Virgin Islands from an IBE as hereunder provided, and every such applicant subject to a tax on a dividend equivalent amount imposed by *section 884 of the Internal Revenue Code*, as it applies to the United States Virgin Islands, is exempted from the payment of 100% of such tax on interest and of that percentage of such tax on dividends and dividend equivalent amounts, to the extent that such dividends, interest and dividend equivalent amounts are derived from or related to the business or industry for which the certificate has been granted.

(b) An applicant granted a tax benefit certificate as hereunder provided is exempted from the requirement to withhold tax pursuant to *sections 1441 and 1442 of the Internal Revenue Code*, as it applies in the United States Virgin Islands, with respect to the payments and dividend

equivalent amounts referred to in subsection (a) of this section to the extent that such payments and dividend equivalent amounts are exempt from the tax described in said subsection

#### **SUBSECTION 744-1. SPECIAL PROVISIONS, OPTIONS AND LIMITATIONS**

(a) Applicants for benefits under 9 V.I.C. §743 may be granted an additional ten years of tax exemption on the initial term of benefits and subsidy at one hundred percent of benefits if the principal place of business of the applicant is located within the town limits of Frederiksted, St. Croix as defined on the Frederiksted Town Limits map recorded in the Office of the Tax Assessor. In all other geographical areas an extension of benefits for a five-year period may be granted by the Director.

(b) An applicant granted benefits under this chapter must be allowed the option, to be exercised prior to the issuance of the tax incentive benefit certificate, of determining when any or all of the benefits commence, if all of the benefits commence at some point during the first five years of operation of the beneficiary's enterprise.

(c) If the beneficiary owns and operates more than one enterprise in the Virgin Islands, benefits granted under this chapter apply only to activities authorized under subchapter 1 of this chapter. In addition, international banking entities may make capital contributions in excess of \$1,000,000 to Virgin Islands business entities and are permitted to take the tax benefits permitted by this chapter for any income or profit made from those investments.

(d) With respect to a corporation or other legal entity, the Director shall review the ownership structure, or the proposed ownership structure, and may, upon review of the applicant's business plan or amended business plan, and consistent with the basis purposes and objectives of this chapter, limit the number of shareholders. The Director may not unreasonably withhold approval of the ownership structure and may not impose additional requirements or limitations on ownership. Once the IBE applicant has furnished all information necessary for review, the Director has 90 days to issue the decision. If the Director does not approve or deny

the proposed ownership structure, the ownership structure is deemed to be approved. The Director has the authority to review all ownership interests in excess of five percent of the business. The IBE shall, however, give the Director notice of owners holding less than a five-percent ownership interest in the company.

(e) Option to Choose Commencement Date of Benefits

(1) In the case of a new applicant, the Director shall inform the Beneficiary by letter of its option to choose the date on which each of its tax exemption and subsidy benefits shall commence.

(2) All of said benefits shall commence at some point during the first two years of operation of the Beneficiary's enterprise.

(3) The earliest commencement date for benefits the Beneficiary is permitted to choose is the date the completed IBE application was filed with the Division of Banking and Insurance and cannot precede the date the Applicant commenced actively working in a trade or business in the Virgin Islands.

(f) Separate Owner and Operator. The total of benefits granted a single business or industry under these Rules and Regulations, operated in whole or in part by a person or entity other than the owner, shall in no event be greater than if such enterprise were operated solely by said owner, however, this provision shall not be construed as limiting any private agreement between an owner and operator of an enterprise regarding the disposition of the proceeds of those benefits between said parties.

(g) Certification by Commissioner of Labor. The Commissioner of the Virgin Islands Department of Labor shall certify the applicant's compliance with all labor laws, rules and regulations prior to any extension of benefits.

(h) Extension of Benefit Period

(1) The Director may grant or deny an application for extension or modification of benefits.

(2) If the Director grants such an application, it shall specify, for each tax exemption and reduction in tax liability, the period of years for which the benefit is to be effective and the percentage level of benefits to apply.

(3) Said periods and levels may be the same or different for each benefit.

(4) Certificate extensions, modifications renewals shall be for a period of ten years.

(i) Transfer of Certificate. All transfer applications, shall incorporate by reference the original application and should state with specificity what changes, if any, the transfer will cause to the information in the original application. The transfer petition must include completed new due diligence forms by the new owner(s) contain the information required in subsection (b) above, and a statement showing the date or dates on which the applicant wishes the transfer of benefits to be effective.

#### **SUBSECTION 747-1. ISSUANCE AND CONTENTS OF CERTIFICATE**

(a) An IBE Certificate shall be issued by the Director in the name of the Government of the United States Virgin Islands and shall bear the signature of the Director.

(b) The Director shall deliver an International Banking Entity Certificate to the Beneficiary:

(1) Within ten (10) days following the date the Director receives a response to any notification letter required to be delivered to the Beneficiary by the Director pursuant to these Rules and Regulations. Delivery of the Certificate may be delayed at the request of the Beneficiary or pending receipt of any clearance letter or certificate required to be delivered to the Director or,

(2) Within thirty (30) days following the date of delivery by the Director of any notification letter required to be delivered to the Beneficiary pursuant to these Rules and Regulations, if no response by the Beneficiary is received by the Director to such notification letter.

(c) If the Director learns that the Beneficiary or applicant is not in compliance with all federal and local laws and regulations, including the Code and these Rules and Regulations, the issuance of the certificate shall be delayed until compliance is achieved. The Director shall so inform the Director.

(d) After receipt of the certificate, the Beneficiary shall indicate its acceptance of the certificate together with the benefits, obligations and conditions prescribed therein, by signing the original and one copy of the certificate and returning the signed copy to the Director

(e) The certificate shall specify all of the following:

- (1) The name of the Beneficiary
- (2) The physical and mailing address of the Beneficiary;
- (3) The date on which the application was accepted by the Director;
- (4) The type of business for which benefits are granted;
- (5) The date by which any investment shall be commenced;
- (6) The amount and type of investment;
- (7) The date by which the required financial investment shall have been completed by the Beneficiary;
- (8) The number of employees required to be maintained by the Beneficiary;
- (9) The date by which any employment requirement was or shall have been met;
- (10) The dates of the public hearing and Director meeting(s) on the application;
- (11) The level, type and duration of the benefits granted, and the option as to the duration and level chosen by the Beneficiary;
- (12) The specific commencement and termination dates for the benefits granted under the certificate;
- (13) In the case of a new applicant, a statement that the applicant was considered to be a new applicant;

(14) A statement that the Beneficiary shall maintain payroll accounts, from which local employees are paid, in a bank licensed and conducting business in the United States Virgin Islands.

(15) Such other conditions as the Director shall deem appropriate, not inconsistent with the provisions of the Code or these Rules and Regulations; and

(16) A statement that the certificate shall be effective only for so long as the Beneficiary continues to observe and perform each and every condition and requirement in the certificate.

(17) A statement that any new shareholders, partners, owners, members or beneficiaries added to such entity after its application has been approved may not claim benefits under these Rules and Regulations without the prior written approval of the Director.

(f) In addition to the foregoing specifications, the certificate shall include a recital that upon failure of the Beneficiary to perform or observe the conditions as required by the Director within the specific period, or any extension thereof granted for good cause shown to the Director, the certificate shall be deemed to be of no force and effect, and the Beneficiary shall pay to the Government of the U.S. Virgin Islands the amount of any benefits actually received under the certificate.

(g) Certification in the Nature of a Contract. Certificates are in the nature of a contract between the Beneficiary and the Government of the Virgin Islands. A breach of the contract can result in the forfeiture of the benefits.

(h) Standard Conditions Generally. Every certificate shall contain the following standard conditions in addition to the conditions required above:

(1) "The Beneficiary shall comply with any reasonable request of the Director, the United States Virgin Islands Department of Finance, the United States Virgin Islands Department of Labor, and the United States Virgin Islands Bureau of Internal Revenue to prove facts, figures, or other data and/or to inspect the records of the Beneficiary."

(2) "The Beneficiary shall fully and actually comply and continue to comply with all the provisions of Title 9, Chapter 25 of the Virgin Islands Code, and any and all amendments thereto whether amended prior to or after issuance of the certificate, the Rules and Regulations promulgated pursuant thereto, and all other local and federal laws and regulations, as may be amended from time to time."

(i) Standard Condition for New Beneficiaries. In addition to the standard conditions set forth in these Rules and Regulations, the certificate of any Beneficiary who has not begun the active conduct of its enterprise on the date the Director signs the certificate shall contain the following standard condition:

"The Beneficiary shall commence the active conduct of the business for which this certificate was granted within five (5) years of the date this certificate is signed by the Director of Banking and Insurance of the Office of the Lieutenant Governor."

#### **SUBSECTION 748-1. TRANSFER OF BENEFITS**

(a) This subchapter shall not be applicable in cases where any modification or extension of a certificate is requested.

(b) This subchapter shall apply to the transfer of benefits granted under the Code and predecessor Codes, except to the extent that such predecessor Codes are inconsistent with this subchapter.

(c) An IBE benefit certificate granted under the provisions of the Code may be transferred, for the unexpired portion of the term of the certificate, to another person, corporation, partnership, who or which succeeds the Beneficiary in carrying on or in operating the industry or business for which the certificate is granted, upon determination of the Director that such person, corporation or partnership, is otherwise qualified to receive such benefits and provided the industrial or business activity with respect to which the certificate was granted is

continued by the said person, corporation or partnership. Thereafter the transferor of the certificate shall lose all economic development benefits under the Code and shall be subject to the operation of the tax laws of the United States Virgin Islands.

(d) Application for Transfer of Benefits. Any entity which is eligible to receive benefits pursuant to the Code, and which acquires ownership from a Beneficiary ("the prior Beneficiary") of the assets utilized by the enterprise for which benefits were granted and which succeeds the prior Beneficiary in operating such enterprise may file a transfer application with the Director and, provided such entity meets the other requirements of the Code and these Rules and Regulations, may be granted a transfer certificate of the prior Beneficiary and the benefits to which such Beneficiary was entitled.

(e) Requirements for Transfer. In addition to meeting all requirements of the Code and these Rules and Regulations applicable to the prior Beneficiary, the prospective transferee of a certificate must continue the enterprise for which the certificate was originally granted and must abide by all conditions and requirements therein.

(f) Director Approval

(A) The Director's approval of transfer certificates is required.

(B) A transfer shall be deemed approved upon letter signed by the Director. A copy of the letter shall be sent to the Virgin Islands Bureau of Internal Revenue, Virgin Islands Office of the Tax Assessor, Virgin Islands Office of the Lieutenant Governor, U.S. Customs and the Virgin Islands Department of Licensing and Consumer Affairs.

(h) Treatment of Taxes Paid and Benefits Received

(A) For tax reporting purposes, benefits shall be treated in the manner prescribed by these rules and regulations and the regulations of the Virgin Islands Bureau of Internal Revenue.

(B) In determining a Beneficiary's income tax liability, the reductions on customs duties and other taxes, and the reduction on income taxes granted pursuant to the Code and these Rules and Regulations, shall not be treated as income.

(i) For the purpose of computing the Beneficiary's income tax liability, only so much of the customs duties and other taxes paid or accrued by the Beneficiary during its taxable year that are in excess of the reductions of the said customs duties and other taxes paid or accrued during the taxable year pursuant to the Code and these Rules and Regulations shall be treated as an expense.

#### **SUBSECTION 749-1. REVOCATION, SUSPENSION, OR MODIFICATION OF CERTIFICATE**

(a) Grounds for Revocation, Suspension or Modification. A certificate granted may be revoked, suspended, or modified by the Director on any of the following grounds:

(1) The Beneficiary has failed to maintain compliance with the requirements of the law, the Rules and Regulations, or its certificate; or

(2) The Beneficiary has failed to file annual report of ownership as required by the law and the Rules and Regulations; or

(3) The Beneficiary, or in the case of a corporate Beneficiary, any officer acting on behalf of the corporation, has been convicted of a felony connected with the operation of the Beneficiary's business or industry.

(4) In the case of a corporation, upon a finding submitted to the Director by the Attorney General of the Virgin Islands that the corporation:

(5) has been dissolved; or

(6) has filed, or there has been filed against the corporation, a petition in bankruptcy which has been approved, provided however that the filing of a petition for reorganization under Chapter XI of the Bankruptcy Act shall stay any Director proceedings based solely on the filing, and/or commencement thereof, until an order to

liquidate has been issued or a petition to convert has been filed pursuant to the Bankruptcy Act or

**SUBSECTION 750-1. PENALTIES FOR VIOLATIONS**

(a) The Director shall issue the following schedule of fines for violations of provisions of this chapter. Whether the Director assesses a fine is subject to the Director’s reasonable discretion.

<b><u>DESCRIPTION OF VIOLATION</u></b>	<b><u>FINE AMOUNT</u></b>
Any official or employee of an IBE, or of a person of which it is a unit, who on behalf of such IBE receives any investor funds with the knowledge that the IBE is insolvent.	\$5000
Any Director, official or employee of the IBE or of the person of which the IBE is a unit, who illegally appropriates, embezzles, removes or voluntarily misuses any moneys, funds, credits or securities of an IBE, or who, without due authorization, issues or draws any certificate of deposit, draws any order or bill of exchange, carries out any type of acceptance or assignment of a note, bond, money order, bill of exchange, and any person who, with the same intention, aids or abets any Director, official or employee to violate any provision of this section.	Not less than \$5,000 nor more than \$10,000 and is liable to make restitution for any losses suffered by any victim.
Any Director, official, or employee of an IBE or of the person of which the IBE is a unit, who voluntarily misrepresents the financial condition of an IBE or about any transaction to be carried out by, or carried out by the IBE, or who declines to provide information legally requested by the Director.	No more than \$5,000

Any applicant or Beneficiary who shall willfully make any false or fraudulent statement or representation as to any fact required or appropriate to the determination of the eligibility of such applicant or Beneficiary for benefits under the Code or these Rules and Regulations, or for the continuation or extension of the same, or who shall willfully make or present any claim for benefits under the Code or these Rules and Regulations knowing such claim to be false, fictitious or fraudulent.	Not more than \$25,000
An IBE whose unencumbered assets or financial guarantees dips below three hundred thousand dollars (US \$300,000) in any calendar year without having had a waiver application approved by the Director.	\$5000
An IBE that bears interest at an interest rate of less than five percentage points above the Federal Home Loan Mortgage Corporation's posted yield on the last business day of the month on thirty-year standard conventional fixed-rate mortgages committed for delivery within sixty days, rounded to the nearest one-fourth percent, which rate shall take effect (a) on the first day of the immediately subsequent month and continue in effect for the remainder of the month.	\$5000
A violation of Subsection 719-1(i): The securities or other financial instruments held by an IBE, shall have, at all times, an aggregate market value equal to or greater than the amount of unencumbered assets that the IBE shall be physically held in the U.S. Virgin Islands.	\$5000
A violation of Subsection 7-19-2(j): Within one year of commencement of operations, every IBE earning one million dollars or less of net income shall employ in its offices a minimum of three (3) full-time residents of the U.S. Virgin Islands. Upon request by a party, the Director may approve a lesser number of full-time employees. Each IBE earning at least two million dollars of net income shall employ in its offices a minimum of four (4) full-time residents of the U.S. Virgin Islands. Each IBE earning at least three million dollars of net income	\$5000

<p>shall employ in its offices a minimum of five (5) full-time residents of the U.S. Virgin Islands. Each IBE earning at least four million dollars of net income shall employ in its offices a minimum of six (6) full-time residents of the U.S. Virgin Islands. Each IBE earning at least five million dollars of net income shall employ in its offices a minimum of seven (7) full-time residents of the U.S. Virgin Islands. In no event shall an IBE be required to hire more than seven full-time employees. In the event that an IBE's income goes to less than one million dollars of net income in a calendar year, the IBE must maintain three full-time employees in that year.</p>	
<p>A violation of Subsection 722-1: The articles of incorporation, partnership agreement or other written document establishing an IBE or to any license executed in accordance with this SUBSECTION may not be amended, unless the amendment has been previously approved, in writing, by the Director.</p>	<p>\$5000</p>
<p>A violation of Subsection 723-2(a): Any issuance of additional shares of capital stock or issuance of additional capital by an IBE not made directly to the stockholders or owners identified in the application for a permit originally filed with the Director, shall require the Director's prior written approval.</p>	<p>\$5000</p>
<p>A violation of Subsection 724-1(a): Every IBE, except those organized as a unit of another person, shall obtain the prior written approval of the Director for any sale, encumbrance, assignment, merger, barter, exchange or other transfer of ten percent (10%) or more of the stock, interest or participation in the capital of said IBE, to a person or group of persons acting in concert, in a single transaction or a series of transactions for that purpose, or which results in the ownership or control by any person or group of persons acting in concert, of ten percent (10%) or more of the stock, interest or participation in the capital of said IBE.</p>	<p>\$10,000</p>

A violation of any of the enumerated “prohibited activities” listed in Subsection 726-2.	\$10,000
A violation of Subsection 726-3(f)(1): No IBE shall transfer the location of its Branches without previously notifying the Director of such transfer at least sixty (60) days prior to the date in which the Branch begins operating in the new location.	\$5,000
A violation of Subsection 727-1(a) without obtaining the applicable waiver: The IBE shall employ on a full-time basis a minimum of three persons at its business office or offices in the Virgin Islands.	\$10,000
A failure to completely adhere to Subsection 736-6 on the establishment of an Anti-Money Laundering (AML) Plan.	\$5,000
Failure to remit the Annual Compliance Report within 30 days of the filing deadline of the Beneficiary’s Income tax return and any extensions thereto, in violation of Subsection 736-8(b).	\$5,000
Violation of Subsection 740-1(a) without obtaining applicable waiver: After the third year of operation, an IBE shall have at least 60% of its management, supervisory or technical positions filled by residents of the Virgin Islands as defined in 29 V.I.C. § 703.	\$5,000

(b) If any beneficiary violates any provision of this chapter, any regulation promulgated under this chapter, or any provision of the tax incentive benefit certificate, or fails or refuses to perform any duty, requirement or lawful order made by the Director, such beneficiary, after

notice and an opportunity to be heard, is subject to fine(s) in accordance with the schedule of fines under subsection (a) of this section as determined by the Director in the Director's reasonable discretion. These fines must be deposited into the General Treasury Fund. In construing and enforcing the provisions of this section, the act, omission or failure of any officer, agent or person acting for or employed by any beneficiary in every case is considered an act, omission or failure of such beneficiary.

(c) The Attorney General of the Virgin Islands shall, at the request of the Director, bring appropriate action to compel adherence to, or enforce any lawful orders of the Director issued pursuant to this chapter, and to recover in the name of the Government of the Virgin Islands the penalties provided in this subchapter.

(d) False or Fraudulent Statements or Representations / False Claims for Benefits. Any applicant or Beneficiary who shall willfully make any false or fraudulent statement or representation as to any fact required or appropriate to the determination of the eligibility of such applicant or Beneficiary for benefits under the Code or these Rules and Regulations, or for the continuation or extension of the same, or who shall willfully make or present any claim for benefits under the Code or these Rules and Regulations knowing such claim to be false, fictitious or fraudulent, shall be fined not more than \$25,000.00. In addition to the foregoing, making willfully false statements will be grounds for the rejection of the application.

(e) Multiple violations shall be treated as separate offenses and fines there for shall be independently assessed.

(f) Waiver or failure to assess a fine for any violation shall not serve as a waiver of any other violations.

(g) If any Beneficiary shall violate any provision of Title 29 V.I.C., Chapter 12, any rule or regulation promulgated there under, or provision of its IBE tax benefit Certificate, or shall fail or refuse to perform any duty, requirement or lawful order made by the Director, such Beneficiary, after notice and the opportunity of a hearing, is subject to fine(s) in accordance with this schedule of fines listed in subsection (a) above as determined by the Director in the

Director's reasonable discretion.. These fines shall be deposited into the general treasury of the U.S. Virgin Islands and checks shall be made payable

(h) In construing and enforcing the provisions of this schedule, the act, omission, or failure of any officer, agent, or person acting for or employed by any Beneficiary, acting within the scope of employment, shall, in every case be deemed to be an act, omission, or failure of such Beneficiary.

(i) These fines shall be deposited into the general treasury of the U.S. Virgin Islands and checks shall be made payable

(j) The Attorney General of the U.S. Virgin Islands, at the request of the Director, shall forthwith bring appropriate action to compel adherence to, or enjoin violations of any lawful orders of the Director issued pursuant to Title 9 V.I.C. Chapter 25 and the Rules and Regulations promulgated there under, and to recover in the name of the Government of the U.S. Virgin Islands the penalties provided herein.

(k) In addition to the imposition of any fine or fines, the Director may also impose any other penalty authorized by law or these regulations, including but not limited to revocation, suspension or modification of a Beneficiary's certificate.

#### **SUBSECTION 751-1. APPEALS**

Any applicant or Beneficiary aggrieved by any action of the Director or the Lt. Governor under the provisions of the Code or these Rules and Regulations, after exhaustion of administrative remedies, shall be entitled to judicial review thereof by appealing to the Superior Court of the United States Virgin Islands within 30 days after final decision by the Director or Lt. Governor.

**SUBSECTION 752-1. EFFECT OF OTHER LAWS**

(a) Insofar as the laws of Virgin Islands are not inconsistent with the provisions of §§ 715 et seq. of this title, the laws of the Virgin Islands shall prevail.

(b) Insofar as the provisions of §§ 715 et seq. of this title are inconsistent with any other laws of Virgin Islands, the provisions of §§ 715 et seq. of this title shall prevail.

(c) The banking-related authority granted to an IBE under the provisions of §§ 715 et seq. of this title are related to and pursuant to the federal banking laws of the United States as applicable to the Virgin Islands. Provided, nothing herein, shall be construed to limit the non-banking-related authority granted to an IBE under the provisions of §§ 715 et seq. of this title. Without limitation of the foregoing, an IBE, whether insured or uninsured by the Federal Deposit Insurance Corporation (FDIC), is authorized to take, receive, reserve, and charge interest as agreed upon by the parties under the laws of the Virgin Islands notwithstanding any state laws to the contrary. This means, for example, that an IBE may export interest rates on a preemptive basis.

(d) Notwithstanding any state laws to the contrary, the Division of Banking shall have exclusive jurisdiction to license and regulate an IBE. This means, for example, that an IBE is not required to be licensed in or regulated by the laws of a state.

(e) Notwithstanding any state laws to the contrary, an IBE's choice of the laws of the Virgin Islands to govern a transaction shall be deemed reasonable, enforceable, and valid for all purposes, including, without limitation, regulatory and contract purposes. This means, for example, that an IBE can effectively choose the laws of the Virgin Islands to apply to a transaction without concern that its choice might be invalid.

(f) Under the Revised Organic Act of the Virgin Islands, 48 U.S.C. § 1541 *et seq.*, the Government of the Virgin Islands is an instrumentality of the Federal government. The Act and these regulations have the full force and effect of federal law.

**SUBSECTION 752-1**

Any section or provision of this rule held by the court to be invalid or unconstitutional will not

affect the validity of any other section or provision.

#### **SUBSECTION 753-1. BACKGROUND REQUIREMENTS**

Before the granting of an IBE license under this chapter, the company and all principals having an ownership interest in excess of five percent are subject to a due diligence background inquiry in which they must demonstrate that they are lawful and productive business persons. In addition, they must demonstrate that their purported use of the tax benefits granted under this title are lawful and consistent with the income sourcing rules promulgated by the U.S. Internal Revenue Service. The background investigation must be outsourced and conducted by a Virgin Islands company with law enforcement and tax experience as per Subsection 736-5, 736-6 and 736-7. The cost of the investigation must be borne by the applicant.

#### **SUBSECTION 754-1. TAP ROOTS PROGRAM**

As prescribed in § 717, five percent (5%) of the net income obtained from the Director's functions related to §§ 715 et seq. of this title for any given fiscal year must be remitted to the non-profit foundation, Taproots, Inc., and ten percent (10%) to the Cancer Care Fund administered by the Department of Health and Human Services. The remittance must be made within 30 days of the end of each fiscal year. Taproots is an organization designed to train and educate individuals and families in self-help, self-improvement, and entrepreneurial techniques to render them capable of developing resources for themselves. In the event that Taproots ceases to function or is formally dissolved, the Director shall remit the applicable funds to the Virgin Islands Treasury.

#### **SECTION 3-1. OFFICE OF FOREIGN ASSETS CONTROL**

The Division of Banking and Insurance shall utilize the services of the federal Office of Foreign Assets Control (OFAC) to obtain information on all foreign transactions, foreign licensing and reporting.

#### **SECTION 4-1. BANK SECRECY ACT OFFICER**

The Division of Banking and Insurance shall employ a Bank Secrecy Act (BSA) Officer, in an effort to comply with the requirements of the federal Bank Secrecy Act of 1970, as amended from time to time. The Director may issue a job description for the BSA Officer as follows:

The Bank Secrecy (BSA) Officer is responsible for coordinating the development, implementation and administration of all aspects of the Bank Secrecy Act Compliance. This position monitors compliance among licensed IBEs and licensed banking institutions in the Virgin Islands with the federal Bank Secrecy Act, the USA PATRIOT Act, the Anti-Money Laundering (AML) laws and regulations, and the Office of Foreign Assets Control laws and regulations. The main duties of the BSA Officer will be:

- Oversee all aspects of the Division of Banking and Insurance Bank Secrecy Act and Anti-Money-Laundering programs.
- Coordinate and assist in the administration of independent, territorial and federal regulator and auditor examinations and reviews.
- Coordinate responses to regulatory BSA and AML examinations and audits and actions taken to insure deficiencies are corrected.
- Make recommendations to the Director regarding BSA and AML compliance among IBE's and banks licensed in the Virgin Islands.
- Maintain proficient knowledge of the applicable rules and regulations, including but not limited to: the Bank Secrecy Act (BSA), the USA PATRIOT Act, and the Office of Foreign Assets Control (OFAC).
- Work closely with operations units and employees of licensed IBE's and banks to investigate transactions that are suspicious in nature.
- Submit Suspicious Activity Reports for BSA-AML-related activities.
- Monitor and track BSA-AML high-risk customers and accounts.
- Assist licensed IBEs and banks in implementing processes necessary to comply with regulations.