

BILL NO. 29-0308

Twenty-Ninth Legislature of the Virgin Islands

March 20, 2012

An Act amending title 9 Virgin Islands Code, adding chapter 25, “The International Banking Center Regulatory Act”, and repealing chapter 21 of title 9

PROPOSED BY: Senator Louis Patrick Hill

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

2 **SECTION 1.** Title 9 Virgin Islands Code, is amended in the following instances:

3 (a) Chapter 1, section 4 is amended by:”

4 (1) striking “exempt”; and

5 (2) striking “facility” and inserting in its place, “entity”.

6 (b) Chapter 25 is added and reads as follows:

7 **“CHAPTER 25**

8 **Subchapter I: International Banking Entities**

9 **§715. [Short title]**

10 This chapter may be cited as ‘The International Banking Center Regulatory Act.’

1 **§716. Definitions**

2 As used in this chapter:

3 (a) “Director” means the Director of Banking and Insurance of the Office of the
4 Lieutenant Governor.

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

9 (c) “Foreign Person” means any person who is not a domestic person.

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

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

17 (f) “License” means permission granted by the Director of the Division of Banking
18 and Insurance to operate an international banking entity (IBE) under the provisions of this
19 chapter.

20 (g) “Person” means an individual, corporation, partnership, association, unit, trust or
21 estate, syndicate or enterprise of any kind, government or political subdivision or agency thereof.

22 (h) “Regulations of the Director” means the regulations adopted by the Director,
23 under §717.

24 (i) “Resident of the Virgin Islands” has the meaning that appears in title 26 U.S.C.

1 932 and subsequent regulations enacted by the U.S. Department of the Treasury.

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

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

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

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

11 (a) The Director shall:

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

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

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

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

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

24 (6) supervise, inspect, and examine international banking entities and require

1 from them periodic reports and other information specified in the regulations of the
2 Director;

3 (7) require periodic examination of the accounts of each international banking
4 entity as requested in the Director's discretion, which must include an examination of the
5 financial condition of each international banking entity, its compliance with the
6 requirements of this chapter and the regulations of the Director, and such other matters as
7 the Director may consider appropriate;

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

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

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

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

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

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

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

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

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

17 **§719. Organization**

18 (a) An international banking entity may be:

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

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

24 (b) The articles of incorporation, the partnership agreement or any other written

1 document establishing an international banking entity must specify:

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

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

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

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

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

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

17 (i) the amount of the proposed capital, which must not be less than
18 \$5,000,000 and of which at least 250,000 must have been fully paid at the time
19 the license is issued in accordance section 721, but the Director may authorize a
20 lesser proposed or paid-in capital, by request of the interested party, when the
21 type of business or power that the international banking entity intends to exercise
22 or other circumstances merits it, in the criterion of the Director; and

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

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

1 perpetual.

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

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

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

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

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

10 (3) The amount of the authorized or proposed paid-in capital of the person of
11 whom the international banking entity is to be a unit, whose capital must not be less than
12 \$5,000,000, of which at least \$250,000 must have been fully paid at the time the license
13 is issued, but the Director may authorize a lesser authorized, proposed, or paid-in capital,
14 by petition of the interested party, when the type of business or power that the
15 international banking entity intends to exercise or other circumstances thus merits it, in
16 the criterion of the Director;

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

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

21 **§720. [Application for permit]**

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

24 The application must be in writing, in the form specified by the regulations of the

1 Director and must be accompanied by:

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

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

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

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

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

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

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

17 (4) a statement of the assets and liabilities of any applicant and of any person
18 who possesses or controls or intends to possess or control 10 percent or more of the
19 interest in the capital of the international banking entity, or of the person of which the
20 proposed international banking entity is to be a unit, for each of the three years preceding
21 the application;

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

24 (6) such additional information as may be required by the regulations of the

1 Director.

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

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

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

10 (3) the adequacy of the articles of incorporation, partnership agreement or
11 other written document belonging to any applicant and, when appropriate, of the articles
12 of incorporation, partnership agreement or other written document establishing the
13 proposed international banking entity;

14 (d) In order not to create additional expenses on the Government of the Virgin
15 Islands, the Director shall outsource the investigation to one or more Virgin Islands companies.
16 The expenses incurred by the Director for the investigation required under this section must be
17 paid by the applicants. The Director shall claim the investigation expenses from the applicants
18 up to an amount of \$15,000.

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

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

8 **§721. [License]**

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

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

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

15 (2) the payment of \$5,000 as an annual fee for the license to operate an
16 international banking entity. An additional annual fee of \$10,000 shall be paid by the IBE
17 once the IBE has exceeded \$1,000,000 in annual net income;

18 (3) a certified copy of the articles of incorporation, partnership agreement or
19 other written document establishing the international banking entity or the certification of
20 the person of which the international banking entity is a unit;

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

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

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

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

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

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

18 (a) The articles of incorporation, partnership agreement or other written document
19 establishing an international banking entity or to any license executed in accordance with § 721,
20 may not be amended, unless the amendment has been previously approved, in writing, by the
21 Director.

22 (b) After the adoption of any amendment to the articles of incorporation, partnership
23 agreement or other written document establishing an international banking entity or to any

1 certification executed in accordance with § 719 of this title, the amended document must be filed
2 with the Division of Corporations and Trademarks.

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

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

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

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

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

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

19 (3) In the case of a corporation, an international banking entity may issue
20 additional shares of capital stock or other securities convertible into shares of capital
21 stock, and in the case of a person other than a corporation, issue additional capital or
22 other securities convertible into additional capital, without the prior written approval of
23 the Director when such additional shares or capital are issued directly to the shareholders
24 of the international banking entity previously identified pursuant to § 720(b)(3). In such

1 event, the international banking entity shall notify the Director of all the particulars of
2 such issuance no later than 10 business days following the date of the issue.

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

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

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

15 (c) The international banking entity shall notify the Director, 30days in advance of
16 the transfers referred to in subsection (a), the identity of the transferor and of the transferee and
17 the nature of the transaction. The Director may require such additional information as he
18 considers necessary to determine if the transfer would be detrimental to the security or financial
19 solvency of the international banking entity or if it would violate any law, rule or regulation
20 governing the international banking entity, in which case the Director may deny the authorization
21 for such transaction; but any person to whom such authorization is denied shall have the right to
22 request a hearing pursuant to the regulations provided in § 749.

23 **§725. [No transfer of license]**

24 A license issued under this chapter may not be sold, assigned, transferred, pledged, used

1 as security, or otherwise encumbered, except under the provisions of subsection 748.

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

3 (a) Upon receipt of a license to operate an international banking entity under section
4 721, an international banking entity may:

5 (1) accept transaction-related funds from foreign persons in accounts as well
6 as demand or fixed term deposits and interbank deposit of funds. For purposes of this
7 chapter, ‘transaction-related funds’ means moneys, funds, credits, securities or properties
8 accepted by an international banking entity in connection with a loan or other transaction,
9 good or service provided by the international banking entity under this chapter;

10 (2) accept or provide wholesale or retail repurchase agreements, or otherwise
11 borrow money from international banking entities and from any foreign persons, subject
12 to any regulations adopted by the Director.

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

17 (3) make, procure, place, arrange, guarantee, secure, bond, or service, loans or
18 other financial undertakings; provided, that none of such loans or financial undertakings
19 may be granted to a domestic person, except as provided in paragraph (3) of this
20 subsection, and in the case of financial securities for debt, issue transactions in the Virgin
21 Islands;

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

24 (B) issue, confirm, give notice, negotiate, or refinance letters of credit

1 in transactions for the financing of exports, even if the beneficiary is a domestic
2 person.

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

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

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

18 (ii) bear interest at an interest rate of not less than five percentage
19 points above the Federal Home Loan Mortgage Corporation's posted yield on the
20 last business day of the month on thirty-year standard conventional fixed-rate
21 mortgages committed for delivery within sixty days, rounded to the nearest one-
22 fourth percent, which rate must take effect on the first day of the immediately
23 subsequent month and continue in effect for the remainder of the month, and
24 apply to all commitments made by a beneficiary during such month; make capital

1 contributions in excess of \$1,000,000 made to Virgin Islands business entities or
2 business entities in the Virgin Islands;

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

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

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

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

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

19 (12) engage in any activity of a financial nature for clients outside of the Virgin
20 Islands which would be allowed to be done, directly or indirectly, by a bank holding
21 company or by a foreign office or subsidiary of a United States bank under applicable
22 United States law.

23 (13) after obtaining a special permit from the Director, act as fiduciary,
24 executor, administrator, registrar of stocks and bonds, property custodian, assignee,

1 trustee, agent or in any other fiduciary capacity; but, such fiduciary services may not be
2 offered to, nor inure to the benefit of domestic persons;

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

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

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

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

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

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

24 (20)(A) establish, with the Director's authorization, branches outside of Virgin

1 Islands, in the United States mainland and its possessions, or in other foreign countries.
2 The Director may provide, through regulations, the procedure to obtain the authorization,
3 and the amount payable for application investigation expenses and annual quota fees for
4 each one of the branches.

5 (B) The International Banking Entities are authorized to establish a
6 service unit or office in the Virgin Islands, in which only specific operations
7 related to the services of the international banking entity are conducted, in the
8 manner and form provided through regulations, but by no means may the service
9 unit or office constitute a branch.

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

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

20 (b) The international banking entity may not:

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

24 (2) make, procure, arrange, place, guarantee, secure, bond, or service, loans or

1 other financial undertakings, unless all loan proceeds are to be used outside of the Virgin
2 Islands, with the exception of the cases permitted in paragraphs (20) and (21) of
3 subsection (a) or subsection (e).

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

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

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

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

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

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

24 (d) Each activity authorized by this section includes transactions whether for

1 commercial, business, investment or agricultural purposes, or for personal, family or household
2 purposes.

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

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

18 (g) In connection with the activities of an international banking entity under this
19 chapter, the Director may establish reasonable regulations and reporting requirements with
20 respect to an international banking entity’s compliance with any applicable federal anti-money
21 laws of the United States, including, without limitation, the following: the Bank Secrecy Act (31
22 U.S.C. §5311 et seq.), and the Uniting and Strengthening America by Providing Appropriate
23 Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No.
24 107-56, 115 Stat. 272. In order to limit additional costs to the Virgin Islands Government, the

1 Director shall outsource anti money laundering due diligence compliance programs to Virgin
2 Islands companies, and the international banking entity is responsible for paying any reasonable
3 costs, as determined by the Director, associated with such compliance.

4 **§727. [Personnel]**

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

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

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

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

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

24

1 **§728. [Accounts and registers]**

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

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

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

11 **§729. [Reports]**

12 Every international banking entity shall submit to the Director all reports as may be
13 required by the regulations of the Director, including an annual financial statement prepared by
14 certified public accountants, licensed to practice in the Virgin Islands, as well as interim financial
15 statements.

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

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

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

23 (2) An international banking entity fails to pay the annual license fee of
24 \$5,000.

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

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

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

9 **§731. [Dissolution]**

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

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

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

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

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

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

24 (4) supervise the dissolution and liquidation of the international banking

1 entity.

2 **§732. [Penalties]**

3 (a) If any director, official or individual acting in a similar capacity of an
4 international banking entity or of a person of which the international banking entity is a unit,
5 violates, or voluntarily or negligently permits any director officer, agent, or employee of the
6 international banking entity or of the person of which the international banking entity is a unit, to
7 violate this chapter, the regulations of the Director, or any provision of the certificate of
8 incorporation, partnership agreement or other written document establishing the international
9 banking entity, the Director shall schedule and summon the interested parties to an
10 administrative hearing pursuant to the regulations provided in § 749 of this title. Once the
11 hearing is held and after the Director determines that a provision mentioned in this subsection
12 has been violated, he shall take the corresponding action, including the suspension or dismissal
13 of such director, officer or individual.

14 (b) Any official or employee of an international banking entity, or of a person of
15 which it is a unit, who on behalf of such international banking entity receives any funds or
16 contract for a loan with the knowledge that the international banking entity or the person of
17 which it is a unit is insolvent, is subject to a civil penalty of not less than 5,000 nor more than
18 10,000 and is also liable to make restitution for any losses suffered by any victim.

19 (c) Any director, official or employee of the international banking entity or of the
20 person of which the international banking entity is a unit, who illegally appropriates, embezzles,
21 removes or voluntarily misuses any moneys, funds, credits, securities, or other properties of an
22 international banking entity, or who, without due authorization, issues or draws any certificate of
23 account, draws any order or bill of exchange, carries out any type of acceptance or assignment of
24 a note, bond, money order, bill of exchange, and any person who, with the same intention, aids

1 or abets any director, official or employee to violate any provision of this section, is subject to a
2 civil penalty of not less than \$5,000 nor more than \$10,000 and is also liable to make restitution
3 for any losses suffered by any victim.

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

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

13 **§733. [Confidentiality]**

14 (a) The information that the international banking entity provides to the Director
15 pursuant to this chapter and the regulations of the Director must be kept confidential, except:

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

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

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

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

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

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

12 **SUBCHAPTER II [TAX INCENTIVES]**

13 **§736. [Tax Incentive Benefits]**

14 (a) Any international business entity licensed and regulated under this chapter, is
15 eligible to receive any tax exemption, tax credit, or tax privilege pursuant to this chapter.

16 (b) The Director may:

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

20 (2) determine compliance of the beneficiary with the provisions of this
21 chapter and the regulations issued under this chapter. The expenses of any investigation
22 by the Director to determine compliance by any beneficiary must be borne by the
23 beneficiary;

24 (3) modify, suspend or revoke a certificate of tax incentive benefits, and hold

1 a hearing in which the beneficiary must show cause why its certificate of tax incentive
2 benefits should not be modified, suspended or revoked;

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

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

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

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

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

23 (9) notify the office of the Lieutenant Governor of any corporation, joint
24 venture, limited liability company, partnership of any other entity which have been

1 approved for tax incentive benefits within 60 days of such approval; as well as prepare
2 and submit an annual listing of all entities that are approved for tax incentive benefits
3 whether they are currently operational or not;

4 (10) conduct investigations with respect to all applications for tax incentive
5 benefits;

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

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

10 **§737. [Contract]**

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

15 **§738. [Qualification]**

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

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

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

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

1 actual investors may qualify for benefits;

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) After the third year of operation, an international banking entity shall have at least
2 20% of its management, supervisory or technical positions filled by residents of the Virgin
3 Islands unless granted a waiver by the Director.

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

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

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

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

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

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

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

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

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

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

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

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

11 (c) The Commissioner of Labor shall provide an evaluation of those residents
12 available in the labor market with the necessary skills suitable for employment by the
13 beneficiary. All beneficiaries employing nonresidents shall annually prepare and file with the
14 Commissioner of Labor a complete roster of all nonresidents and a detailed description of the
15 positions held by such nonresidents. The Commissioner of Labor shall promulgate specific
16 regulations governing compliance with these requirements.

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

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

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

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

24 (B) The Department of Labor was unable, within ten working days

1 after the beneficiary's request, to refer any qualified applicants to the beneficiary
2 for employment.

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

5 **§742. Tax exemptions**

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

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

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

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

18 (4) corporate income taxes;

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

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

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

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

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

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

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

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

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

21 (1) reduce the amount of each payment of estimated income tax by ninety-
22 percent if its principal place of business is located on St. Thomas or St. John, and ninety-
23 five percent if its principal place of business is located within the town limits of
24 Christiansted, St. Croix as defined by the Christiansted Town Limits map recorded in the

1 Cadastral Section of the Office of the Tax Assessor, and by one hundred percent for a
2 period of ten years, at which time the beneficiary must apply for renewal, if the principal
3 place of business is located within the town limits of Frederiksted, St. Croix, as defined
4 by the Frederiksted Town Limits map recorded in the Cadastral section of the Office of
5 the Tax Assessor; and

6 (2) reduce its income tax liability shown on its income tax return for the
7 taxable year by ninety percent if its principal place of business is located on St. Thomas
8 or St. John, and ninety-five percent if its principal place of business is located within the
9 town limits of Christiansted, St. Croix as defined by the Christiansted Town Limits map
10 recorded in the Cadastral section of the Office of the Tax Assessor, and by one hundred
11 percent for a period of ten years, at which time the beneficiary must apply for renewal, if
12 the principal place of business is located within the town limits of Frederiksted, St. Croix
13 as defined by the Frederiksted Town Limits map recorded in the Cadastral section of the
14 Office of the Tax Assessor for each of the years specified in the tax incentive benefit
15 certificate or renewal thereof. In the case of estimated income taxes, such reduction must
16 be prorated over the quarterly payments due, or constructively due by the applicant, or in
17 the case of the determination of its income tax liability, by the entire amount of the
18 subsidy thus constructively calculated.

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

24 (g) A corporation that is organized under the laws of the Virgin Islands, a corporation

1 that is organized under the laws of the United States, or one of the states, territories or
2 commonwealths, whose principal office is located in the Virgin Islands is presumed to be
3 continually domiciled in the Virgin Islands for purposes of this section, unless it is established
4 that such domicile has been superseded by a new domicile.

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

8 **§743b [Exemption on withholding tax]**

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

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

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

24 (a) Applicants for benefits under §743 may be granted an additional ten years of tax

1 exemption on the initial term of benefits and subsidy at one hundred percent of benefits if the
2 principal place of business of the applicant is located within the town limits of Frederiksted, St.
3 Croix as defined on the Frederiksted Town Limits map recorded in the Office of the Tax
4 Assessor. In all other geographical areas an extension of benefits for a five-year period may be
5 granted by the Director.

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

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

15 (d) With respect to a corporation or other legal entity, the Director may review the
16 ownership structure, or the proposed ownership structure, and may, upon review of the
17 applicant's business plan or amended business plan, and consistent with the basis purposes and
18 objectives of this chapter, limit the number of shareholders. The Director may not unreasonably
19 withhold approval of the ownership structure and may not impose additional requirements or
20 limitations on ownership. Once the international banking entity applicant has furnished all
21 information necessary for review, the Director has 90 days to issue the decision. If the Director
22 does not approve or deny the proposed ownership structure, the ownership structure is deemed to
23 be approved. The Director has the authority to review all ownership interests in excess of five
24 percent of the business. The international banking entity shall, however, give the Director notice

1 of owners holding less than a five-percent ownership interest in the company.

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

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

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

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

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

14 (c) The Director may grant an extension or modification of benefits under an existing
15 certificate or grant a new certificate if the Director determines that the international banking
16 entity is helpful to the development of the economy of the Virgin Islands.

17 **§746. [Action by the Director]**

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

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

1 **§747. Contents of certificate**

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

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

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

8 (3) The date by which the required financial investment was completed by the
9 beneficiary;

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

14 (5) The specific commencement and termination dates for the benefits granted
15 under the certificate.

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

19 (b) In addition to the conditions established in subsection (a), the certificate must
20 contain a recital that it is conditioned upon the performance and observance of those conditions
21 by the beneficiary within a period of time specified, and upon the final determination of the
22 Secretary of the Treasury of the United States or the Secretary's delegate, of compliance with the
23 requirement of Internal Revenue Code sections 934. Upon failure of the beneficiary to perform
24 or observe the conditions as required by the Director within the specified period or any extension

1 thereof granted for good cause shown to the Director, the certificate is of no force and effect, and
2 the beneficiary shall pay or refund as the case may be to the Government of the Virgin Islands
3 the amount of any benefit actually received under the certificate. Upon a final determination by
4 the Secretary of the Treasury of the United States or his delegate that the beneficiary has not
5 complied with the requirements of the Internal Revenue Code section 934, the beneficiary shall
6 pay or refund, as the case maybe, to the Government of the Virgin Islands, the amount of any
7 subsidy benefits, based on income tax liability, actually received, or the amount of the reduction
8 of income tax liability on a current basis for all the years of non-compliance.

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

10 A tax incentive benefit certificate granted under this subchapter may be transferred, for
11 the unexpired portion of the term of the certificate to another corporation which succeeds the
12 beneficiary in carrying on or in operating the industry or business for which the certificate is
13 granted, upon determination of the Director that such corporation is otherwise qualified to
14 receive such benefits and that the industry or business activity with respect to which the
15 certificate was granted is continued by the corporation. Thereafter the transferor of the
16 certificate loses all tax incentive benefits under this subchapter and is subject to the tax laws of
17 the Virgin Islands.

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

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

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

24 (2) Upon a finding submitted to the Director by the Lieutenant Governor or

1 the Attorney General of the Virgin Islands that the corporation:

2 (A) has been dissolved; or

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

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

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

10 (5) An officer, shareholder or director acting on behalf of the corporation has
11 given or offered, or caused to be given or offered a bribe, or any money, property, or
12 value of any kind or any promise or agreement therefore to a public officer, or to a person
13 executing any of the functions of a public office, or to a person elected, appointed or
14 designated to thereafter execute the same, with intent to influence him with respect to any
15 act, decision, vote, opinion, or other proceeding in the exercise of the powers or functions
16 which he has or may have pertaining in any way to the tax incentive benefit program.

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

21 **§750. Penalties for violations**

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

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

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

13 **§751. Appeals**

14 Any applicant or beneficiary aggrieved by any action of the Director under the provisions
15 of this subchapter is entitled to judicial review of the action by appealing to the Superior Court
16 under the applicable writ of review provisions no later than 30 days after a final decision by the
17 Director or Lt. Governor.

18 **§752. Effect of other laws**

19 (a) Insofar as the laws of Virgin Islands are not inconsistent with the provisions of §§
20 715 et seq. of this title, the laws of the Virgin Islands shall prevail.

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

23 (c) The banking-related authority granted to an international banking entity under the
24 provisions of §§ 715 et seq. of this title shall be related to and pursuant to the federal banking

1 laws of the United States as applicable to the Virgin Islands. Provided, nothing herein, shall be
2 construed to limit the non-banking-related authority granted to an international banking entity
3 under the provisions of §§ 715 et seq. of this title.

4 **§753. [Background Requirements]**

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

13 **§754. Tap Roots Program**

14 As prescribed in § 717, fifteen percent (15%) of the net income obtained from the
15 Director's functions related to §§ 715 et seq. of this title for any given fiscal year must be
16 remitted to the non-profit foundation, Taproots, Inc. The remittance must be made within 30
17 days of the end of each fiscal year. Taproot is an organization designed to train and educate
18 individuals and families in self-help, self-improvement, and entrepreneurial techniques to render
19 them capable of developing resources for themselves. In the event that Taproots ceases to
20 function or is formally dissolved, the Director shall remit the applicable funds to the Virgin
21 Islands Treasury. “

22 **SECTION 2.** Title 9 Virgin Islands Code, chapter 21 is repealed.

23

24

BILL SUMMARY

1
2 Section 1, subsection (a) of this bill amends title 9, chapter 1 section 4 of the Virgin
3 Islands Code. That section limits the use of the term, “bank” in the designation of a business to
4 corporations doing a banking business exclusively or to an exempt international banking facility.
5 Section 1 (a) amends section 4 by replacing “exempt international banking facility” with
6 “international banking entity”.
7

8 Section 1 (b) of the bill puts in place mechanisms to allow International Banking entities
9 to conduct business in the territory by enacting chapter 25 which amends title 9 of the Virgin
10 Islands Code pertaining to Banking and Insurance, and by providing for tax incentive benefits for
11 all such international banking entities. The bill establishes rules for appeals and penalties to be
12 applied for violation of the regulatory requirements and the tax incentive benefit requirements
13 and the regulations promulgated by the Director.
14

15 Specifically, internal §715 sets forth the short title of the Act.
16

17 Internal §716 sets forth key definitions as used in the chapter.
18

19 Internal §717 sets forth the duties of the Director of Banking and Insurance as the Director serves
20 as the head for regulating international banking entities. The director is required to draft and
21 adopt regulations to implement the chapter.
22

23 Internal §718 relating to interest rates and reserves, provides that International Banking
24 Entities may never bear interest at an interest rate of less than five percentage points above the
25 Federal Home Loan Mortgage Corporation’s posted yield on the last business day of the month
26 on thirty-year standard conventional fixed-rate mortgages committed for delivery within sixty
27 days, rounded to the nearest one-fourth percent, which rate shall take effect (a) on the first day of
28 the immediately subsequent month and continue in effect for the remainder of the month, and (b)
29 apply to all commitments made by a beneficiary during such month, that the Director may not
30 establish interest rates to be paid or charged by an international banking entity.
31

32 Internal §719 sets forth the criteria for organizing as an international banking entity in the
33 Virgin Islands.
34

35 Internal §720 sets forth the requirements for obtaining a permit to organize an
36 international banking entity.
37

38 Internal §721 provides the circumstances under which the Director may issue applicants a
39 license to operate an international banking entity including the payment of an annual licensing
40 fee.
41

42 Internal §722 provides guidelines for making amendments to articles of incorporation of
43 an international banking entity organized pursuant to this chapter.
44
45
46

1 Internal §723 provides minimum amounts of unencumbered assets, capital, shares of
2 capital stock needed to organize as an international banking entity as well as what changes can
3 be made to such minimum requirements.
4

5 Internal §724 sets forth the parameters for the transfer of capital or control of an
6 international banking entity.
7

8 Internal §725 provides that no license issued under the chapter may be sold, assigned,
9 transferred, pledged, used as security, or otherwise encumbered.
10

11 Internal §726 lists the permitted and prohibited transactions of an international banking
12 entity organized pursuant to this chapter.
13

14 Internal §727 sets forth the personnel requirements of international banking entities.
15

16 Internal §728 provides, *inter alia*, that the original of the account books and registers of
17 the international banking entity must be kept in its main business office in the Virgin Islands.
18

19 Internal §729 requires that interim and annual reports, including financial statements be
20 made to the Director.
21

22 Internal §730 sets forth the circumstances which will lead to or require a revocation,
23 suspension or surrender of a license granted pursuant to this chapter.
24

25 Internal §731 provides the procedure for dissolution of an entity which license is revoked
26 or surrendered under §730.
27

28 Internal §732 provides the penalties for violating any of the provisions of this chapter.
29

30 Internal §733 sets forth guidelines as to the confidentiality of documents submitted to the
31 Director pursuant to this chapter.
32

33 Internal §734 requires that all administrative hearings, adjudication proceedings and
34 judicial review must be set forth by regulation and that all such regulations substantially conform
35 to the principles of the federal Administrative Procedure Act, 5 U.S.C. Sec 551 et seq.
36

37 Internal §735 relates to the inapplicability of existing laws, and provides, *inter alia*, that
38 neither the provisions of §§ 1 et seq. of this title, known as the "Banking" title, nor the provisions
39 of §§ 951 et seq. of this title, which fix the maximum interest rates or charges permitted on loans,
40 are applicable to the operations of international banking entities established under this chapter.
41

42 Internal §736 provides that any international business entity licensed and regulated under
43 this chapter, is eligible to receive any tax exemption, tax credit, or tax privilege pursuant to this
44 chapter.
45

46 Internal §737 makes each certificate granting tax incentive benefits issued under this
47 chapter a contract between the Government of the Virgin Islands and the beneficiary, and

1 provides that should the Government adopt any legislation impairing or limiting the obligations
2 going forward, existing contracts must be honored.

3
4 Internal §738 sets forth the maximum requirements the Director can request before
5 issuing an initial tax incentive benefit certificate.

6
7 Internal §739 authorizes the Director to revoke a beneficiary's certificate upon clear and
8 convincing evidence at a hearing in compliance with local and federal due process requirements
9 if there is a finding that a beneficiary willfully practices discrimination in employment.

10
11 Internal §740 provides that after the third year of operation, an international banking
12 entity shall have at least 20% of its management, supervisory or technical positions filled by
13 residents of the Virgin Islands unless granted a waiver by the Director.

14
15 Internal section §741 provides that the Commissioner of Labor shall oversee the
16 enforcement of the labor provisions of the Act, and prohibits a beneficiary from employ non-
17 residents of the Virgin Islands unless at least 80 percent of the beneficiary's employees are
18 residents of the Virgin Islands or the beneficiary has met certain other requirements.

19
20 Internal section §742 exempts each international banking entity applicant granted a tax
21 incentive benefit certificate from payment of taxes on real property to the extent that property is
22 used in the business, gross receipt taxes with some exceptions, all excise taxes on building
23 materials, tools, pipes, pumps, conveyor belts or other appliances materials and supplies
24 necessary for the use in the construction, alteration, reconstruction or extension of the physical
25 plant or facilities of the applicant, corporate income taxes, and personal income taxes as
26 specified in section 743, for a period of ten years if it remains compliant with the chapter.

27
28 Internal §743a provides for reduction on a current basis of income tax liability for income
29 derived from the business for which the certificate is granted, and income from investment
30 described in the section for each applicant granted a tax incentive benefit certificate, and sets
31 forth guidelines for said reductions.

32
33 Internal §743b provides for certain interest exemptions.

34
35 Internal §744 allows applicants for benefits under §743 may be granted an additional ten
36 years of tax exemption on the initial term of benefits and subsidy at one hundred percent of
37 benefits if the principal place of business of the applicant is located within the town limits of
38 Frederiksted, St. Croix as defined on the Frederiksted Town Limits map recorded in the Office of
39 the Tax Assessor.

40
41 Internal §745 establishes procedures and conditions for extension, modification or
42 renewal of tax incentive benefits.

43
44 Internal §746 mandates approval of a tax incentive benefit certificate if 60 days have
45 elapsed from the conclusion of the Director's investigation and the Director fails to deny or
46 approve an application for benefits, or if the Lieutenant Governor fails to approve or deny the
47 Director's recommendation within ten (10) of the recommendation.

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

2
3 Internal §748 provides for the transferability of tax incentive certificates with certain
4 limitations.

5
6 Internal §749 provides for the revocation, suspension or modification of a tax incentive
7 benefit certificate under certain enumerated circumstances.

8
9 Internal §750 requires the Director to promulgate a schedule of fines for violation of any
10 provision of the chapter and the beneficiary's certificate no later than 90 days after the effective
11 date of this chapter and submit the schedule of fines to the Governor for approval.

12
13 Internal §751 provides that an applicant or beneficiary aggrieved by an action of the
14 Director may seek judicial review of the action by appealing to the Superior Court under the
15 applicable no later than 30 days after a final decision by the Director or Lt. Governor.

16
17 Internal §752 provides nullifies any other Virgin Islands Law inconsistent with the
18 provisions of this Act, and provides that the banking-related authority granted to an international
19 banking entity under the provisions of §§ 715 et seq. of this title shall be related to and pursuant
20 to the federal banking laws of the United States as applicable to the Virgin Islands. Provided,
21 nothing herein, shall be construed to limit the non-banking-related authority granted to an
22 international banking entity under the provisions of §§ 715 et seq. of this title.

23
24 Internal §753 requires background checks for all principals having an ownership interest
25 in excess of five percent in which they must demonstrate that they are lawful and productive
26 business persons. In addition, they must demonstrate that their purported use of the tax benefits
27 granted under this title are lawful and consistent with the income sourcing rules promulgated by
28 the U.S. Internal Revenue Service.

29
30 Internal §754 requires that the Department of Finance deposit into the Tap Roots
31 Program, described in §754, 15 percent of the net income obtained from the Director's functions
32 related to this chapter for such fiscal year.

33
34 Section 2 of the bill repeals chapter 21 of title 9 of the Virgin Islands Code. Chapter 21
35 governs exempt international banking facilities.
36

37
38 **BR11-0020T/February 28, 2012/REVIEWED BY TF/Revised By TF March 12, 2012**

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