

BILL NO. 32- _____

THIRTY-SECOND LEGISLATURE OF THE VIRGIN ISLANDS
OF THE UNITED STATES

To amend Title 13 Virgin Islands Code to provide for the establishment of series limited liability companies; and for other purposes

PROPOSED BY:

SECTION 1. Title 13, Chapter 15, Virgin Islands Code is amended by adding the following §1212 thereof to read as follows:

§ 1212. Series of members, managers, limited liability company interests or assets.

(a) An operating agreement may establish or provide for the establishment of one or more designated series of members, managers, limited liability company interests or assets. Any such series may have separate rights, powers or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and any such series may have a separate business purpose or investment objective.

(b) Notwithstanding anything to the contrary set forth in this chapter or under other applicable law, in the event that an operating agreement establishes or provides for the establishment of one or more series, and if the records maintained for any such series account for the assets associated with such series separately from the other assets of the limited liability company, or any other series thereof, and if the operating agreement so provides, and if notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the articles of organization of the limited liability company, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, and, unless otherwise provided in the operating agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such series. Neither the preceding

sentence nor any provision pursuant thereto in an operating agreement or articles of organization shall (i) restrict a series or limited liability company on behalf of a series from agreeing in the operating agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such series or (ii) restrict a limited liability company from agreeing in the operating agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a series shall be enforceable against the assets of the limited liability company generally. Assets associated with a series may be held directly or indirectly, including in the name of such series, in the name of the limited liability company, through a nominee or otherwise. Records maintained for a series that reasonably identify its assets, including by specific listing, category, type, quantity, computational or allocational formula or procedure (including a percentage or share of any asset or assets) or by any other method where the identity of such assets is objectively determinable, will be deemed to account for the assets associated with such series separately from the other assets of the limited liability company, or any other series thereof. Notice in articles of organization of the limitation on liabilities of a series as referenced in this subsection shall be sufficient for all purposes of this subsection whether or not the limited liability company has established any series when such notice is included in the articles of organization, and there shall be no requirement that any specific series of the limited liability company be referenced in such notice. The fact that articles of organization that contains the foregoing notice of the limitation on liabilities of a series is on file in the office of the Secretary of State shall constitute notice of such limitation on liabilities of a series. As used in this chapter, a reference to assets of a series includes assets associated with a series and a reference to assets associated with a series includes assets of a series.

(c) A series established in accordance with subsection (b) of this section may carry on any lawful business, purpose or activity, whether or not for profit. Unless otherwise provided in an operating agreement, a series established in accordance with subsection (b) of this section shall have the power and capacity to, in its own name, contract, hold title to assets (including real, personal and intangible property), grant liens and security interests, and sue and be sued.

(d) Notwithstanding § 1303(a) of this chapter, under an operating agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of one or more series.

(e) An operating agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers and duties as the operating agreement may provide, and may make provision for the future creation in the manner provided in the operating agreement of additional classes or groups of members or managers associated with the series having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members or managers associated with the series. An operating agreement may provide for the taking of an

action, including the amendment of the operating agreement, without the vote or approval of any member or manager or class or group of members or managers, including an action to create under the provisions of the operating agreement a class or group of the series of limited liability company interests that was not previously outstanding. An operating agreement may provide that any member or class or group of members associated with a series shall have no voting rights.

(f) An operating agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter. Voting by members or managers associated with a series may be on a per capita, number, financial interest, class, group or any other basis.

(g) Unless otherwise provided in an operating agreement, the management of a series shall be vested in the members associated with such series in proportion to the then current percentage or other interest of members in the profits of the series owned by all of the members associated with such series, the decision of members owning more than fifty percent of the said percentage or other interest in the profits controlling; provided, however, that if an operating agreement provides for the management of the series, in whole or in part, by a manager, the management of the series, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the operating agreement. The manager of the series shall also hold the offices and have the responsibilities accorded to the manager as set forth in an operating agreement. A series may have more than one manager. A manager shall cease to be a manager with respect to a series as provided in an operating agreement. Except as otherwise provided in an operating agreement, any event under this chapter or in an operating agreement that causes a manager to cease to be a manager with respect to a series shall not, in itself, cause such manager to cease to be a manager of the limited liability company or with respect to any other series thereof.

(h) Notwithstanding § 1405(c) of this chapter, but subject to subsections (i) and (l) of this section, and unless otherwise provided in an operating agreement, at the time a member associated with a series that has been established in accordance with subsection (b) of this section becomes entitled to receive a distribution with respect to such series, the member has the status of, and is entitled to all remedies available to, a creditor of the series, with respect to the distribution. An operating agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a series.

(i) Notwithstanding § 1406 of this chapter, a limited liability company may make a distribution with respect to a series that has been established in accordance with subsection (b) of this section. A limited liability company shall not make a distribution with respect to a series that has been established in accordance with subsection (b) of this section to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such

series, other than liabilities to members on account of their limited liability company interests with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series, except that the fair value of property of the series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that property exceeds that liability. For purposes of the immediately preceding sentence, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A member who receives a distribution in violation of this subsection, and who knew at the time of the distribution that the distribution violated this subsection, shall be liable to a series for the amount of the distribution. A member who receives a distribution in violation of this subsection, and who did not know at the time of the distribution that the distribution violated this subsection, shall not be liable for the amount of the distribution. Subject to § 1407(d) of this chapter, which shall apply to any distribution made with respect to a series under this subsection, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(j) Unless otherwise provided in the operating agreement, a member shall cease to be associated with a series and to have the power to exercise any rights or powers of a member with respect to such series upon the assignment of all of the member's limited liability company interest with respect to such series. Except as otherwise provided in an operating agreement, any event under this chapter or an operating agreement that causes a member to cease to be associated with a series shall not, in itself, cause such member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company or cause the termination of the series, regardless of whether such member was the last remaining member associated with such series.

(k) Subject to § 1801 of this chapter, except to the extent otherwise provided in the operating agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of a series established in accordance with subsection (b) of this section shall not affect the limitation on liabilities of such series provided by subsection (b) of this section. A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under § 1801 of this chapter or otherwise upon the first to occur of the following:

- (1) At the time specified in the operating agreement;
- (2) Upon the happening of events specified in the operating agreement;
- (3) Unless otherwise provided in the operating agreement, upon the vote or consent of members associated with such series who own more than 2/3 of the then-current percentage or

other interest in the profits of the series of the limited liability company owned by all of the members associated with such series; or

(4) The termination of such series under subsection (m) of this section.

(l) Notwithstanding § 1803(a) of this chapter, unless otherwise provided in the operating agreement, a manager associated with a series who has not wrongfully terminated the series or, if none, the members associated with the series or a person approved by the members associated with the series, in either case, by members who own more than fifty percent of the then current percentage or other interest in the profits of the series owned by all of the members associated with the series, may wind up the affairs of the series; but, if the series has been established in accordance with subsection (b) of this section, the Superior Court, upon cause shown, may wind up the affairs of the series upon application of any member or manager associated with the series, or the member's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee. The persons winding up the affairs of a series may, in the name of the limited liability company and for and on behalf of the limited liability company and such series, take all actions with respect to the series as are permitted under 1803 of this chapter. The persons winding up the affairs of a series shall provide for the claims and obligations of the series and distribute the assets of the series as provided in 1806 of this chapter, which section shall apply to the winding up and distribution of assets of a series. Actions taken in accordance with this subsection shall not affect the liability of members and shall not impose liability on a liquidating trustee.

(m) On application by or for a member or manager associated with a series established in accordance with subsection (b) of this section, the Supreme Court may decree termination of such series whenever it is not reasonably practicable to carry on the business of the series in conformity with an operating agreement.

(n) If a foreign limited liability company that is applying for a certificate of authority to do business in the Virgin Islands in accordance with § 2002 of this chapter is governed by an operating agreement that establishes or provides for the establishment of designated series of members, managers, limited liability company interests or assets having separate rights, powers or duties with respect to specified property or obligations of the foreign limited liability company or profits and losses associated with specified property or obligations, that fact shall be so stated on the application for registration as a foreign limited liability company. In addition, the foreign limited liability company shall state on such application whether the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series, if any, shall be enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally or any other series thereof, and whether any of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the foreign limited liability company generally or any other series thereof shall be enforceable against the assets of such series.

SECTION 2. Title 13, Chapter 15, Virgin Islands Code is amended by adding the following §1401a, immediately following §1401 thereof, to read as follows:

§ 1401a. Co-ownership of interest in limited liability company as joint tenants with right of survivorship, tenants in common, or tenants by the entireties

(a) Except as prohibited or restricted in an operating agreement, an interest in a limited liability company may be held by two or more natural persons as joint tenants with right of survivorship or as tenants in common, or by a married couple as tenants by the entireties. Except as otherwise provided in this section or in an operating agreement, an assignment or issuance of an interest in a limited liability company to two or more natural persons creates a tenancy in common.

(b) A joint tenancy with right of survivorship is created when a written operating agreement expressly declares that two or more natural persons hold an interest in a limited liability company as joint tenants with right of survivorship or in joint tenancy with right of survivorship. Except as prohibited or restricted in an operating agreement, a joint tenancy with right of survivorship may also be created by a written assignment of an interest in a limited liability company to two or more natural persons, who may include one or more assignors, or by the articles of organization of the limited liability company, if the written assignment or the articles of organization have been signed by each joint tenant and contain the express written declaration that the joint tenants hold the interest as joint tenants with right of survivorship or in joint tenancy with right of survivorship.

(c) A tenancy by the entireties is created when a written operating agreement expressly declares that a married couple holds an interest in a limited liability company as tenants by the entireties. Except as prohibited or restricted in an operating agreement, a tenancy by the entireties may also be created by a written assignment of an interest in a limited liability company to a married couple, who may include one or both assignor spouses, or by the articles of organization of the limited liability company, if the written assignment or the articles of organization have been signed by each spouse and contain the express written declaration that the two spouses hold the interest as tenants by the entireties.

(d) All co-owners of an interest in a limited liability company held as joint tenants with right of survivorship or as tenants by the entireties, shall own an equal undivided interest in the interest. Each co-owner of an interest in a limited liability company, whether the interest is held as tenants in common, joint tenants with right of survivorship, or tenants by the entireties, shall have only the rights of a transferee with respect to the interest, both during the lifetime and following the death of any other co-owner, unless and until the co-owner is admitted as a member in accordance with the operating agreement or section 1503.

(e) If an interest in a limited liability company is held by two or more persons in joint tenancy with right of survivorship or by a married couple as tenants by the entireties, after the death of a co-owner of the interest:

(1) The surviving co-owner or co-owners of the interest shall succeed to the ownership of the decedent's interest in the limited liability company without further action by the limited liability company or the other members, and shall have only the rights of a transferee with respect to the interest, unless and until the co-owner is admitted as a member in accordance with the operating agreement or section 1503.

(2) The interest in the limited liability company in the hands of the surviving co-owner or co-owners shall continue to be subject to all obligations and liabilities to which that interest was subject immediately before the death under the terms of the operating agreement or other agreement among one or more members or third parties.

(3) If there is more than one surviving co-owner of an interest held in joint tenancy with right of survivorship, after the death of a co-owner the surviving co-owners shall continue to own the interest in equal shares as joint tenants with right of survivorship.

(f) Except as otherwise provided in an operating agreement:

(1) The distribution, voting, approval and other management rights with respect to an interest in a limited liability company that is co-owned by two or more persons, whether the interest is held as tenants in common, joint tenants with right of survivorship, or tenants by the entireties, shall be the same as if the interest were held by only one person.

(2) Each co-owner of an interest in a limited liability company who has been admitted as a member may exercise all voting, approval and other management rights of a member, including the right to approve an amendment to the operating agreement, with respect to an interest held as tenancy in common, joint tenancy with right of survivorship, or tenancy by the entireties.

(3) The limited liability company is entitled to rely in good faith on the act of a member that purports to be taken in the exercise of any voting, approval or other management right, including the right to approve an amendment to the operating agreement relating to an interest in a limited liability company that is co-owned by the member with one or more other persons, whether the interest is held as tenants in common, joint tenants with right of survivorship, tenants by the entireties.

(g) If a co-owner of an interest in a limited liability company held as joint tenants with right of survivorship or tenants by the entireties transfers part or all of the co-owner's share of that interest, the right of survivorship or the tenancy by the entireties is extinguished and the co-owners of the interest after the transfer hold their shares of the interest as tenants in common, except as otherwise provided in an operating agreement.

(h) Except as otherwise provided in an operating agreement, a limited liability company does not need to give effect to any creation or extinguishment of a right of survivorship or a tenancy by the entireties, until the limited liability company has received written notice of the

change in the form of ownership or of the creation or the extinguishment of a right of survivorship or tenancy by the entirety at the address of its known place of business or the address of its agent for service of process in the records of the Lieutenant Governor.

(i) With respect to an interest in a limited liability company owned in joint tenancy with right of survivorship, tenancy in common, or tenancy by the entirety, if a charging order from a court of competent jurisdiction is obtained against a co-owner's share of the interest, it shall attach only to that co-owner's share or portion of the interest and not to the share or portion of the other co-owner or co-owners.

(j) The provisions of this section shall apply to co-ownership interests in a limited liability company regardless of whether such interests were created subsequent or prior to the date of enactment of the Act that added this section.

SECTION 3. Title 13, Chapter 1, Virgin Islands Code is amended in the following instances:

- (a) §61 thereof is amended by adding the following sentence at the end thereof: "The board of directors of a corporation consists of one or more members, each of whom may be a natural person or a juridical person."
- (b) §69 thereof is amended to read as follows:

§ 69. Officers, Selection, Term and Duties; Omission of the Elections; Vacancies, Nonprofit Organizations.

(a) Every corporation organized in accordance with this chapter shall have one or more officers with such titles and duties as are provided in the bylaws of the corporation or in a resolution of the board of directors which is not inconsistent with such bylaws, and as may be necessary to allow the corporation to execute instruments and stock certificates. Any officer may be a natural person or a juridical person. One of the officers shall be appointed president, chief executive officer or other analogous title. One of the officers shall record all of the minutes of all meetings of the stockholders of the corporation and of the board of directors in a book to be kept for said purposes. An officer may simultaneously hold one or more of the offices established, unless the articles of incorporation or the bylaws provide otherwise. To secure the performance of his/her duties, the board of directors may require any officer to post a bond, in the amount and with such surety or sureties as the board may provide

(b) The officers shall be chosen in the manner and for the term provided by the bylaws or the board of directors or other directing or governing body. Every officer shall continue to hold office until replaced by his/her successor or until he/she resigns or is removed, whichever occurs first. Any officer may resign at any time through written notice or electronic communication to the corporation.

(c) The fact that the annual election of the president, secretary, treasurer and other officers is omitted shall not cause the dissolution of the corporation nor otherwise affect it.

(c) Subsection (c) of §471 thereof is amended by deleting existing paragraph (4) thereof and inserting new paragraphs (4) and (5) in lieu thereof to read as follows:

“(4) Whether the corporation shall be continued in the United States Virgin Islands as a corporation under this chapter or as a limited liability company under chapter 15;

“(5) In the case of a corporation that shall be continued in the United States Virgin Islands as a corporation under this chapter, amended articles of incorporation that meet all of the provisions and requirements of section 2 of this title, and in the case of a corporation that shall be continued in the United States Virgin Islands as a limited liability company under chapter 15, amended articles of organization that meet all of the provisions and requirements of section 1203 of this title, and in either case including any change of name of the corporation, as of the date of the corporation’s continuance in the United States Virgin Islands.”

EXPLANATION

The bill amends the Virgin Islands Uniform Limited Liability Company (“LLC”) Act in three respects.

First, Section 1 amends the LLC Act to provide for what has come to be known as “series LLCs.” Some states, such as Delaware, have had this type of provision in their LLC law for a number of years and this bill would enact provisions similar to those of Delaware.

A series LLC is an LLC with several classes of ownership interest, each known as a “series.” Each series may have different members, different managers, and different assets from the other series in the LLC. Most importantly, the statute provides limited liability among the various series in the LLC so that the debts of one series may not be satisfied from the assets belonging to other series.

Series LLCs have been used by companies for various purposes and are particularly well suited to situations where it is beneficial to operate several different businesses under one banner. Series LLCs may help to reduce the need for many different ownership entities for related businesses. For example, a retail furniture store that offers customer financing could place the retail operations in one series and the financing operations in another series within a single LLC. The retail operations series and the financing operations series could then each have separately identifiable owners, managers, assets, liabilities, and business purposes.

The flexibility that series LLCs provides should attract more entrepreneurs to the Virgin Islands and give them, and existing local businesses, additional options as to how they might structure the establishment of their businesses.

Second, Section 2 amends the LLC Act to clarify that two or more persons may own a single interest in an LLC as joint tenants with the right of survivorship, as tenants in common, or, in the case of a married couple, as tenants by the entirety. In the case of joint tenancies and tenancies by the entirety, this means that if one of the co-owners dies, then the other co-owner(s) will automatically succeed to the decedent’s interest. The provision added by section 2 also spells out the means of creation, consequences, and procedures applicable to all three types of co-ownership of an LLC. Section 2 also specifies that its rules shall apply retroactively to co-ownership interests in LLCs that were created prior to the date of enactment of this amendment.

Third, Section 3 amends the Virgin Islands Corporation Law (Title 13, chapter 1) to allow for juridical persons (such as corporations or LLCs) to serve as officers or directors of a Virgin Islands corporation. This change in the law will be unique in the United States although it is often permitted in many other countries around the world. Making this change would be

helpful in attracting new companies to the Virgin Islands and making the Virgin Islands financial services industry more competitive and dynamic. Section 3 would also amend the redomiciliation (also known as “continuation”) provisions of the Corporation law to allow continuation of a foreign entity in the Virgin Islands as either a limited liability company or a corporation, unlike current law that only permits continuation as a corporation.