

**BILL NO. 29-0308**

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**Twenty-Ninth Legislature of the Virgin Islands**

**March 20, 2012**

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An Act amending title 9 Virgin Islands Code establishing International Banking Center Regulatory Act

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**PROPOSED BY:** Senator Louis Patrick Hill

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1 *Be it enacted by the Legislature of the Virgin Islands:*

2       **SECTION 1.** Title 9 Virgin Islands Code, is amended by adding chapter 25 to read as  
3 follows:

4 **“CHAPTER 25**

5 **Subchapter I: International Banking Entities**

6       **§715. [Short title]**

7       This chapter may be cited as the International Banking Center Regulatory Act.

8       **§716. Definitions**

9       As used in this chapter:

10       (a)   “Director” means the Director of Banking and Insurance of the Office of the

1 Lieutenant Governor.

2 (b) "Domestic Person" means any natural person who is a resident of the Virgin  
3 Islands or a person incorporated or organized under the laws of the Virgin Islands, or a person  
4 whose principal place of business is located in the Virgin Islands, and the Government or any  
5 political subdivision or agency of the Territory of the Virgin Islands.

6 (c) "Foreign Person" means any person who is not a domestic person.

7 (d) "International Banking Entity" means any person, other than an individual,  
8 incorporated or organized under the laws of the Virgin Islands, the United States, or a foreign  
9 country, or a unit of such person, to which a license has been issued pursuant to §721.

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

14 (f) "License" means permission granted by the Director of the Division of Banking  
15 and Insurance to operate an international banking entity (IBE) under the provisions of this  
16 chapter.

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

19 (h) "Regulations of the Director" means the regulations adopted by the Director,  
20 under §717.

21 (i) "Resident of the Virgin Islands" has the meaning that appears in title 26 U.S.C.  
22 932 and subsequent regulations enacted by the U.S. Department of the Treasury.

23 (j) "The United States" means the United States of America, any state of the United  
24 States, the District of Columbia, and every possession, territory, political subdivision, and

1 agency thereof, excluding the Virgin Islands.

2 (k) "Unit" means a subdivision or branch of any person other than an individual,  
3 whose business and operations are segregated from the other business and operations of such  
4 person, as required by this chapter.

5 (l) "Virgin Islands" means the territory of the United States as defined in section 2 of  
6 the Revised Organic Act and each of its political subdivisions and agencies.

7 **§717. [Authority and duties of the Director]**

8 (a) The Director shall:

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

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

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

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

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

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

24 (7) require periodic auditing of the accounts of each international banking

1 entity at least once a year, which must include an audit of the financial condition of each  
2 international banking entity, its compliance with the requirements of this chapter and the  
3 regulations of the Director, and such other matters as the Director may consider  
4 appropriate;

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

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

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

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

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

21 (d) Within the term of 90 days after the closing of each fiscal year of the Virgin  
22 Islands, the Director shall remit to the Department of Finance, to be covered into the Tap Roots  
23 Program, described in §754, fifteen (15) percent of the net income obtained from his functions  
24 related to this chapter for such fiscal year.

1           **§718. Interest rates and reserves**

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

11          (b)     The Director may not establish interest rates to be paid or charged by an  
12 international banking entity.

13          (c)     International banking entities that accept deposits shall be under the obligation to  
14 retain therein either as loans, bonds of the Government of the United States or of the  
15 Government of the United States Virgin Islands or obligations of the political subdivisions  
16 thereof, real property situated in the United States Virgin Islands, or in cash, an amount equal to  
17 75 percent of the total amount of its deposits of residents in the United States Virgin Islands;  
18 provided, however, that checks, bills of exchange, drafts and other instruments deposited for  
19 collection shall not be considered as deposits of money until such checks, bills of exchange,  
20 drafts and other instruments have been collected and paid. The violation of this provision shall be  
21 sufficient cause for the cancellation of its license.

22          (d)     For international banking entities that do not accept deposits, the Director may not  
23 require that deposit reserves be kept.

24           **§719. Organization**

1 (a) An international banking entity may be:

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

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

7 (b) The articles of incorporation, the partnership agreement or any other written  
8 document establishing an international banking entity must specify:

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

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

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

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

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

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

24 (i) the amount of the proposed capital, which must not be less than

1           \$5,000,000 and of which at least 250,000 must have been fully paid at the time  
2           the license is issued in accordance section 721, but the Director may authorize a  
3           lesser proposed or paid-in capital, by request of the interested party, when the  
4           type of business or power that the international banking entity intends to exercise  
5           or other circumstances merits it, in the criterion of the Director; and

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

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

9           (5)    The purposes for which it is organized.

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

11          (c)    An international banking entity that intends to operate as a unit shall provide  
12          certification executed by the person of which it is a unit in the form prescribed by the regulations  
13          of the Director, which must specify:

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

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

17                   (3)    The amount of the authorized or proposed paid-in capital of the person of  
18          whom the international banking entity is to be a unit, whose capital must not be less than  
19          \$5,000,000, of which at least \$250,000 must have been fully paid at the time the license  
20          is issued, but the Director may authorize a lesser authorized, proposed, or paid-in capital,  
21          by petition of the interested party, when the type of business or power that the  
22          international banking entity intends to exercise or other circumstances thus merits it, in  
23          the criterion of the Director;

24                   (4)    The purposes for which the unit is organized, including a specific

1 limitation of its operations to carry out only those services authorized in §726; and

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

4 **§720. [Application for permit]**

5 (a) Any person, as defined in § 719, may apply to the Director for a permit to  
6 organize an international banking entity.

7 The application must be in writing, in the form specified by the regulations of the  
8 Director and must be accompanied by:

9 (1) The proposed articles of incorporation, partnership agreement or other  
10 written document establishing the international banking entity or the certification  
11 required by §719(c);

12 (2) A nonrefundable application fee of \$5,000, and;

13 (3) Such other documents as may be specified by the regulations of the  
14 Director.

15 (b) Every application must include, in the form required by the regulations of the  
16 Director:

17 (1) The identity and business history of the applicants;

18 (2) the city or town in the Virgin Islands and the street and number or any  
19 other address where its principal place of business in the Virgin Islands will be  
20 maintained;

21 (3) the identity and business and credit history of any person who, directly or  
22 indirectly, possesses or controls or intends to possess or control 10 percent or more in the  
23 capital of the proposed international banking entity;

24 (4) a statement of the assets and liabilities of any applicant and of any person



1 who possesses or controls or intends to possess or control 10 percent or more of the  
2 interest in the capital of the international banking entity, or of the person of which the  
3 proposed international banking entity is to be a unit, for each of the three years preceding  
4 the application;

5 (5) the identity and background of all proposed directors, and officials or  
6 persons who intend to act in a similar capacity in the international banking entity; and

7 (6) such additional information as may be required by the regulations of the  
8 Director.

9 (c) Upon receipt of the sworn application, all the required documents and the  
10 application fee, the Director shall carry out all the necessary investigations of the applicants and  
11 of the application, including a review of:

12 (1) the financial solvency, credit, banking experience and business integrity of  
13 the applicants, their directors and officers, or persons who intend to act in a similar  
14 capacity in the proposed international banking entity;

15 (2) the adequacy of the capital available for the operations of the proposed  
16 international banking entity; and

17 (3) the adequacy of the articles of incorporation, partnership agreement or  
18 other written document belonging to any applicant and, when appropriate, of the articles  
19 of incorporation, partnership agreement or other written document establishing the  
20 proposed international banking entity;

21 (d) In order not to create additional expenses on the Government of the Virgin  
22 Islands, the Director shall outsource the investigation to one or more Virgin Islands companies.  
23 The expenses incurred by the Director for the investigation required under this section must be  
24 paid by the applicants. The Director shall claim the investigation expenses from the applicants

1 up to an amount of \$15,000.

2 (e) If the Director determines that the results of the investigation are favorable, and  
3 after payment of the investigation expenses as established in subsection (d) of this section, the  
4 Director shall issue to the applicants a permit to organize an international banking entity, subject  
5 to such conditions as the Director may establish. If the Director declines to issue a permit to  
6 organize the international banking entity, the applicant has an immediate right to appeal the  
7 decision to the Lt. Governor who shall issue a decision within 30 days of the appeal.

8 (f) When the Director issues a permit under this section, the interested party shall file  
9 with the Division of Corporations and Trademarks of the Lt. Governor's Office of the Virgin  
10 Islands, the articles of incorporation, partnership agreement or other written document  
11 establishing the proposed international banking entity or unit, as well as the certification  
12 provided for in §719(c) in the case of a unit and the permit issued by the Director. The Division  
13 of Corporations and Trademarks shall issue under its official seal, a certification of the filing of  
14 the stipulated documents.

15 **§721. [License]**

16 (a) A person may not commence operations as an international banking entity before  
17 it has been issued a license under this section.

18 (b) The Director may issue to the applicants a license to operate an international  
19 banking entity after receipt of:

20 (1) the certification by the Division of Corporations and Trademarks referred  
21 to in §720 of this title;

22 (2) the payment of five \$5,000 as an annual fee for the license to operate an  
23 international banking entity;

24 (3) a certified copy of the articles of incorporation, partnership agreement or

1 other written document establishing the international banking entity or the certification of  
2 the person of which the international banking entity is a unit;

3 (4) a copy of the bylaws or internal governing agreements adopted by the  
4 board of directors or similar governing body of the international banking entity, which  
5 must be certified before a notary public by its secretary or an individual acting in a  
6 similar capacity;

7 (5) evidence in the form required by the regulations of the Director, that the  
8 capital of the international banking entity has been subscribed to, issued and paid-in, to  
9 the extent and under such conditions as the Director may establish at the Director's sole  
10 discretion;

11 (6) a statement in the form required by the regulations of the Director and  
12 authenticated before a notary public, by the Secretary of the Board of Directors or the  
13 person acting in a similar capacity for the international banking entity, or for the person  
14 of which the international banking entity is a unit, to the effect that the international  
15 banking entity has complied with the requirements of this chapter and of the regulations  
16 of the Director and that it is ready to commence operations.

17 (c) The license must be renewed and the license fee established under this  
18 section must be paid annually no later than 15 days following each anniversary date of  
19 the issuance of the original license;

20 (d) Subject to section 749, the Director may not issue a license if the Director  
21 believes, or has reason to believe, that the applicant has violated the provisions of this  
22 chapter or the regulations of the Director.

23 **§722. [Amendments to articles of incorporation]**

24 (a) The articles of incorporation, partnership agreement or other written document

1 establishing an international banking entity or to any license executed in accordance with § 721,  
2 may not be amended, unless the amendment has been previously approved, in writing, by the  
3 Director.

4 (b) After the adoption of any amendment to the articles of incorporation, partnership  
5 agreement or other written document establishing an international banking entity or to any  
6 certification executed in accordance with § 719 of this title, the amended document must be filed  
7 with the Division of Corporations and Trademarks.

8 **§723. Unencumbered assets, capital, shares of capital stock**

9 (a) Every international banking entity shall possess not less than \$300,000 of  
10 unencumbered assets or acceptable financial securities, or that lesser sum that, by request of the  
11 interested party, the Director authorizes, when the type of business or power that the  
12 international banking entity intends to exercise or other circumstances thus merits it, in the  
13 judgment of the Director. The unencumbered assets must be physically located in the Virgin  
14 Islands and subject to the requirements regarding them established by the regulations of the  
15 Director.

16 (b) The capital of, or assigned to an international banking entity may not be reduced  
17 without the prior written approval of the Director.

18 (c) Subject to paragraph (3), without the prior written approval of the Director, an  
19 international banking entity may not issue:

20 (1) additional shares of capital stock or other securities convertible into  
21 additional shares of capital stock, in the case of a corporation; or

22 (2) additional capital or other securities convertible into additional capital, in  
23 the case of a person other than a corporation.

1           (3) In the case of a corporation, an international banking entity may issue  
2 additional shares of capital stock or other securities convertible into shares of capital  
3 stock, and in the case of a person other than a corporation, issue additional capital or  
4 other securities convertible into additional capital, without the prior written approval of  
5 the Director when such additional shares or capital are issued directly to the shareholders  
6 of the international banking entity previously identified pursuant to § 720(b)(3). In such  
7 event, the international banking entity shall notify the Director of all the particulars of  
8 such issuance no later than 10 business days following the date of the issue.

9           **§724. Transfer of capital or control of an international banking entity**

10          (a) Except as provided in regulations of the Director, a sale, encumbrance,  
11 assignment, merger, barter, exchange or other transfer of shares, interest or participation in the  
12 capital of an international banking entity may not be initiated without the previous written  
13 authorization of the Director, if by way of such transaction, a person could acquire, directly or  
14 indirectly, control of 10 percent or more of any class of stock, interest or participation in the  
15 capital of an international banking entity.

16          (b) Every sale, encumbrance, assignment, merger, barter, exchange or other transfer  
17 of shares of capital stock, interest or participation in the capital of an international banking  
18 entity, as set forth in subsection (a) of this section, is void "*ab initio*" if the written authorization  
19 of the Director has not been obtained. The written authorization of the Director may not be  
20 unreasonably withheld.

21          (c) The international banking entity shall notify the Director, 30 days in advance of  
22 the transfers referred to in subsection (a), the identity of the transferor and of the transferee and  
23 the nature of the transaction. The Director may require such additional information as he  
24 considers necessary to determine if the transfer would be detrimental to the security or financial

1 solvency of the international banking entity or if it would violate any law, rule or regulation  
2 governing the international banking entity, in which case the Director may deny the authorization  
3 for such transaction; but any person to whom such authorization is denied shall have the right to  
4 request a hearing pursuant to the regulations provided in § 749.

5 **§725. [No transfer of license]**

6 A license issued under this chapter may not be sold, assigned, transferred, pledged, used  
7 as security, or otherwise encumbered, except under the provisions of subsection 748.

8 **§726. [Permitted transactions; prohibited transactions ]**

9 (a) Upon receipt of a license to operate an international banking entity under section  
10 721, an international banking entity may:

11 (1) accept deposits from foreign persons in checking accounts as well as demand  
12 or fixed term deposits and interbank deposit of funds, accept or provide deposit account  
13 alternatives such as wholesale or retail repurchase agreements, or otherwise borrow  
14 money from international banking entities and from any foreign person, subject to any  
15 regulations adopted by the Director;

16 (2) accept properly collateralized deposits or otherwise borrow duly secured  
17 money from the Economic Development Authority of the Virgin Islands;

18 (3) make or place deposits in, any international banking entity, or in any bank,  
19 including banks organized under the laws of the Virgin Islands, and branches in the  
20 Virgin Islands of banks that are foreign persons, and otherwise give money as a loan to  
21 the Economic Development Authority of the Virgin Islands;

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

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

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

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

8 (6) engage in money services, money transmission, payment services, bill-  
9 payment services, payment systems, check cashing, sale of instruments or other payment  
10 devices, currency exchange, or other financial and business management services,  
11 including, without limitation, providing, discounting, rediscounting, dealing or otherwise  
12 trading in money orders, stored value, bills of exchange, drafts, or other instruments or  
13 payment devices, provided that the purchaser, payee, or beneficiary is not a domestic  
14 person.

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

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

23 (ii) bear interest at an interest rate of not less than five percentage  
24 points above the Federal Home Loan Mortgage Corporation's posted yield on the

1 last business day of the month on thirty-year standard conventional fixed-rate  
2 mortgages committed for delivery within sixty days, rounded to the nearest one-  
3 fourth percent, which rate must take effect on the first day of the immediately  
4 subsequent month and continue in effect for the remainder of the month, and  
5 apply to all commitments made by a beneficiary during such month; make capital  
6 contributions in excess of \$1,000,000 made to Virgin Islands business entities or  
7 business entities in the Virgin Islands;

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

10 (9) underwrite, issue, distribute, and otherwise deal in securities, notes, debt  
11 instruments, drafts, bills of exchange, issued by the international banking entity, or by a  
12 foreign person, for final purchase by a person outside of the Virgin Islands;

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

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

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

24 (13) engage in any activity of a financial nature for clients outside of the Virgin



1 Islands which would be allowed to be done, directly or indirectly, by a bank holding  
2 company or by a foreign office or subsidiary of a United States bank under applicable  
3 United States law.

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

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

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

17 (17) act as a clearinghouse in relation to financial contracts or instruments of  
18 foreign persons, subject to any regulations adopted by the Director.

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

23 (19) engage in such other activities as are expressly authorized by the  
24 regulations or order of the Director, or are incidental to the execution of the services

1 authorized by this chapter and the regulations of the Director;

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

5 (21)(A) finance, through loans or financial securities, projects in those areas of  
6 priority for the Government of the Virgin Islands in those cases designated as  
7 extraordinary by the Commissioner of Finance and the Director.

8 (B) The Director shall adopt the pertinent regulations to implement this  
9 provision. However, the regulations must require, in all cases, the prior  
10 authorization of such loans by the Commissioner of Finance and the Director.

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

16 (B) The Director may authorize an international banking entity to  
17 establish a service unit or office in the Virgin Islands, in which only specific  
18 operations related to the services of the international banking entity are  
19 conducted, in the manner and form provided through regulations, but by no means  
20 may the service unit or office constitute a branch.

21 (23) With the prior authorization of the Director, provide to other international  
22 banking entities or to foreign persons or entities outside of the Virgin Islands, those  
23 services of financial nature, as these are defined and generally accepted in the banking  
24 industry of the United States and the Virgin Islands and which are not listed in this

1 section. This paragraph does not apply to activities otherwise authorized by this chapter.

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

7 (b) The international banking entity may not:

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

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

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

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

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

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

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

8           (c)   An international banking entity that is a unit of another person shall segregate and  
9 keep separated all transactions made or conducted by the unit, from every other transaction made  
10 or conducted by the person of which the international banking entity is a unit.

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

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

1 (f) The international banking entity shall disclose in advance if a certain type of  
2 deposit account or service is not insured by providing a notice in language substantially similar  
3 to the following: THIS [SPECIFY TYPE DEPOSIT ACCOUNT OR SERVICE] IS NOT  
4 INSURED.

5 (g) In connection with the activities of an international banking entity under this  
6 chapter, the Director may establish reasonable regulations and reporting requirements with  
7 respect to an international banking entity's compliance with any applicable federal anti-money  
8 laws of the United States, including, without limitation, the following: the Bank Secrecy Act (31  
9 U.S.C. §5311 et seq.), and the Uniting and Strengthening America by Providing Appropriate  
10 Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No.  
11 107-56, 115 Stat. 272. In order to limit additional costs to the Virgin Islands Government, the  
12 Director shall outsource anti money laundering due diligence compliance programs to Virgin  
13 Islands companies, and the international banking entity is responsible for paying any reasonable  
14 costs, as determined by the Director, associated with such compliance.

15 **§727. [Personnel]**

16 (a) The international banking entity shall employ on a full-time basis a minimum of  
17 three persons at its business office or offices in Virgin Islands. However, the Director may  
18 authorize a lesser number of employees upon request of the interested party. In considering such  
19 authorization the Director shall evaluate factors, such as the powers conferred by the license  
20 granted under this chapter, the nature and complexity of its operations in Virgin Islands, and  
21 those other criteria established in the regulations of the Director.

22 (b) The full-time employees of a person of which an international banking entity is a  
23 unit which render some services to such entity, are considered to be full-time employees of such  
24 entity for purposes of the employment requirements set forth in subsection (a).

1           (c)     An international banking entity may engage other persons to act as its agent in the  
2 exercise of the international banking entity's authorized activities in this chapter whether on or  
3 off its premises, and, in connection therewith:

4           (1)     Such performance must be treated, and subject to regulation and examination by  
5 the Director, to the same extent as if the services were being performed by the international  
6 banking entity itself on its own premises, and

7           (2)     The international banking entity shall notify the Director of the existence of the  
8 service relationship no later than 60 days after the making of the service contract or the  
9 performance of the service, whichever occurs first. The Director may establish exemptions from  
10 the reporting requirement in this paragraph.

11           **§728. [Accounts and registers]**

12           (a)     The original of the account books and registers of the international banking entity  
13 must be kept in its main business office in the Virgin Islands and must reflect such details and be  
14 kept in such a manner as may be required by the regulations of the Director; a duplicate of the  
15 account books and registers may be kept and maintained in entity's country of origin.

16           (b)     The account books and registers must be segregated and kept separately from the  
17 account books and registers of any other person.

18           (c)     The originals of the account books and registers of an international banking entity  
19 are considered as belonging to the international banking entity regardless of whether the entity is  
20 a person or constitutes a unit of another person.

21           **§729. [Reports]**

22           Every international banking entity shall submit to the Director all reports as may be  
23 required by the regulations of the Director, including an annual financial statement prepared by  
24 certified public accountants, licensed to practice in the Virgin Islands, as well as interim financial

1 statements.

2 **§730. Revocation, suspension or surrender**

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

5 (1) An international banking entity or the person of which the international  
6 banking entity is a unit, contravenes or fails to comply with any of the provisions of this  
7 chapter, any regulation of the Director, or any of the terms or conditions of the license to  
8 operate an international banking entity.

9 (2) An international banking entity fails to pay the annual license fee of  
10 \$5,000.

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

13 (b) In all hearings commenced under this chapter, the Director has the burden of  
14 proof, and the standard of proof is by clear and convincing evidence. The Director may not  
15 undertake any arbitrary or discriminatory enforcement action.

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

19 **§731. [Dissolution]**

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

23 (b) The receiver appointed must be a person of recognized moral qualities, with vast  
24 experience in the field of banking or finance, and the receiver's performance with the

1 international banking entity must be secured by an adequate bond, to be paid by the international  
2 banking entity itself.

3 (c) The receiver shall manage the international banking entity in accordance with the  
4 provisions of this chapter and shall:

5 (1) take possession of the assets and liabilities, books, records, documents and  
6 files which belong to the international banking entity;

7 (2) collect all loans, charges and fees owed to the international banking entity;

8 (3) pay all obligations and debts of the international banking entity, after  
9 having paid the necessary costs of the receivership; and

10 (4) supervise the dissolution and liquidation of the international banking  
11 entity.

12 **§732. [Penalties]**

13 (a) If any director, official or individual acting in a similar capacity of an  
14 international banking entity or of a person of which the international banking entity is a unit,  
15 violates, or voluntarily or negligently permits any director officer, agent, or employee of the  
16 international banking entity or of the person of which the international banking entity is a unit, to  
17 violate this chapter, the regulations of the Director, or any provision of the certificate of  
18 incorporation, partnership agreement or other written document establishing the international  
19 banking entity, the Director shall schedule and summon the interested parties to an  
20 administrative hearing pursuant to the regulations provided in § 749 of this title. Once the  
21 hearing is held and after the Director determines that a provision mentioned in this subsection  
22 has been violated, he shall take the corresponding action, including the suspension or dismissal  
23 of such director, officer or individual.

24 (b) Any official or employee of an international banking entity, or of a person of



1 which it is a unit, who on behalf of such international banking entity receives any deposit or  
2 contract for a loan with the knowledge that the international banking entity or the person of  
3 which it is a unit is insolvent, is subject to a civil penalty of not less than 5,000 nor more than  
4 10,000 and is also liable to make restitution for any losses suffered by any victim.

5 (c) Any director, official or employee of the international banking entity or of the  
6 person of which the international banking entity is a unit, who illegally appropriates, embezzles,  
7 removes or voluntarily misuses any moneys, funds, credits or securities of an international  
8 banking entity, or who, without due authorization, issues or draws any certificate of deposit,  
9 draws any order or bill of exchange, carries out any type of acceptance or assignment of a note,  
10 bond, money order, bill of exchange, and any person who, with the same intention, aids or abets  
11 any director, official or employee to violate any provision of this section, is subject to a civil  
12 penalty of not less than \$5,000 nor more than \$10,000 and is also liable to make restitution for  
13 any losses suffered by any victim.

14 (d) Any director, official, or employee of an international banking entity or of the  
15 person of which the international banking entity is a unit, who voluntarily misrepresents the  
16 financial condition of an international banking entity or about any transaction to be carried out  
17 by, or carried out by the international banking entity, or who declines to provide information  
18 legally requested by the Director, is subject to a civil penalty of not less than \$5,000 nor more  
19 than \$10,000.

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

23 **§733. [Confidentiality]**

24 (a) The information that the international banking entity provides to the Director

1 pursuant to this chapter and the regulations of the Director must be kept confidential, except:

2 (1) when disclosure of such information is required by law or judicial order;

3 or

4 (2) through a formal petition of a domestic or foreign government agency in  
5 the course of the exercise of its supervisory function, when the Director has grounds to  
6 believe that it is in the best interest of the public. In such case, the information must be  
7 delivered under a binding agreement with the concerned government entity of  
8 maintaining the confidential nature of the information. However, the exception under  
9 this paragraph may under no circumstances be extended to information regarding clients  
10 of the international banking entity.

11 **§734. [Administrative hearings, adjudication proceedings and judicial review]**

12 All matters related to administrative hearings procedure, adjudicatory proceedings and  
13 judicial review must be set forth by regulations promulgated by the Director. The regulations  
14 must substantially conform to the principles of the federal Administrative Procedure Act, 5  
15 U.S.C. Sec 551 et seq.

16 **§735. [Inapplicability of existing laws]**

17 Neither the provisions of §§ 1 et seq. of this title, known as the "Banking" title, nor the  
18 provisions of §§ 951 et seq. of this title, which fix the maximum interest rates or charges  
19 permitted on loans, are applicable to the operations of international banking entities established  
20 under this chapter. However, this chapter may not be construed to be a limitation of the powers  
21 of the Governor of Virgin Islands or of the person designated by the Governor.

22 **SUBCHAPTER II [TAX INCENTIVES]**

23 **§736. [Tax Incentive Benefits]**

24 (a) Any international business entity licensed and regulated under this chapter, is

1 eligible to receive any tax exemption, tax credit, or tax privilege pursuant to this chapter.

2 (b) The Director may:

3 (1) review all applications for tax incentive benefits, issue a Certificate of  
4 Eligibility for Tax Incentive Benefits to: international banking entities licensed and  
5 regulated under this chapter;

6 (2) determine compliance of the beneficiary with the provisions of this  
7 chapter and the regulations issued under this chapter. The expenses of any investigation  
8 by the Director to determine compliance by any beneficiary must be borne by the  
9 beneficiary;

10 (3) modify, suspend or revoke a certificate of tax incentive benefits, and hold  
11 a hearing in which the beneficiary must show cause why its certificate of tax incentive  
12 benefits should not be modified, suspended or revoked;

13 (4) in connection with any investigation or hearing required by this chapter or  
14 regulations issued pursuant to this chapter, subpoena witnesses, records, books, and  
15 administer oaths, and inspect properties and facilities of tax incentive beneficiaries and  
16 applicants for tax incentive benefits.

17 (5) request and obtain from the Commissioner of Finance and Director of the  
18 Internal Revenue Bureau such auditing services as considered necessary to the proper  
19 administration of this chapter, or the Director may outsource the auditing service  
20 necessary to this function. Reasonable costs of such outsourcing, as determined by the  
21 Director, shall be borne by the international banking entity.

22 (6) prepare and promulgate, in accordance with title 3, chapter 35 of the  
23 Virgin Islands Code, such regulations as may be necessary to implement the provisions of  
24 this chapter;

1           (7)   prepare and submit annual reports to the Governor and the Legislature  
2 containing data regarding all tax incentive benefits outstanding and the beneficiaries of  
3 such tax incentives;

4           (8)   in addition to the application fee and annual compliance fees, assess  
5 against an applicant or beneficiary any extraordinary costs and expenses to process the  
6 application or monitor the beneficiary's performance of the conditions in the certificate,  
7 including costs for the services of outside consultants necessitated by the application or  
8 compliance investigation;

9           (9)   notify the office of the Lieutenant Governor of any corporation, joint  
10 venture, limited liability company, partnership or any other entity which have been  
11 approved for tax incentive benefits within 60 days of such approval; as well as prepare  
12 and submit an annual listing of all entities that are approved for tax incentive benefits  
13 whether they are currently operational or not;

14          (10)  conduct investigations with respect to all applications for tax incentive  
15 benefits;

16          (11)  promote the tax incentive program; prepare an annual budget for  
17 consideration and approval by the Lieutenant Governor;

18          (12)  perform such other acts or functions within the area of responsibility as it  
19 may be necessary in furtherance of the purposes of this chapter.

20       **§737. [Contract]**

21       Each certificate granting tax incentive benefits issued under this chapter is a contract  
22 between the Government of the Virgin Islands and the beneficiary. Should the Government  
23 adopt any legislation impairing or limiting the obligations going forward, existing contracts must  
24 be honored.

1           **§738. [Qualification]**

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

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

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

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

12                   (3)     Employ at least three full time persons;

13                   (4)     Comply with all federal and local laws;

14                   (5)     Agree in writing to employ or contract with Virgin Islands businesses and  
15 Virgin Islands residents. A beneficiary may employ persons who are not Virgin Islands  
16 residents at the time of hire if they relocate to the Virgin Islands at the commencement of  
17 employment, and become bona fide residents pursuant to title 26 United States Code,  
18 section 932(c) (Internal Revenue Code of 1986, as amended);

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

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

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

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

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

15          (c)    The Director shall establish, by regulation, the requirements for management  
16          training programs required by this section, as guidance for all beneficiaries and the reasonable  
17          number of Virgin Islands residents to be employed by each beneficiary in accordance with the  
18          specific normal requirements of the business involved, and report annually to the Governor the  
19          titles and compensation of all trainees who are placed in management positions by beneficiaries.

20          (d)    The Director may impose a monetary penalty for delinquent reports as prescribed  
21          by law. Any monetary penalty imposed by the Director pursuant to this section must be  
22          deposited into the Territorial Scholarship Fund established pursuant to title 17, section 171, of  
23          the Virgin Islands Code.

1           **§739. [Discrimination, hearing, certificate revocation]**

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

9           **§740. [Employment of residents by international banking entity; temporary**  
10 **permits]**

11           (a)     After the third year of operation, an international banking entity shall have at least  
12 20% of its management, supervisory or technical positions filled by residents of the Virgin  
13 Islands unless granted a waiver by the Director.

14           (b)     A waiver may be granted only when:

15                   (1)     The Commissioner of Labor has certified that:

16                           (A)     The beneficiary has not been able to recruit individuals to fill the  
17 positions; or

18                           (B)     The beneficiary has not been able to train individuals to fill the  
19 positions; or

20                           (C)     The beneficiary has demonstrated to the Commissioner of Labor  
21 that the beneficiary's training program has failed to provide the individuals  
22 capable of filling the positions and that the beneficiary has made a public effort to  
23 recruit personnel for the positions; or

24                   (2)     The Director has made a finding that the economic position of the

1 beneficiary is such that the beneficiary cannot comply with the requirement without  
2 further erosion of its financial position or that the beneficiary cannot comply for such  
3 other practical reasons that the Director has established by regulations.

4 **§741. [Powers and duties of the Commissioner of Labor]**

5 (a) The Commissioner of Labor shall appoint a qualified and responsible employee of  
6 the Department of Labor to administer, supervise and enforce or cause to be enforced the  
7 provisions of this section and section 740, and in this context may promulgate necessary  
8 regulations, conduct such investigations and institute such remedial action as may be required.  
9 Should remedial action be found to be required, the beneficiary would be required to pay for  
10 reasonable costs, as determined by the Director, of investigation.

11 (b) Any beneficiary applying for permission to hire nonresidents in accordance with  
12 subsection (c)(2) shall submit a specification of the number of nonresident workers required and  
13 their occupational classifications and wage rates to the Commissioner of Labor for review prior  
14 to any grant of permission to hire a nonresident. Upon receiving the information and material,  
15 the Commissioner shall:

16 (1) promptly supply the information and material to all labor unions operating  
17 in the Virgin Islands;

18 (2) at the expense of the beneficiary, give public notice of such employment  
19 opportunity; and

20 (3) assist the beneficiary in the recruitment of residents.

21 (c) The Commissioner of Labor shall provide an evaluation of those residents  
22 available in the labor market with the necessary skills suitable for employment by the  
23 beneficiary. All beneficiaries employing nonresidents shall annually prepare and file with the  
24 Commissioner of Labor a complete roster of all nonresidents and a detailed description of the



1 positions held by such nonresidents. The Commissioner of Labor shall promulgate specific  
2 regulations governing compliance with these requirements.

3 (d) A beneficiary may not employ a person who is not a resident of the Virgin Islands  
4 unless:

5 (1) After hiring the nonresident, at least 80 percent of the beneficiary's  
6 employees are residents of the Virgin Islands; or

7 (2) The Department of Labor has certified that:

8 (A) The beneficiary requested the Department of Labor's assistance in  
9 filling the vacancy; and

10 (B) The Department of Labor was unable, within ten working days  
11 after the beneficiary's request, to refer any qualified applicants to the beneficiary  
12 for employment.

13 (e) The Commissioner of Labor shall report all violations of the resident employment  
14 provisions of this chapter to the Director.

15 **§742. Tax exemptions**

16 (a) Each international banking entity applicant granted a tax incentive benefit  
17 certificate, pursuant to this title is exempt from payment of the following taxes:

18 (1) taxes on real property to the extent that property is used in the business;

19 (2) gross receipt taxes, except that this exemption does not apply to the gross  
20 receipts of businesses operated by a concession or rental agreement on the premises of  
21 beneficiaries, for which businesses separate licenses are required or which, as determined  
22 by the Director, are not ordinarily related to, or do not constitute an essential part of, the  
23 operation of the beneficiary, and which businesses are not otherwise eligible for tax  
24 incentive benefits as a distinct enterprise;

1           (3) all excise taxes on building materials, tools, pipes, pumps, conveyor belts  
2 or other appliances materials and supplies necessary for the use in the construction,  
3 alteration, reconstruction or extension of the physical plant or facilities of the applicant;

4           (4) corporate income taxes;

5           (5) personal income taxes as specified in section 743.

6           (b) Each approved international banking entity eligible for tax incentive benefits  
7 provided under this subchapter must be granted **one hundred percent benefits for a period of**  
8 **ten years** if they remain in compliance with all the requirements of this chapter. Applicants may  
9 receive a renewal of benefits for ten years if they remain in compliance with all the requirements  
10 of this chapter for their initial benefit period.

11           (c) Tax exemptions and benefits may be granted under this section only if the  
12 applicant granted a tax incentive benefit certificate can provide certification from the Bureau of  
13 Internal Revenue and the Department of Finance that the applicant has filed and paid all taxes,  
14 penalties and interest, and from the Office of the Lieutenant Governor that the applicant has filed  
15 its required annual report or has satisfactorily made agreement to pay the taxes or file the  
16 required reports.

17           **§743. [Income tax reduction; benefit options]**

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

21           (b) All exemptions granted under § 742 must be made available to the applicant.

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

24           (d) An applicant may obtain tax benefits only commencing with the first day of the

1 applicant's taxable year for income tax purposes, or commencing one day after the due date for  
2 the payment of an installment of estimated taxes by the applicant. If no payment of an  
3 installment of estimated income taxes by the applicant is due, then the date of commencement of  
4 the benefits under this section shall be the due date of such a payment if one were due by the  
5 applicant.

6 (e) An international banking entity is entitled to:

7 (1) reduce the amount of each payment of estimated income tax by ninety-  
8 percent if its principal place of business is located on St. Thomas or St. John, and ninety-  
9 five percent if its principal place of business is located within the town limits of  
10 Christiansted, St. Croix as defined by the Christiansted Town Limits map recorded in the  
11 Cadastral Section of the Office of the Tax Assessor, and by one hundred percent for a  
12 period of ten years, at which time the beneficiary must apply for renewal, if the principal  
13 place of business is located within the town limits of Frederiksted, St. Croix, as defined  
14 by the Frederiksted Town Limits map recorded in the Cadastral section of the Office of  
15 the Tax Assessor; and

16 (2) reduce its income tax liability shown on its income tax return for the  
17 taxable year by ninety percent if its principal place of business is located on St. Thomas  
18 or St. John, and ninety-five percent if its principal place of business is located within the  
19 town limits of Christiansted, St. Croix as defined by the Christiansted Town Limits map  
20 recorded in the Cadastral section of the Office of the Tax Assessor, and by one hundred  
21 percent for a period of ten years, at which time the beneficiary must apply for renewal, if  
22 the principal place of business is located within the town limits of Frederiksted, St. Croix  
23 as defined by the Frederiksted Town Limits map recorded in the Cadastral section of the  
24 Office of the Tax Assessor for each of the years specified in the tax incentive benefit

1 certificate or renewal thereof. In the case of estimated income taxes, such reduction must  
2 be prorated over the quarterly payments due, or constructively due by the applicant, or in  
3 the case of the determination of its income tax liability, by the entire amount of the  
4 subsidy thus constructively calculated.

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

10 (g) A corporation that is organized under the laws of the Virgin Islands, a corporation  
11 that is organized under the laws of the United States, or one of the states, territories or  
12 commonwealths, whose principal office is located in the Virgin Islands is presumed to be  
13 continually domiciled in the Virgin Islands for purposes of this section, unless it is established  
14 that such domicile has been superseded by a new domicile.

15 (h) This section applies to corporations, limited liability companies, limited liability  
16 partnerships, shareholders, members, partners, trusts, individuals or other direct or indirect  
17 owners of corporations or other entities.

18 **§743b. [Exemption on withholding tax]**

19 (a) Every person who receives a payment of dividends or interest subject to the tax  
20 imposed by *section 871(a)(1) or 881 of the Internal Revenue Code*, as it applies in the United  
21 States Virgin Islands from an IBE as hereunder provided, and every such applicant subject to a  
22 tax on a dividend equivalent amount imposed by *section 884 of the Internal Revenue Code*, as it  
23 applies to the United States Virgin Islands, is exempted from the payment of 100% of such tax  
24 on interest and of that percentage of such tax on dividends and dividend equivalent amounts as is

1 determined pursuant to subsection (c) of this section, to the extent that such dividends, interest  
2 and dividend equivalent amounts are derived from or related to the business or industry for  
3 which the certificate has been granted.

4 (b) An applicant granted a tax benefit certificate as hereunder provided is exempted  
5 from the requirement to withhold tax pursuant to *sections 1441 and 1442 of the Internal Revenue*  
6 *Code*, as it applies in the United States Virgin Islands, with respect to the payments and dividend  
7 equivalent amounts referred to in subsection (a) of this section to the extent that such payments  
8 and dividend equivalent amounts are exempt from the tax described in said subsection.

9 **§744. [Special provisions or limitations]**

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

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

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

1           (d)     With respect to a corporation or other legal entity, the Director shall review the  
2 ownership structure, or the proposed ownership structure, and may, upon review of the  
3 applicant's business plan or amended business plan, and consistent with the basis purposes and  
4 objectives of this chapter, limit the number of shareholders. The Director may not unreasonably  
5 withhold approval of the ownership structure and may not impose additional requirements or  
6 limitations on ownership. Once the international banking entity applicant has furnished all  
7 information necessary for review, the Director has 60 days to issue the decision. If the Director  
8 does not approve or deny the proposed ownership structure, the ownership structure is deemed to  
9 be approved. The Director has the authority to review all ownership interests in excess of five  
10 percent of the business. The international banking entity shall, however, give the Director notice  
11 of owners holding less than a five-percent ownership interest in the company.

12           **§745. [Certificate modifications, extension or renewals]**

13           (a)     Upon proper application or reapplication, public hearing and in compliance with  
14 all other relevant provisions of this chapter pertaining to the grant of initial benefits, as  
15 determined and required by the Director, any recipient of tax incentive benefits granted under  
16 this chapter may be granted an extension, modification or renewal of those benefits subject to the  
17 conditions stated herein.

18                   (1)     Benefits must be granted pursuant to the provision of this chapter only,  
19 and not pursuant to the provisions of any previous law.

20                   (2)     The Commissioner of Labor shall certify the applicant's compliance with  
21 all labor laws, and regulations prior to any extension, modification or renewal of benefits.

22           (b)     Certificate extensions, modifications or renewals are for a period approved by the  
23 Director.

24           (c)     The Director may grant an extension or modification of benefits under an existing

1 certificate or grant a new certificate if the Director determines that the international banking  
2 entity is helpful to the development of the economy of the Virgin Islands.

3 **§746. [Action by the Director]**

4 (a) Upon receipt of a finding by the Director that tax incentive benefits should be  
5 granted, the Director shall then proceed to issue the appropriate certificate.

6 (b) If, after 60 calendar days, excluding Sundays and holidays, have elapsed from the  
7 date the Director has concluded his investigation of the applicant, the Director has neither  
8 approved nor disapproved the issuance of a tax incentive benefit certificate, the issuance of the  
9 certificate must be considered approved, pending final approval by the Lieutenant Governor.  
10 The Lieutenant Governor has an additional ten (10) days to approve or deny the license.

11 **§747. Contents of certificate**

12 (a) A tax incentive benefit certificate must be issued by the Director in the name of  
13 the Government of the Virgin Islands and must bear the signature of the Director. The certificate  
14 must specify all of the following:

15 (1) In the case of a non-publicly owned corporation, the names and addresses  
16 of all of shareholders holding at least a five percent interest in the stock of the company;

17 (2) The line or lines of businesses for which benefits have been granted;

18 (3) The date by which the required financial investment was completed by the  
19 beneficiary;

20 (4) The date or dates upon which benefits commence which may be  
21 retroactive to the first date of investment by the beneficiary in the industry or business  
22 granted in the certificate, but such date may not be before the effective date of this  
23 chapter.

24 (5) The specific commencement and termination dates for the benefits granted

1 under the certificate.

2 (6) Such other conditions as the Director considers appropriate, not  
3 inconsistent with the provisions of this chapter or regulations promulgated under this  
4 chapter.

5 (b) In addition to the conditions established in subsection (a), the certificate must  
6 contain a recital that it is conditioned upon the performance and observance of those conditions  
7 by the beneficiary within a period of time specified, and upon the final determination of the  
8 Secretary of the Treasury of the United States or the Secretary's delegate, of compliance with the  
9 requirement of Internal Revenue Code sections 934. Upon failure of the beneficiary to perform  
10 or observe the conditions as required by the Director within the specified period or any extension  
11 thereof granted for good cause shown to the Director, the certificate is of no force and effect, and  
12 the beneficiary shall pay or refund as the case may be to the Government of the Virgin Islands  
13 the amount of any benefit actually received under the certificate. Upon a final determination by  
14 the Secretary of the Treasury of the United States or his delegate that the beneficiary has not  
15 complied with the requirements of the Internal Revenue Code section 934, the beneficiary shall  
16 pay or refund, as the case maybe, to the Government of the Virgin Islands, the amount of any  
17 subsidy benefits, based on income tax liability, actually received, or the amount of the reduction  
18 of income tax liability on a current basis for all the years of non-compliance.

19 **§748. [Transferability of certificates]**

20 A tax incentive benefit certificate granted under this subchapter may be transferred, for  
21 the unexpired portion of the term of the certificate to another corporation which succeeds the  
22 beneficiary in carrying on or in operating the industry or business for which the certificate is  
23 granted, upon determination of the Director that such corporation is otherwise qualified to  
24 receive such benefits and that the industry or business activity with respect to which the



1 certificate was granted is continued by the corporation. Thereafter the transferor of the  
2 certificate loses all tax incentive benefits under this subchapter and is subject to the tax laws of  
3 the Virgin Islands.

4 **§749. [Revocation, suspension or modification of certificate]**

5 (a) A tax incentive benefit certificate granted in accordance with this chapter may be  
6 revoked, suspended or modified by the Director, after notice, public hearing, and written findings  
7 by the Director that:

8 (1) The beneficiary has failed to maintain compliance with the requirements  
9 of this chapter or any regulation hereunder;

10 (2) Upon a finding submitted to the Director by the Lieutenant Governor or  
11 the Attorney General of the Virgin Islands that the corporation:

12 (A) has been dissolved; or

13 (B) has filed, or there has been filed against the corporation, a petition  
14 in bankruptcy which has been approved; or

15 (3) The beneficiary has failed to file an annual report of ownership as required  
16 by this chapter; or

17 (4) An officer, shareholder or director acting on behalf of the corporation has  
18 been convicted of a felony connected with the operation of the beneficiary's business or  
19 industry; or

20 (5) An officer, shareholder or director acting on behalf of the corporation has  
21 given or offered, or caused to be given or offered a bribe, or any money, property, or  
22 value of any kind or any promise or agreement therefore to a public officer, or to a person  
23 executing any of the functions of a public office, or to a person elected, appointed or  
24 designated to thereafter execute the same, with intent to influence him with respect to any

1 act, decision, vote, opinion, or other proceeding in the exercise of the powers or functions  
2 which he has or may have pertaining in any way to the tax incentive benefit program.

3 (b) In addition to the fine and imprisonment provided in title 14, section 406 of the  
4 Virgin Islands Code for this offense, any benefit granted or obtained as a result of an act,  
5 decision, vote, opinion or other proceeding under subsection (a)(5) is void as to the briber and  
6 recoverable from the briber as the circumstances of the particular case dictates.

7 **§750. Penalties for violations**

8 (a) The Director shall promulgate a schedule of fines for violation of any provision of  
9 this chapter and the beneficiaries' certificate no later than 90 days after the effective date of this  
10 chapter and submit the schedule of fines to the Governor for approval.

11 (b) If any beneficiary violates any provision of this chapter, any regulation  
12 promulgated under this chapter, or any provision of the tax incentive benefit certificate, or fails  
13 or refuses to perform any duty, requirement or lawful order made by the Director, such  
14 beneficiary, after notice and an opportunity to be heard, must be fined in accordance with the  
15 schedule of fines under subsection (a) of this section. These fines must be deposited into the  
16 General Treasury Fund. In construing and enforcing the provisions of this section, the act,  
17 omission or failure of any officer, agent or person acting for or employed by any beneficiary in  
18 every case is considered an act, omission or failure of such beneficiary.

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

23 **§751. Appeals**

24 Any applicant or beneficiary aggrieved by any action of the Director under the provisions

1 of this subchapter is entitled to judicial review of the action by appealing to the Superior Court  
2 under the applicable writ of review provisions no later than 30 days after a final decision by the  
3 Director or Lt. Governor.

4 **§752. Effect of other laws**

5 (a) Insofar as the laws of Virgin Islands are not inconsistent with the provisions of §§  
6 715 et seq. of this title, the laws of the Virgin Islands shall prevail.

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

9 (c) The banking-related authority granted to an international banking entity under the  
10 provisions of §§ 715 et seq. of this title shall be related to and pursuant to the federal banking  
11 laws of the United States as applicable to the Virgin Islands. Provided, nothing herein, shall be  
12 construed to limit the non-banking-related authority granted to an international banking entity  
13 under the provisions of §§ 715 et seq. of this title.

14 **§753. [Background Requirements]**

15 Before the granting of an international banking entity license under this chapter, the  
16 company and all principals having an ownership interest in excess of five percent are subject to  
17 a due diligence background inquiry in which they must demonstrate that they are lawful and  
18 productive business persons. In addition, they must demonstrate that their purported use of the  
19 tax benefits granted under this title are lawful and consistent with the income sourcing rules  
20 promulgated by the U.S. Internal Revenue Service. The background investigation must be  
21 outsourced and conducted by a Virgin Islands company with law enforcement and tax  
22 experience. The cost of the investigation must be borne by the applicant.

23

24

**§754. Tap Roots Program**

As prescribed in § 717, fifteen percent (15%) 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. The remittance must be made within 30 days of the end of each fiscal year. Taproot 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.

**BILL SUMMARY**

This Bill puts in place mechanisms to allow International Banking entities to conduct business in the territory by enacting chapter 25 which amends title 9 of the Virgin Islands Code pertaining to Banking and Insurance, and by providing for tax incentive benefits for all such international banking entities. The bill establishes rules for appeals and penalties to be applied for violation of the regulatory requirements and the tax incentive benefit requirements and the regulations promulgated by the Director.

Specifically, internal §715 provides the short title of the Act.

Internal §716 sets forth key definitions as used in the chapter.

Internal §717 sets forth the duties of the Director of Banking and Insurance as the Director serves as the head for regulating international banking entities. The director is required to draft and adopt regulations to implement the chapter.

Internal §718 relating to interest rates and reserves, provides that International Banking Entities 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, that the Director may not establish interest rates to be paid or charged by an international banking entity, that for international banking entities that do not accept deposits, the Director may not require that deposit reserves be kept, and that international banking entities that accept deposits shall be under the obligation to retain therein either as loans, bonds of the Government of the United States or of the Government of the United States Virgin Islands or obligations of the political

1 subdivisions thereof, real property situated in the United States Virgin Islands, or in cash, an  
2 amount equal to 75 percent of the total amount of its deposits of residents in the United States  
3 Virgin Islands; provided, however, that checks, bills of exchange, drafts and other instruments  
4 deposited for collection shall not be considered as deposits of money until such checks, bills of  
5 exchange, drafts and other instruments have been collected and paid.

6  
7 Internal §719 sets forth the criteria for organizing as an international banking entity in the  
8 Virgin Islands.

9  
10 Internal §720 sets forth the requirements for obtaining a permit to organize an  
11 international banking entity.

12  
13 Internal §721 provides the circumstances under which the Director may issue applicants a  
14 license to operate an international banking entity including the payment of an annual licensing  
15 fee.

16  
17 Internal §722 provides guidelines for making amendments to articles of incorporation of  
18 an international banking entity organized pursuant to this chapter.

19  
20 Internal §723 provides minimum amounts of unencumbered assets, capital, shares of  
21 capital stock needed to organize as an international banking entity as well as what changes can  
22 be made to such minimum requirements.

23  
24 Internal §724 sets forth the parameters for the transfer of capital or control of an  
25 international banking entity.

26  
27 Internal §725 provides that no license issued under the chapter may be sold, assigned,  
28 transferred, pledged, used as security, or otherwise encumbered.

29  
30 Internal §726 lists the permitted and prohibited transactions of an international banking  
31 entity organized pursuant to this chapter.

32  
33 Internal §727 sets forth the personnel requirements of international banking entities.

34  
35 Internal §728 provides, *inter alia*, that the original of the account books and registers of  
36 the international banking entity must be kept in its main business office in the Virgin Islands.

37  
38 Internal §729 requires that interim and annual reports, including financial statements be  
39 made to the Director.

40  
41 Internal §730 sets forth the circumstances which will lead to or require a revocation,  
42 suspension or surrender of a license granted pursuant to this chapter.

43  
44 Internal §731 provides the procedure for dissolution of an entity which license is revoked  
45 or surrendered under §730.

46  
47 Internal §732 provides the penalties for violating any of the provisions of this chapter.

1  
2 Internal §733 sets forth guidelines as to the confidentiality of documents submitted to the  
3 Director pursuant to this chapter.  
4

5 Internal §734 requires that all administrative hearings, adjudication proceedings and  
6 judicial review must be set forth by regulation and that all such regulations substantially conform  
7 to the principles of the federal Administrative Procedure Act, 5 U.S.C. Sec 551 et seq.  
8

9 Internal §735 relates to the inapplicability of existing laws, and provides, *inter alia*, that  
10 neither the provisions of §§ 1 et seq. of this title, known as the "Banking" title, nor the provisions  
11 of §§ 951 et seq. of this title, which fix the maximum interest rates or charges permitted on loans,  
12 are applicable to the operations of international banking entities established under this chapter.  
13

14 Internal §736 provides that any international business entity licensed and regulated under  
15 this chapter, is eligible to receive any tax exemption, tax credit, or tax privilege pursuant to this  
16 chapter.  
17

18 Internal §737 makes each certificate granting tax incentive benefits issued under this  
19 chapter a contact between the Government of the Virgin Islands and the beneficiary, and  
20 provides that should the Government adopt any legislation impairing or limiting the obligations  
21 going forward, existing contracts must be honored.  
22

23 Internal §738 sets forth the maximum requirements the Director can request before  
24 issuing an initial tax incentive benefit certificate.  
25

26 Internal §739 authorizes the Director to revoke a beneficiary's certificate upon clear and  
27 convincing evidence at a hearing in compliance with local and federal due process requirements  
28 if there is a finding that a beneficiary willfully practices discrimination in employment.  
29

30 Internal § 740 provides that after the third year of operation, an international banking  
31 entity shall have at least 20% of its management, supervisory or technical positions filled by  
32 residents of the Virgin Islands unless granted a waiver by the Director.  
33

34 Internal section §741 provides that the Commissioner of Labor shall oversee the  
35 enforcement of the labor provisions of the Act, and prohibits a beneficiary from employ non-  
36 residents of the Virgin Islands unless at least 80 percent of the beneficiary's employees are  
37 residents of the Virgin Islands or the beneficiary has met certain other requirements.  
38

39 Internal section §742 exempts each international banking entity applicant granted a tax  
40 incentive benefit certificate from payment of taxes on real property to the extent that property is  
41 used in the business, gross receipt taxes with some exceptions, all excise taxes on building  
42 materials, tools, pipes, pumps, conveyor belts or other appliances materials and supplies  
43 necessary for the use in the construction, alteration, reconstruction or extension of the physical  
44 plant or facilities of the applicant, corporate income taxes, and personal income taxes as  
45 specified in section 743, for a period of ten years if it remains compliant with the chapter.  
46

47 Internal §743a provides for reduction on a current basis of income tax liability for income

1 derived from the business for which the certificate is granted, and income from investment  
2 described in the section for each applicant granted a tax incentive benefit certificate, and sets  
3 forth guidelines for said reductions.

4  
5 Internal §743b provides for certain interest exemptions.

6  
7 Internal §744 allows applicants for benefits under §743 may be granted an additional ten  
8 years of tax exemption on the initial term of benefits and subsidy at one hundred percent of  
9 benefits if the principal place of business of the applicant is located within the town limits of  
10 Frederiksted, St. Croix as defined on the Frederiksted Town Limits map recorded in the Office of  
11 the Tax Assessor.

12  
13 Internal §745 sets the guidelines for extension, modification or renewal of tax incentive  
14 benefits.

15  
16 Internal §746 mandates approval of a tax incentive benefit certificate if 60 days have  
17 elapsed from the conclusion of the Director's investigation and the Director fails to deny or  
18 approve an application for benefits, or if the Lieutenant Governor fails to approve or deny the  
19 Director's recommendation within ten (10) of the recommendation.

20  
21 Internal §747 sets forth the required contents of a tax incentive benefit certificate.

22  
23 Internal §748 provides for the transferability of tax incentive certificates with certain  
24 limitations.

25  
26 Internal §749 provides for the revocation, suspension or modification of a tax incentive  
27 benefit certificate under certain enumerated circumstances.

28  
29 Internal §750 requires the Director to promulgate a schedule of fines for violation of any  
30 provision of the chapter and the beneficiary's certificate no later than 90 days after the effective  
31 date of this chapter and submit the schedule of fines to the Governor for approval.

32  
33 Internal §751 provides that an applicant or beneficiary aggrieved by an action of the  
34 Director may seek judicial review of the action by appealing to the Superior Court under the  
35 applicable no later than 30 days after a final decision by the Director or Lt. Governor.

36  
37 Internal §752 provides nullifies any other Virgin Islands Law inconsistent with the  
38 provisions of this Act, and provides that the banking-related authority granted to an international  
39 banking entity under the provisions of §§ 715 et seq. of this title shall be related to and pursuant  
40 to the federal banking laws of the United States as applicable to the Virgin Islands. Provided,  
41 nothing herein, shall be construed to limit the non-banking-related authority granted to an  
42 international banking entity under the provisions of §§ 715 et seq. of this title.

43  
44 Internal §753 requires background checks for all principals having an ownership interest  
45 in excess of five percent in which they must demonstrate that they are lawful and productive  
46 business persons. In addition, they must demonstrate that their purported use of the tax benefits

1 granted under this title are lawful and consistent with the income sourcing rules promulgated by  
2 the U.S. Internal Revenue Service.

3  
4 Internal §754 requires that the Department of Finance deposit into the Tap Roots  
5 Program, described in §754, 15 percent of the net income obtained from the Director’s functions  
6 related to this chapter for such fiscal year.

7  
8  
9  
10  
11 **BR11-0020T/February 28, 2012/REVIEWED BY TF/Revised By TF March 12, 2012**