

BILL NO. 33-0446

Thirty-Third Legislature of the Virgin Islands

November 30, 2020

An Act repealing and replacing Act Nos 8329 and 8330; amending title 29 Virgin Islands Code, by repealing chapter 24 in its entirety and replacing it with a new chapter 24; terminating the existence of the “Matching Fund Securitization Corporation”; creating, as of the date hereof, a new entity named the “Matching Fund Securitization Corporation” to: (1) acquire all of the Virgin Islands Government’s right, title, and interest in the Matching Fund Receipts to be paid to or for the account of the Government by the United States Treasury during the Transfer Period and the Related Rights, (2) issue Matching Fund Securitization Bonds and the Residual Certificate in order to pay the purchase price therefor and as otherwise authorized under the act, and (3) direct the Secretary and the United States Department of Interior to pay the Matching Fund Receipts directly into the Deposit Account; approving and ratifying all actions taken pursuant to Act Nos 8329 and 8330 prior to the date hereof; and ratifying the amendments to the rum company agreements; and for other related purposes.

PROPOSED BY: Senator Novelle E. Francis, Jr. by request of the Governor

1 **WHEREAS**, the Legislature of the Virgin Islands (“Legislature”) previously authorized
2 the issuance of bonds, notes, or other evidences of indebtedness (as hereinafter defined as the
3 “Existing PFA Bonds”) of the Government of the Virgin Islands (the “Government”) and/or the
4 Virgin Islands Public Finance Authority (“PFA”) to provide funds to finance all or a portion of the
5 costs of certain infrastructure and economic development projects to support the production of rum
6 by Cruzan VIRIL, Ltd. (“Cruzan”) and Diageo USVI, Inc. (“Diageo”) in the Virgin Islands;

1 **WHEREAS**, the Legislature previously authorized the Government to enter into certain
2 agreements with Cruzan and Diageo in connection with the financing of the costs;

3 **WHEREAS**, the Legislature has determined that it is necessary to repeal Act Nos 8329
4 and 8330, thereby repealing title 29 Virgin Islands Code, chapter 24 in its entirety and replacing it
5 with a new chapter 24;

6 **WHEREAS**, the Legislature has determined that the Matching Fund Receipts (as
7 hereinafter defined) from the United States Treasury can be more efficiently used by creating a
8 new, special purpose vehicle to serve as an independent and autonomous public corporation and
9 governmental instrumentality (“Corporation”) whose purpose would be to acquire all of the
10 Government’s rights, title, and interest in and to the Matching Fund Receipts during the Transfer
11 Period, to issue Bonds and the Residual Certificate, as such terms are hereinafter defined, in order
12 to pay the purchase price therefor and as otherwise authorized, and to direct the Secretary of the
13 U.S. Treasury and the United States Department of the Interior (the “DOI”) to pay the Matching
14 Fund Receipts directly into the trust account established in the name of the Government, in trust
15 for the sole benefit of the Corporation and the Corporation’s collateral assignee, the trustee for the
16 Bonds (the “GVI Restricted Account”) (all such steps being collectively referred to as, the
17 “Transaction”);

18 **WHEREAS**, the Legislature has determined that to fulfill the objectives of the
19 Transaction, it is necessary for the Government to apply the proceeds from the sale of the Matching
20 Fund Receipts to prepay the Existing Matching Fund Loan Notes, as hereinafter defined, so that the
21 PFA may refund, redeem, pay and defease all of its Existing PFA Bonds;

22 **WHEREAS**, the Legislature wishes to continue to use the Matching Fund Receipts that it
23 receives from the U.S. Treasury to support its investment in infrastructure and economic
24 development projects in the Virgin Islands, but to do so on a more efficient basis;

1 **WHEREAS**, the Legislature acknowledges that providing for a statutory lien on the assets
2 of the Corporation to secure the payment on the Bonds and on the ancillary agreements entered
3 into in connection with the Transaction would serve the interests of the Government;

4 **WHEREAS**, the Legislature seeks to authorize the Government to assign, sell, transfer or
5 otherwise convey its interest in the Matching Fund Receipts that are to be received from the U.S.
6 Treasury as long as the Bonds are outstanding and to provide the Related Rights (as hereinafter
7 defined) to the Corporation in connection with such sale;

8 **WHEREAS**, the Legislature seeks to authorize the Corporation to issue Bonds the
9 proceeds of which must be used to purchase from the Government all of its rights, title and interest
10 in and to the Matching Fund Receipts and the Related Rights and pay the related costs of the
11 issuance;

12 **WHEREAS**, the Legislature seeks to authorize the Government to use the cash purchase
13 price for the Matching Fund Receipts and the Related Rights to prepay all Existing Matching Fund
14 Loan Notes owing to the PFA so that the PFA may, in turn, refund, redeem, pay and defease all
15 Existing PFA Bonds that secure the Existing Matching Fund Loan Notes, thereby releasing the
16 existing liens on the Matching Fund Receipts so that they can be sold and conveyed to the
17 Corporation;

18 **WHEREAS**, in addition to the cash purchase price for the Matching Fund Receipts, the
19 Government is to receive a Residual Certificate, pursuant to which the Government will have rights
20 to the portion of the Matching Fund Receipts deposited by the U.S. Treasury into the GVI
21 Restricted Account and then transferred into the deposit account of the Corporation and which
22 remain after the Corporation pays the debt service and expenses in connection with the bonds and
23 other obligations;

1 **WHEREAS**, the Legislature has determined that the issuance of the initial Bonds and the
2 Residual Certificate is expected to ultimately result in increased receipts to the Government on a
3 net present value basis by way of the Residual Certificate as compared to the residual receipts that
4 would have been expected to be available to the Government had the Existing Matching Fund
5 Loan Notes and Existing PFA Bonds remained outstanding due to the Corporation’s expected
6 lower borrowing costs when compared to the borrowing costs of the Government; and

7 **WHEREAS**, the Legislature has determined that certain amendments to the existing
8 agreements with Cruzan and Diageo and other new agreements are necessary to carry out the
9 transactions contemplated by this act; *Now, Therefore,*

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

11 **SECTION 1.** (a) Act No 8329 and Act No. 8330 are HEREBY repealed and replaced in
12 their entirety with this act.

13 (b) The existence of the “Matching Fund Securitization Corporation,” created on
14 August 31, 2020, is hereby terminated and it ceases to exist.

15 **SECTION 2.** Title 29 Virgin Islands Code is amended by inserting a chapter 24 to read
16 as follows:

17 **“Chapter 24. The Matching Fund Securitization Corporation**

18 **§ 1401. Short Title**

19 This chapter may be cited as “The Matching Fund Securitization Act of 2020.”

20 **§ 1402. Definitions**

21 For the purposes of this chapter, the following terms have the meanings set forth in this
22 section:

1 (a) “Additional Bonds” means one or more additional series and/or tranches of Bonds
2 issued pursuant to the Indenture or another indenture after the Initial Matching Fund Securitization
3 Bonds are issued.

4 (b) “Ancillary agreements” means the Sale Agreement, the Indenture, any
5 supplemental indentures, other indentures, the bond purchase agreement between the Corporation
6 and the bond purchasers, security enhancement agreements, investment agreements, or any other
7 agreement or instrument entered into by the Corporation, the Government, or the Trustee in
8 connection with, or in furtherance of, the sale and conveyance of the Matching Fund Receipts and
9 the Related Rights pursuant to this chapter and the issuance of the Bonds.

10 (c) “Bonds” means the Matching Fund Securitization Bonds and the Subordinate Lien
11 Bonds issued pursuant to the Indenture or other indenture.

12 (d) “Bondholder” means a registered owner of an outstanding Bond.

13 (e) “Code” means the Internal Revenue Code of 1986, as amended, and applicable
14 regulations.

15 (f) “Corporation” means the Matching Fund Securitization Corporation established by
16 section 1404.

17 (g) “Cut-Off Date” means November 1, 2020.

18 (h) “Deposit Account” means a designated account in the name of the Corporation
19 created and held by the Trustee pursuant to the Indenture at a bank or trust company having the
20 authority to receive the transfer of the Matching Fund Receipts from the GVI Restricted Account
21 and having trust powers under the Indenture.

22 (i) “DOI” means the United States Department of the Interior.

1 (j) “Existing Matching Fund Loan Notes” means the outstanding special obligation
2 notes issued to the Public Finance Authority by the Government pursuant to the Loan Agreement
3 dated July 1, 2009, the Loan Agreement dated October 1, 2009, the Loan Agreement dated
4 December 1, 2009, the Loan Agreement dated July 1, 2010, the Loan Agreement dated September
5 1, 2012, the Loan Agreement dated September 1, 2013, and the Loan Agreement dated October 1,
6 2013, each by and among the Public Finance Authority, the trustee and the Government, which
7 Loan Notes are the security for the repayment of the corresponding Existing PFA Bonds.

8 (k) “Existing PFA Bonds” means the various series of outstanding bonds issued by the
9 Public Finance Authority pursuant to an Indenture of Trust dated May 1, 1998, as amended and
10 supplemented, a Subordinated Indenture of Trust dated June 1, 2009, as supplemented, and a
11 Subordinated Indenture of Trust dated December 1, 2009, as supplemented, secured by Matching
12 Fund Receipts on a senior and subordinate basis, respectively, received by the Government from
13 the U.S. Treasury.

14 (l) “Financing costs” means all costs associated with the following.

15 (1) the issuance, repayment, financing, or refinancing of the Bonds, whether
16 upon issuance or over the term of the Bonds;

17 (2) the making of payments required by the ancillary agreements;

18 (3) the preparation for and the entering into the transactions authorized by this
19 chapter;

20 (4) the maintenance, preservation, protection, and defense of the Trust Estate,
21 including any collection, enforcement, sale, protection or settlement actions relating to the
22 Trust Estate;

1 (5) the confirmation, defense and protection of the statutory lien and the
2 consensual lien on the Trust Estate;

3 (6) the performance of all ongoing activities relating to the Matching Fund
4 Securitization Bonds, the Residual Certificate, the Subordinate Lien Bonds, the Matching
5 Fund Receipts, any ancillary agreements, and the Trust Estate; and

6 (7) for the compensation and expenses of or relating to the independent
7 directors of the Corporation.

8 (m) “Financing entity” means the Corporation, the Trustee and any other person or
9 entity acting for the benefit of the Bondholders or the Corporation that has rights under any
10 ancillary agreements.

11 (n) “Government” means the Government of the Virgin Islands.

12 (o) “Governor” means the Governor of the Virgin Islands or THE Governor’s designee
13 as may be named from time to time.

14 (p) “GVI Restricted Account” means the trust account established in the name of the
15 Government, in trust for the sole benefit of the Corporation and the Corporation’s collateral
16 assignee, the Trustee.

17 (q) “Indenture” means the master trust indenture, bond indenture, trust agreement or
18 similar agreement between the Corporation and the Trustee, as amended or supplemented from
19 time to time, from the date of the issuance of the Initial Matching Fund Securitization Bonds and the
20 Residual Certificate.

21 (r) “Initial Matching Fund Securitization Bonds” means the initial series of Matching
22 Fund Securitization Bonds issued pursuant to the Indenture.

23 (s) “Matching Fund Receipts” means the amounts paid and to be paid by the U.S.
24 Treasury through the Secretary of DOI as a transfer of federal excise taxes imposed and collected

1 under the Code in any fiscal year on rum produced in the Virgin Islands and exported to the United
2 States and that is subject to federal excise tax pursuant to 26 USC §7652, as amended from time
3 to time.

4 (t) “Matching Fund Securitization Bonds” means the Initial Matching Fund
5 Securitization Bonds and any Additional Bonds issued on a parity therewith, which bonds may be
6 issued as taxable or tax-exempt bonds, authorized to be issued by the Corporation from time to
7 time pursuant to the Indenture or other indenture. Neither the Residual Certificate nor any
8 Subordinate Lien Bond is a Matching Fund Securitization Bond.

9 (u) “Public Finance Authority” means the Virgin Islands Public Finance Authority, a
10 public corporation and governmental instrumentality of the Government.

11 (v) “Related Rights” means the contractual rights provided by the Government, the
12 covenants made by the Government, and the Corporation’s rights to enforce the rights and
13 covenants, all pursuant to the Act and the Sale Agreement.

14 (w) “Residual Certificate” means a certificate issued by the Corporation evidencing the
15 right of the holder to receive any Residual Receipts on deposit in the Residual Fund.

16 (x) “Residual Certificate Holder” means the holder or holders of the Residual
17 Certificate. Upon its issuance by the Corporation, the Residual Certificate Holder is the
18 Government.

19 (y) “Residual Fund” means the fund or account so designated, created and established
20 pursuant to the Indenture into which the Residual Receipts are deposited.

21 (z) “Residual Receipts” means that portion of the Matching Fund Receipts deposited
22 in the Residual Fund, if any, after making the deposits required in each fiscal year for the following,
23 in the order of priority provided in the Indenture:

24 (1) Payment of debt service on the Bonds;

1 (2) Establishing, maintaining, or replenishing any reserve funds created in
2 connection with the issuance of the Bonds;

3 (3) Payment of any other obligations of the Corporation under any ancillary
4 agreement; or

5 (4) Payment of the operating expenses of the Corporation.

6 (aa) “Resolution” means one or more resolutions by the board of directors of the
7 Corporation, adopted in accordance with this chapter, authorizing:

8 (1) the Corporation’s purchase of the Matching Fund Receipts and the Related
9 Rights,

10 (2) the issuance of one or more series of Bonds,

11 (3) any redemption, defeasance or refunding of Bonds, and

12 (4) the execution and delivery of the Indenture, any other indenture, any
13 supplemental indenture, and any ancillary agreement.

14 (bb) “Sale Agreement” means an agreement between the Corporation and the
15 Government that provides for the irrevocable transfer, pursuant to section 1403 and the Resolution,
16 to the Corporation of all of the Government’s right, title, and interest in and to the Matching Fund
17 Receipts paid and to be paid by the U.S. Treasury to the Government, by depositing such amounts
18 into the GVI Restricted Account, during the Transfer Period and the Related Rights, in exchange
19 for:

20 (1) a cash payment of the net proceeds from the sale of any Matching Fund
21 Securitization Bonds and any Subordinate Lien Bonds, and

22 (2) the Residual Certificate.

23 (cc) “Secretary” means the Secretary of the U.S. Treasury.

1 (dd) “Subordinate Lien Bonds” means Bonds that may be issued by the Corporation
2 from time to time after the issuance of the Initial Matching Fund Securitization Bonds pursuant to
3 a Resolution and an indenture, which Bonds are secured by a subordinate pledge on the Matching
4 Fund Receipts and the Related Rights.

5 (ee) “Transfer Period” means the period from and including the Cut-Off Date through
6 and including the date on which the last outstanding Bond is paid or defeased and all obligations
7 under the Indenture and the ancillary agreements are paid in full.

8 (ff) “Trust Estate” means the right, title, and interest in and to:

9 (1) the Corporation’s interest in the funds in the GVI Restricted Account;

10 (2) the Matching Fund Receipts paid and to be paid to the Corporation during the
11 Transfer Period and the Related Rights;

12 (3) all earnings, interest, claims, credit enhancement payments, and proceeds of or
13 arising from the Matching Fund Receipts and any adjustments to and from the Related Rights;
14 and

15 (4) all rights of the Corporation under the Sale Agreement and all other ancillary
16 agreements. The Trust Estate may not include any Residual Receipts.

17 (gg) “Trustee” means the bank or trust company appointed as “Trustee” for the Bonds
18 pursuant to the Indenture and having the duties, responsibilities and rights provided for in the
19 Indenture, and its successor or successors and any other bank or trust company that may at any
20 time be substituted in its place pursuant to the Indenture.

21 (hh) “U.S. Treasury” means the United States Department of the Treasury.

22 (ii) “Virgin Islands” means the unincorporated territory of the United States of America
23 as described in the Revised Organic Act of the Virgin Islands, 48 U.S.C. § 1541 (a).

1 **§ 1403. Authority to sell and transfer the Matching Fund Receipts and provide**
2 **Related Rights**

3 (a) For the purposes of prepaying the Existing Matching Fund Loan Notes so that the
4 Public Finance Authority may, in turn, refund, redeem, pay or defease all Existing PFA Bonds
5 secured thereby, releasing the existing liens on the Matching Fund Receipts so that the Government
6 may more efficiently leverage the value of the Matching Fund Receipts, the Government may sell
7 to the Corporation all of the Government's right, title, and interest in and to the Matching Fund
8 Receipts and the Related Rights and any earnings or interest payable to the Government during
9 the Transfer Period at a purchase price equal to the net proceeds from the sale of the Initial
10 Matching Fund Securitization Bonds, less the costs associated with the sale, plus the Residual
11 Certificate. Prior to the sale, the U.S. Treasury shall first have acknowledged in writing that it will
12 deposit Matching Fund Receipts directly into the GVI Restricted Account.

13 (b) The Government may transfer all or a portion of the Residual Certificate upon the
14 conditions set forth in the Indenture.

15 (c) The right to receive the Matching Fund Receipts during the Transfer Period and to
16 exercise and enjoy the Related Rights is a vested, presently existing property right notwithstanding
17 that the amounts of the Matching Fund Receipts to be paid in the future will depend on further acts
18 that have not yet occurred, including but not limited to:

- 19 (1) the production of rum in the Virgin Islands;
- 20 (2) the sale and export of the rum to the United States;
- 21 (3) adjustments that may be made to the rate or amount of the Matching Fund
22 Receipts to be paid by the U.S. Treasury; and

1 (4) the U.S. Treasury's paying the Matching Fund Receipts directly into the
2 GVI Restricted Account, as irrevocably directed by the Government.

3 (d) Subject to the authorization and restrictions of this chapter, the Governor shall
4 determine the terms and conditions of the Sale Agreement, which determination must be
5 conclusively evidenced by the Governor's execution of the Sale Agreement. Once sold pursuant
6 to the Sale Agreement, the Matching Fund Receipts that would have been paid to the Government
7 during the Transfer Period, and the Related Rights, regardless of location, completion of any
8 transfer process, or whether deposited into the GVI Restricted Account, are no longer the property
9 of the Government, and the Government has no right to obtain the return of the Matching Fund
10 Receipts or to exercise and enjoy any of the Related Rights, except as agent for the Corporation or
11 the Trustee, as the case may be. Once sold pursuant to the Sale Agreement, only the Corporation
12 or the Trustee may transfer Matching Fund Receipts from the GVI Restricted Account. But for so
13 long as the Government is the Residual Certificate Holder, it must receive payment of the Residual
14 Receipts in the Residual Fund in accordance with the Indenture solely by virtue of being the
15 Residual Certificate Holder.

16 (e) The Government shall cause the net proceeds from its sale of the Matching Fund
17 Receipts and the Related Rights to be placed in one or more separate accounts and used to prepay
18 the Existing Matching Fund Loan Notes and pay all costs associated with the prepayment, and if
19 funds remain in those accounts after the prepayment of the Existing Matching Fund Loan Notes
20 and the payment of all related costs, the funds must be released to the Government for any purpose
21 authorized by an act of the Legislature. In no event shall amounts paid to purchase the Matching
22 Fund Receipts and the Related Rights be available or be applied for payment of the Matching Fund

1 Securitization Bonds, the Subordinate Lien Bonds, the Residual Certificate, any claim against the
2 Corporation, or any debt or obligation of the Corporation.

3 (f) Upon the Public Finance Authority's receipt of the funds from the prepayment of
4 the Existing Matching Fund Loan Notes by the Government, the Public Finance Authority shall,
5 use the amounts to cause all the Existing PFA Bonds to be redeemed or defeased in full and shall
6 pay in full all other amounts outstanding under the indenture and other documents related to the
7 Existing PFA Bonds. In no event shall amounts paid to prepay the Existing Matching Fund Loan
8 Notes be available or be applied for payment of the Matching Fund Securitization Bonds, the
9 Subordinate Lien Bonds, the Residual Certificate, any claim against the Corporation, or any debt
10 or obligation of the Corporation.

11 (g) The Government shall provide on a timely basis for each fiscal year to:

12 (1) the DOI with a copy to the Corporation, an estimate of the amount of rum
13 to be produced in the Virgin Islands and exported to the United States for the ensuing
14 fiscal year, and

15 (2) the Corporation, any information required to make the request for any
16 adjustment to the Matching Fund Receipts for such year.

17 (h) The Government shall deliver one or more agreements or instruments, including
18 an irrevocable letter of instruction, and in each and every instance under subsection (g)(1),
19 directing the Secretary and DOI to cause to be transferred promptly to the GVI Restricted
20 Account any and all payments of the Matching Fund Receipts, including any transferred in error,
21 during the Transfer Period.

22 (i) The Government, acting by the Governor, may execute and deliver all documents
23 and agreements and take all actions necessary or appropriate in connection with the sale and

1 conveyance of the Matching Fund Receipts and the Related Rights pursuant to this chapter and the
2 prepayment of the Existing Matching Fund Loan Notes, and to take all actions permitted or
3 required by this chapter and included in the Sale Agreement and to accomplish the purposes of
4 this chapter and the Sale Agreement.

5 (j) The Public Finance Authority may execute and deliver all documents and
6 agreements and take all actions necessary or appropriate in connection with the redemption or
7 defeasance in full of the Existing PFA Bonds and the payment in full of all other amounts
8 outstanding under the indenture and other documents related to the Existing PFA Bonds.

9 (k) The Government shall cause a report of the final amount and disposition of the net
10 proceeds from the sale of the Matching Fund Receipts and the Related Rights to be made to the
11 Legislature of the Virgin Islands.

12 **§ 1404. The Corporation established**

13 (a) The Matching Fund Securitization Corporation is established as a special purpose,
14 independent and autonomous, public corporation and governmental instrumentality of the
15 Government of the Virgin Islands. The Corporation is intended, created, and empowered to
16 effectuate the purposes stated in this chapter. The Corporation has a legal existence separate from
17 the Government. The debts, obligations, contracts, bonds, receipts, expenditures, accounts, funds,
18 facilities and property of the Corporation are those of the Corporation and not those of the
19 Government, or any office, bureau, department, agency, commission, branch, agent, office or
20 employee of the Government. The Corporation is not created or organized, and its operations may
21 not be conducted, for the purpose of making a profit.

22 (b) The purposes of the Corporation are to:

1 (1) acquire all of the Government's right, title, and interest in and to the
2 Matching Fund Receipts to be paid to or for the account of the Government by the U.S.
3 Treasury during the Transfer Period and the Related Rights;

4 (2) issue Bonds and the Residual Certificate in order to pay the purchase price
5 therefor and as otherwise authorized under this chapter; and

6 (3) direct the Secretary and the DOI to pay the Matching Fund Receipts directly
7 into the GVI Restricted Account.

8 (c) The Corporation shall, pursuant to a Resolution:

9 (1) issue the Initial Matching Fund Securitization Bonds as contemplated by a
10 Resolution, and use the net proceeds to purchase and acquire the Government's right, title
11 and interest in and to the Matching Fund Receipts to be paid to or for the account of the
12 Government during the Transfer Period and the Related Rights, and own, hold and use the
13 Trust Estate and pay any related closing costs and ongoing financing costs;

14 (2) direct that Matching Fund Receipts deposited in the GVI Restricted
15 Account and then transferred to the deposit account created by the Trustee for the Matching
16 Fund Securitization Bonds be applied by the Trustee to the payments, at the times and in
17 the order of priority, set forth in the Indenture;

18 (3) in addition to the statutory lien on the Trust Estate securing the payment of
19 principal of and interest on the Bonds as referred to in section 1405(i), as additional security
20 for the payment of principal of and interest on any Bonds issued by it and of any and all
21 other obligations under the applicable indenture, pledge and automatically create a security
22 interest that is a consensual lien on the Trust Estate, and take any and all actions to create,
23 impose and document the liens or other encumbrances that arise by force of this chapter;

1 (4) by the earlier of the date requested by the U.S. Treasury or such other
2 deadline provided by law, for each fiscal year during the Transfer Period, when
3 appropriate, deliver to the DOI a written letter requesting any adjustment to the amounts
4 based on actual federal excise taxes paid on rum produced in the Virgin Islands and
5 exported to the United States, with the adjustment to be applied to the amount of the
6 Matching Fund Receipts paid to the Corporation in the ensuing year;

7 (5) if authorized in the future by the Legislature, issue Additional Bonds for
8 purposes related to the Corporation as contemplated by a Resolution, and use the proceeds
9 as contemplated in the related indenture or supplemental indenture and pay any related
10 closing costs and ongoing financing costs; and

11 (6) issue the Residual Certificate as described in section 1403(a).

12 (d) So long as any Bonds remain outstanding, the Corporation may not merge or
13 consolidate, directly or indirectly, with any person or entity. In addition, the Corporation may not
14 incur, guarantee or otherwise become obligated to pay any debt other than the Bonds, the Residual
15 Certificate, or obligations other than those incurred pursuant to ancillary agreements and the
16 related financing costs. The Corporation shall keep its assets and liabilities separate and distinct
17 from those of any other entity.

18 (e) The Corporation has no authority to engage in any business activities other than
19 those provided in this chapter. In connection with the authority provided in this chapter, the
20 Corporation has the power to:

21 (1) Adopt, amend, repeal, and enforce bylaws, rules, regulations, and
22 procedures as it determines appropriate to the governing of its affairs and the conduct of
23 its business and which are not inconsistent with this chapter;

1 (2) Sue and be sued, and to complain and defend in its own name;

2 (3) Adopt, alter, and use a corporate seal, which must be judicially noticed, but
3 the absence of the seal on a contract or other documents does not affect its validity;

4 (4) Acquire, hold, or pledge, contract rights, general intangibles, revenues,
5 moneys, and accounts as may be proper or expedient to carry out the purposes of the
6 Corporation and this chapter, and to assign, convey, sell, transfer, lease or otherwise
7 dispose of such property;

8 (5) Establish and maintain such reserves and special accounts, for the benefit
9 of the Bondholders, to be held in trust or otherwise, as may be required by agreements
10 made in connection with the Bonds, or any agreement between itself and third parties;

11 (6) Redeem, defease, or otherwise refund the Bonds in accordance with the
12 terms of the Indenture as long as the redemption, defeasance or refunding does not, solely
13 by such action, reduce the expected Residual Receipts to the Residual Certificate Holder
14 on a net present value basis compared to the net Residual Receipts that would have been
15 expected to be available to the Residual Certificate Holder had the Bonds remained
16 outstanding unless the Residual Certificate Holder otherwise consents to such action;

17 (7) Consistent with the statutory lien on the Trust Estate, execute and deliver
18 one or more agreements or other instruments pursuant to which it shall take all actions
19 necessary or appropriate to cause the Matching Fund Receipts to be paid directly from the
20 U.S. Treasury into the GVI Restricted Account and which amounts must be transferred to
21 the deposit account where they must be maintained in the custody of the Trustee and must
22 be held separate from any other funds and accounts of the Government or the Corporation
23 or a bank or trust company;

1 (8) Elect, appoint, and employ officers and agents as the Corporation considers
2 advisable to operate and manage the affairs of the Corporation, and to define their duties
3 and fix, adjust, and define their compensation as it determines to be appropriate;

4 (9) Make, execute, and perform contracts, commitments, agreements,
5 indentures, instruments and ancillary agreements, in connection with the issuance of,
6 security for, or administration of the Bonds and the Residual Certificate, as approved by
7 its board of directors and as necessary or appropriate to accomplish the purposes of the
8 Corporation and this chapter;

9 (10) Select, retain, and employ professionals, contractors, agents, bond
10 insurance providers, or rating agencies that are necessary or appropriate to enable or assist
11 the Corporation in carrying out the purposes of the Corporation;

12 (11) Pay its financing costs, scheduled debt service on the Bonds and related
13 financing costs;

14 (12) Indemnify or insure members of the board of directors and officers of the
15 Corporation as it determines appropriate;

16 (13) Purchase insurance or self-insure against loss in connection with its
17 property and other assets or other risks, in amounts and from insurers as it determines
18 appropriate;

19 (14) Invest any funds or other moneys under its custody and control in
20 investment securities or under any ancillary agreement pursuant to the terms of the
21 Indenture;

22 (15) Do all things necessary or appropriate to enforce its rights and require other
23 parties to fulfill their obligations hereunder and under the ancillary agreements; and

1 (16) Do all things necessary or appropriate to carry out its purposes and exercise
2 the powers expressly given and granted in this chapter.

3 (f) Board of Directors.

4 (1) The Corporation is governed by a board of directors composed of three
5 members. The Governor serves as the ex-officio member of the board of directors. Two
6 members of the board of directors must be private citizens, “independent members.”

7 (2) An independent member of the board of directors:

8 (A) must be older than 18 years of age and have at least seven years’
9 executive or board experience in banking, accounting, or finance;

10 (B) must not be a current officer, employee or director of any
11 governmental entity of the Virgin Islands and must be at least three years removed
12 from having served as an officer, employee or director of any governmental entity
13 of the Virgin Islands; and

14 (C) need not be a resident of the Virgin Islands,

15 (3) A quorum consists of two members, one of whom must be the Governor
16 Any one or more directors may participate in a meeting of the board of directors by means
17 of a conference telephone, video, or similar communications equipment allowing all
18 persons participating in the meeting to hear one another at the same time and allowing for
19 the verification of the identity of each of the directors. Participation by such means
20 constitutes presence in person at a meeting.

21 (4) Actions of the board of directors are determined by a majority vote of the
22 members, unless a unanimous vote of all the members is required by the by-laws of the
23 Corporation for certain purposes; but the affirmative vote of both of the independent

1 members is required for the issuance of the Initial Matching Fund Securitization Bonds,
2 and the affirmative vote of both a majority of the independent members and the Governor
3 is required for the issuance of any Additional Bonds.

4 (5) The two independent members of the board of directors must be appointed
5 by the Governor within 30 calendar days after the effective date of this chapter. Any
6 vacancy by either of the two independent directors appointed by the Governor must be
7 filled by the Governor not more than 90 days after the date of the vacancy. At any time
8 after the issuance of the Initial Matching Fund Securitization Bonds, the board of directors
9 shall increase the size of the board of directors to five members, and the two additional
10 directors must be independent and be appointed by the Governor with the advice and
11 consent of the Legislature. Any vacancy of either of the additional independent directors
12 must be filled by the Governor not later than 90 days after the date of the vacancy. Each of
13 the independent members of the board of directors serves a four-year term, except that an
14 independent member selected to fill a vacancy occurring before the end of the term for
15 which the member's predecessor was selected may serve only until the end of the term. A
16 director serves after the expiration of the term until the member's successor has taken
17 office. Any director who has not been removed from the board of directors pursuant to
18 paragraph (7) may be reappointed at any time.

19 (6) The independent directors may receive compensation not in excess of \$150
20 per each day or part of a day spent in the meeting of the board of directors, and all directors
21 may receive, or be reimbursed for, the actual, reasonable, and necessary expenses incurred
22 in the performance of their official duties.

1 (7) The Governor may remove any director for inefficiency, neglect of duty or
2 misconduct in office after giving the director a copy of the charges against him and an
3 opportunity to be heard, in person or by counsel, in his defense, upon not less than ten days'
4 notice. If any director is so removed, the Governor shall file in the Office of the Lieutenant
5 Governor a complete statement of the charges made against the director and the Governor's
6 findings, together with a complete record of the proceedings.

7 (8) Each director has a fiduciary duty to act in the best interests of the
8 Corporation, including its creditors, the Bondholders, and shall perform such other duties
9 as may be specified in the organizational documents or other agreements of the
10 Corporation.

11 (g) All assets and income of the Corporation are exempt from Virgin Islands taxation.

12 (h) The Corporation has the same fiscal year as the Government.

13 (i) An independent accountant, appointed by the board of directors of the Corporation,
14 shall conduct an annual audit of the accounts and records of the Corporation.

15 (j) No Virgin Islands laws, rules, or orders governing procurement or administrative
16 procedures, or personnel apply to the Corporation, its activities, board members, officers, or
17 employees, except as otherwise provided for in this chapter.

18 (k) All operating and administrative expenses of the Corporation necessary for the
19 proper business of the Corporation and budgeted at the time of the issuance of the Bonds or in any
20 successive year and the costs of issuance and marketing of the Bonds must be paid by the
21 Corporation out of the proceeds of the Bonds and the Matching Fund Receipts.

22 **§ 1405. Bonds of the Corporation**

1 (a) Subject to section 1404(c)(5) and section 1409, the Corporation may issue Bonds
2 in one or more series or tranches, or both series and tranches, and at one or more times, including
3 refunding Bonds at or before maturity, and the obligations are payable solely from the Trust Estate,
4 and the Corporation has the power to provide for the authorization, securing, sale, and issuance of
5 the Bonds and the Residual Certificate consistent with this chapter. The Corporation may pledge
6 the Trust Estate as security for the payment of all amounts payable under the Indenture, any
7 supplemental indenture, and other indentures.

8 (b) The Corporation shall enter into an agreement with one or more underwriters or
9 purchasers to sell the Initial Matching Fund Securitization Bonds in compliance with the
10 Resolution, setting forth the principal amount of the Initial Matching Fund Securitization Bonds
11 to be issued, the pricing and the proceeds expected from the issuance.

12 (c) A Resolution must authorize and describe the terms of the Initial Matching Fund
13 Securitization Bonds to be issued to finance the Corporation's acquisition of the Matching Fund
14 Receipts and the Related Rights only if the board of directors determines and states in the
15 Resolution that the issuance of the Initial Matching Fund Securitization Bonds and the Residual
16 Certificate is expected to ultimately result in increased receipts to the Government on a net present
17 value basis by way of the Residual Certificate as compared to the residual receipts that would have
18 been expected to be available to the Government had the Existing Matching Fund Loan Notes and
19 Existing PFA Bonds remained outstanding by taking advantage of the Corporation's expected
20 lower borrowing costs when compared to the borrowing costs of the Government.

21 (d) The Corporation, by Resolution of its board of directors, may authorize the issuance
22 of one or more series of Bonds. The Resolution may stipulate the terms of the Bonds, including
23 the following:

- 1 (1) Whether the Bonds will be issued as Matching Fund Securitization Bonds
2 or as Subordinate Lien Bonds;
- 3 (2) The date a Bond bears;
- 4 (3) The date a Bond matures and, if different, the other date on which a Bond
5 may be paid;
- 6 (4) Whether the Bonds are issued as current interest bonds, capital appreciation
7 bonds, convertible, capital, appreciation bonds or a combination thereof;
- 8 (5) Whether the Bonds are issued as serial bonds, term bonds or as a
9 combination of the two;
- 10 (6) The denominations;
- 11 (7) The interest rate or rates, to be payable semi-annually, all as provided in or
12 determined pursuant to, authorization under the Resolution;
- 13 (8) The method and terms of sale;
- 14 (9) The method for payment;
- 15 (10) Security for the Bonds;
- 16 (11) The terms of redemption;
- 17 (12) The establishment of debt service funds and the use of proceeds of the
18 Bonds for costs of issuance, capitalized interest and otherwise in accordance with this
19 chapter;
- 20 (13) The terms of any ancillary agreements to be entered into in connection with
21 the issuance of such Bonds;
- 22 (14) The identity of the Trustee and other financing entities in connection with
23 the issuance of the Bonds;

1 (15) Whether the Corporation will seek a rating on the Bonds and whether the
2 Bonds may be insured; and

3 (16) Any other terms that, in the opinion of the board of directors or its advisors,
4 may be necessary or appropriate for the sale of the Bonds.

5 (e) The Resolution authorizing the issuance of the Bonds must include a statement as
6 to whether a series of the Bonds is intended to be issued on a federally tax-exempt or taxable basis.

7 (f) The Resolution authorizing the issuance of the Bonds must include a description of
8 the use of the proceeds from the sale of the Bonds and provide for the payment of any closing
9 financing costs and ongoing financing costs.

10 (g) Each Resolution must be irrevocable but may be amended on or after the date of
11 issuance of the Bonds approved thereunder only in accordance with and subject to the limitations
12 of the Indenture. The Resolution must remain in effect and unabated until the Bonds authorized by
13 the Resolution have been paid in full and all amounts required to be paid to any financing entity
14 are paid in full and all obligations thereunder have been performed in full.

15 (h) The board of directors may delegate to the Governor the authority to prescribe the
16 terms and conditions of each series of Bonds, including those referred to in subsection (d), except
17 that the terms and conditions of the Residual Certificate issued in connection with the purchase of
18 the Matching Fund Receipts and the Related Rights must be consistent with the terms of the Sale
19 Agreement.

20 (i) The Bonds upon issuance, are automatically secured by a statutory lien on the Trust
21 Estate. The Matching Fund Securitization Bonds and any Subordinate Lien Bonds have the benefit
22 of, and are secured by, a statutory lien upon the Trust Estate, which statutory lien is effective,
23 binding, and enforceable against creditors and all others asserting rights therein or having claims

1 of any kind in tort, contract, or otherwise, irrespective of whether those parties have notice of the
2 lien and without the need for any physical delivery, recordation, filing or further act of any kind.
3 The statutory lien arises by operation of law pursuant to this subsection and automatically attaches
4 to the Trust Estate from the time the Bonds are issued, without further action, filing or authorization
5 by the Corporation or any other entity, person, governmental authority, or officer. The statutory
6 lien on amounts constituting Residual Receipts is automatically released and discharged
7 immediately upon deposit by the Trustee of the amounts of Residual Receipts into the Residual
8 Fund without further action, filing or authorization by the Corporation or any other entity, person,
9 governmental authority, or officer.

10 (j) Any pledge by the Corporation of the Trust Estate as security for the Matching
11 Fund Securitization Bonds has the benefit of a consensual lien, perfected, effective, binding, and
12 enforceable against creditors and all others asserting rights therein or having claims of any kind in
13 tort, contract, or otherwise, irrespective of whether those parties have notice of the lien and without
14 the need for any physical delivery, recordation, filing or further act of any kind. The consensual
15 lien on amounts constituting Residual Receipts is automatically released and discharged
16 immediately upon any deposit by the Trustee of the Residual Receipts into the Residual Fund
17 without further action, filing or authorization by the Corporation or any other entity, person,
18 governmental authority, or officer.

19 (k) The Bonds are securities in which all public officers and bodies of the Government
20 and all agencies, instrumentalities, commissions, authorities, and political subdivisions thereof, all
21 insurance companies and associations and other persons carrying on an insurance business, all
22 banks, bankers, trust companies, savings banks and savings associations, including savings and
23 loan associations, building and loan associations, investment companies and other persons carrying

1 on a banking business, and all other persons whatsoever who are now or may hereafter be
2 authorized to invest in Bonds or other obligations of the Corporation, may properly and legally
3 invest funds including capital in their control or belonging to them.

4 (l) The Bonds are securities that may be deposited with and are received by all public
5 officers and bodies of the Government and all agencies, instrumentalities, commissions,
6 authorities, and political subdivisions thereof, for any purpose for which the deposit of Bonds or
7 other obligations of the Corporation is now or may hereafter be authorized.

8 (m) The Bonds are obligations of the Corporation.

9 (1) The Bonds, obligations of the Corporation under the ancillary agreements
10 or other contracts, expenditures, accounts, funds, property and facilities of the Corporation
11 are those of the Corporation and not those of the Government, or any department, office,
12 agency, commission, municipality, branch, bureau, agent, officer or employee of the
13 Government.

14 (2) The Bonds are not obligations of the Government and are not secured by a
15 pledge of the full faith and credit of the Government and the Bondholders may not require
16 the levy or imposition of taxes. Neither the full faith and credit nor the taxing power of the
17 Virgin Islands is pledged to the payment of the principal of, or interest on, the Bonds.

18 (3) The Bonds and the Residual Certificate are special obligations of the
19 Corporation payable solely from and secured by the Trust Estate.

20 (4) The Corporation has no taxing power.

21 (5) The Bonds must contain on their face the statements contained in
22 paragraphs (1) through (4) of this subsection.

1 (6) Nothing contained in the Bonds or in the related financing or closing
2 documents creates an obligation on the part of the Corporation or the Government to make
3 payments with respect to the Matching Fund Securitization Bonds, the Subordinate Lien
4 Bonds, or the Residual Certificate from sources other than the assets of the Corporation.

5 (n) The issuance of the Bonds, the authority to issue the Bonds, the regularity thereof,
6 the validity of any pledge or lien, and the validity and legality of each Resolution authorizing the
7 Bonds and the proceedings so adopted are conclusively presumed.

8 (o) No official, employee, or agent of the Corporation or the Government is personally
9 liable solely because the Matching Fund Securitization Bonds are issued. Members of the board
10 of directors, while acting within the scope of their authority as directors of the Corporation, are
11 not subject to any personal or civil liability from the exercise of any of the Corporation's purposes,
12 duties or responsibilities, unless the conduct of the director is determined by a court of competent
13 jurisdiction to constitute willful wrongdoing or gross negligence.

14 (p) The signature of an officer of the Corporation that appears on the Bonds, including
15 Matching Fund Securitization Bonds, not yet issued, or delivered, whether manual or facsimile,
16 remains valid and sufficient notwithstanding that the person has ceased to hold that office.

17 (q) The Bonds are exempt as to principal and interest from taxation by the Government
18 or by any political subdivision of the Government.

19 **§ 1406. Term of Corporation; No Bankruptcy**

20 (a) The existence of the Corporation is perpetual; but the board of directors by majority
21 vote, including all of the independent members, may dissolve the Corporation no earlier than one
22 year and one day after the Bonds, and all other obligations of the Corporation under the applicable
23 indenture and the ancillary agreements have been repaid or their repayment has been provided for

1 fully, and the existence of the Corporation terminates when adequate provision has been made for
2 the payment of all other debts and obligations, and the winding up of the affairs of the Corporation.
3 No assets or earnings of the Corporation inures to a private person or entity. Upon dissolution of
4 the Corporation, title to all property of the Corporation is vested in and becomes the property of the
5 Government.

6 (b) The Corporation may not be a debtor under any provision of the United States
7 Bankruptcy Code or under any other bankruptcy or similar law, and neither any public officer nor
8 any organization, entity or other person may authorize the Corporation to be or become a debtor
9 under any provision of the United States Bankruptcy Code or under any other bankruptcy or similar
10 law. Until the date not earlier than one year and one day after the Bonds and all other obligations
11 under the Indentures and ancillary agreements are paid in full:

12 (1) The Corporation may not dissolve or file a voluntary petition under any
13 bankruptcy legislation in effect from time to time or sell all, or substantially all, of its assets;

14 (2) No public officer, organization, entity, or other person is empowered to
15 authorize the Corporation to be or become a debtor under any bankruptcy legislation in
16 effect from time to time; and

17 (3) The Corporation may not take any action that materially and adversely
18 affects the rights of the Bondholders or other obligations issued by it.

19 **§ 1407. Sale of Matching Fund Receipts and Related Rights**

20 (a) The transfer of the Government's right, title, and interest in and to the Matching
21 Fund Receipts and the Related Rights pursuant to this chapter to the Corporation or any assignee
22 permitted under the Indenture must be treated as an absolute transfer and true sale of all of the
23 Government's right, title, and interest in and to the Matching Fund Receipts designated as being
24 sold pursuant to the terms of the Sale Agreement, and not a pledge of or secured transaction relating

1 to the Government's right, title, and interest in the Matching Fund Receipts and the Related Rights,
2 if the documents governing the transaction expressly state that the transaction is a sale or other
3 absolute transfer.

4 (b) The sale and conveyance of the Matching Fund Receipts and the Related Rights
5 pursuant to this chapter must occur only when all of the following have occurred:

6 (1) The Corporation has adopted a Resolution;

7 (2) The documents evidencing the sale and conveyance of the Matching Fund
8 Receipts and the Related Rights pursuant to this chapter have been executed and delivered
9 to the Corporation;

10 (3) The Government has received the purchase price required for the rights to
11 the Matching Fund Receipts and the Related Rights set forth in section 1403(a); and

12 (4) The U.S. Treasury has provided the written acknowledgment as
13 contemplated in section 1403(a), and the Governor on behalf of the Government has
14 delivered an irrevocable letter of instruction to the Secretary and the DOI as contemplated
15 in section 1403(h).

16 (c) The existence of a statutory lien and consensual liens on all of the Corporation's
17 right, title, and interest in and to the Trust Estate, including the moneys payable or received
18 thereunder and any interest thereon, or the characterization of the transaction for accounting or
19 securities regulation purposes may not impair or negate the characterization of any transfer as a
20 true sale. The transfer of the Government's right, title and interest in and to the Matching Fund
21 Receipts and the Related Rights to the Corporation or to any assignee pursuant to the Sale
22 Agreement must be irrevocable and must be perfected, vested, valid and binding as against third
23 persons having claims of any kind in tort, contract or otherwise against the Government,

1 irrespective of whether the parties have notice thereof and are superior to any judicial liens or other
2 liens obtained by the claimants or transferees. No instrument by which the sale is accomplished
3 need be recorded in order to accomplish the transfer.

4 (d) The Legislature by this chapter is determining the nature of, and procedure for the
5 absolute conveyance of, property rights. The characterization of the assignment, sale and transfer
6 of the Matching Fund Receipts and the Related Rights as an absolute transfer and true sale and the
7 corresponding characterization of the property interest of the Corporation under this chapter may
8 not be altered, adversely affected or impaired by, among other things, the occurrence of any of the
9 following factors:

- 10 (1) the commingling of the Matching Fund Receipts with other funds;
- 11 (2) the initial retention by the Government of interest in the Residual Receipts
12 in the Trust Estate as part of the consideration for the sale of the Matching Fund Receipts
13 and the Related Rights;
- 14 (3) any recourse that the Corporation may have against the Government
15 pursuant to the Sale Agreement;
- 16 (4) any indemnification or other obligations of the Government in favor of the
17 Corporation;
- 18 (5) the treatment of the sale, assignment or transfer for tax, financial reporting,
19 or other purposes;
- 20 (6) any subsequent Resolution of the Corporation; or
- 21 (7) any deposit of Matching Fund Receipts in a separate fund in the Virgin
22 Islands treasury referred to in 26 USC §7652(b)(3) despite the instruction by the
23 Government to the Secretary of the Treasury or otherwise.

1 (e) The sale and conveyance of the Matching Fund Receipts and the Related Rights
2 pursuant to this chapter may not be subject to disavowal, disaffirmance, cancellation, or avoidance
3 by reason of insolvency of any party, lack of consideration, or any other fact, occurrence, or Virgin
4 Islands law, the United States Code or other law or rule. On and after the effective date of the sale
5 and conveyance of the Matching Fund Receipts and the Related Rights pursuant to this chapter,
6 the Government has no right, title, or interest in or to the Matching Fund Receipts and the Related
7 Rights conveyed, and the Matching Fund Receipts and the Related Rights so conveyed are the
8 property of the Corporation.

9 (1) The sale and conveyance of the Matching Fund Receipts pursuant to this
10 chapter are exempt from all taxes and similar charges imposed by the Virgin Islands or any
11 instrumentality of the Virgin Islands.

12 **§ 1408. Government Pledge**

13 (a) The Government pledges to and agrees with the Corporation for the Corporation
14 and for the benefit of the Bondholders that, until at least one year and one day after the Bonds and
15 all other obligations of the Corporation pursuant to the Indenture, other than the Residual
16 Certificate, have been paid or defeased and all unpaid closing financing costs or ongoing financing
17 costs have been paid, the Government shall:

18 (1) take all steps necessary or appropriate to provide, on a timely basis for each
19 fiscal year;

20 (A) provide to the DOI with a copy to the Corporation, an estimate of
21 the amount of rum produced in the Virgin Island and exported to the United States
22 in such year, and

1 (B) provide to the Corporation, any information required to make a
2 request for any adjustment to the Matching Fund Receipts for such year;

3 (2) take all steps necessary or appropriate to ensure the Corporation's receipt
4 and continued collection of the Matching Fund Receipts and payment thereof directly into
5 the GVI Restricted Account and the prompt transfer of such Matching Fund Receipts to
6 the deposit account;

7 (3) not divert, reclaim, sequester, commandeer, or use any Matching Fund
8 Receipts transferred to the Corporation or deposited in the GVI Restricted Account; and

9 (4) not close the GVI Restricted Account, and not take or permit any other
10 action to be taken that reduces, postpones, limits, alters, or impairs the value of or
11 collections on the Trust Estate or the rights and powers vested in the Corporation and in
12 Bondholders.

13 (b) The Government further pledges to take all actions as may be permitted by law
14 fully to preserve, maintain, defend, protect and confirm the interests of the Corporation, the pledge,
15 lien and security interest and all rights of the Bondholders in the Trust Estate, and the payments
16 therefrom pursuant to the terms of the Sale Agreement against all claims and demands of third
17 parties, and shall not revoke, terminate or amend such pledge, lien and security interest in any way
18 that would adversely affect the rights of any Bondholder.

19 (c) Without limiting the foregoing, the Government pledges to the Corporation and the
20 Bondholders that, until at least one year and one day after the Bonds and all other obligations of
21 the Corporation pursuant to the Indenture have been paid or defeased and all unpaid closing costs
22 or ongoing financing costs have been paid, the Government shall not:

1 (1) take any action that would, directly or indirectly, result in the repeal,
2 rescission, or termination of this chapter, or

3 (2) enact any law permitting or authorizing the Corporation, or allow any public
4 officer or any organization, entity or other person to permit or authorize the Corporation,
5 to be a debtor under any bankruptcy or similar law.

6 (d) The Corporation may include these pledges and agreements of the Government in
7 the Indenture or other indenture, any offering materials, marketing materials, or any ancillary
8 agreement.

9 (e) In no way may the pledges and agreements of the Government be interpreted to
10 indicate that the Government is a guarantor of any debt or obligation of the Corporation.

11 **§ 1409. Further Actions**

12 The Governor shall negotiate and may execute the amendments or adjustments to existing
13 agreements with Cruzan and Diageo and any ancillary agreements relating to the Initial Matching
14 Fund Securitization Bonds as are necessary and appropriate to carry out the transactions
15 contemplated by this chapter, subject to ratification by the Legislature.

16 **§ 1410. Choice of Law**

17 The law governing, as applicable, the validity, enforceability, attachment, perfection,
18 priority and exercise of remedies with respect to the sale and conveyance of the Matching Fund
19 Receipts and the Related Rights pursuant to this chapter or the creation of a security interest in, or
20 lien on, the Trust Estate are the laws of the Virgin Islands.

21 **§ 1411. Conflict of Laws**

22 If there is a conflict between this chapter and any other law regarding the attachment,
23 assignment or perfection, or the effect of perfection, or priority of any pledge of, security interest

1 in or transfer of the Trust Estate, this chapter governs to the extent of the conflict. Notwithstanding
2 any provisions of law to the contrary, no approvals, notices, authorizations or filings other than
3 those specified in this chapter are required with respect to any Resolution or the transactions and
4 contracts authorized in or contemplated by this chapter or any Resolution, including but not limited
5 to the issuance of the Bonds and the Residual Certificate, the sale and conveyance of the Matching
6 Fund Receipts and the Related Rights, the creation and perfection of the statutory lien or any
7 consensual lien on the Trust Estate, the entering into or performance of any ancillary agreements,
8 and the incurring of any expenses to facilitate the taking of the actions described in this chapter.

9 **§ 1412. Invalidity**

10 (a) Effective on the date that any Bonds are first issued, if any provision of this chapter
11 is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that
12 occurrence does not affect any action allowed under this chapter that is taken by the Government,
13 the Public Finance Authority, the Corporation, any financing entity, a Bondholder or a party to an
14 ancillary agreement prior to the provision being held to be invalid, or being invalidated,
15 superseded, replaced, repealed or expired, and any such action remains in full force and effect.

16 (b) If a provision of this chapter or its application to a person or circumstances is held
17 invalid, the invalidity does not affect other provisions or applications of this chapter that can be
18 given effect without the invalid provisions. It is the intent of the Legislature that this chapter would
19 have been enacted even if the invalid provisions had not been included.

20 **§ 1413. Money Bill; No Appropriation Required**

21 This chapter is a money bill of the Legislature for the purposes of 48 USC §1561 and there
22 is no requirement under statutory or other provisions of Virgin Islands law that the Legislature

1 enact further legislation to appropriate any funds to the Corporation or to implement the provisions
2 of this chapter presently or in the future.”

3 **SECTION 3.** All actions taken pursuant to Act Nos 8329 and 8330 prior to the date of
4 this act, other than the creation of the special purpose vehicle pursuant to Act No 8329, are hereby
5 approved and ratified notwithstanding the repeal of Act Nos 8329 and 8330.

6 **SECTION 4.** Pursuant to 29 V.I.C. § 1409, the Legislature hereby ratifies the following
7 agreements:

8 (1) Agreement titled “Amendments”, with preamble that reads “THESE
9 AMENDMENTS, dated September 11, 2020 (the “Amendments”), to the Agreement
10 between Cruzan VIRIL, Ltd. (“Cruzan”) and the Government of the United States Virgin
11 Islands (“Government”), dated as of October 6, 2009, as amended and supplemented (the
12 “Cruzan Agreement”), are made by and between the Cruzan and the Government. The
13 Government and Cruzan are sometimes collectively referred to herein as the “Parties” and
14 individually as a “Party”.

15 (2) Agreement titled “Amendments” with a preamble that reads: “THESE
16 AMENDMENTS, dated September 11, 2020 (the “2020 Amendments”), to the Agreement
17 between Diageo USVI, Inc. (“Diageo”) and the Government of the United States Virgin
18 Islands (“Government”), dated as of June 17, 2008, as supplemented (the “Diageo
19 Agreement”), are made by and between Diageo and the Government. The Government
20 and Diageo are sometimes collectively referred to herein as the “Parties” and individually
21 as a “Party.”

22 Section 2 of Act No. 8329, as amended by Act No. 8330, section 10 provided that
23 if the Bonds did not close by midnight on September 30, 2020, all authority to perform acts

1 under Acts 8329 and 8330 would expire. The foregoing sunset clause is replaced in this
2 bill with a provision in section 3 which ratifies all actions taken pursuant to Act Nos 8329
3 and 8330 other than the creation of the special purpose vehicle pursuant to Act No 8329.

4 **BILL SUMMARY**

5 Section 1 of the bill repeals Act No. 8329, which created The Matching Fund Securitization
6 Corporation and provided for the securitization of the Matching Fund Receipts, and Act No. 8330,
7 which amended Act No. 8330. Section 2 of the bill reenacts The Matching Fund Securitization
8 Corporation to acquire all of the Government's right, title, and interest in the Matching Fund
9 Receipts to be paid to or for the account of the V.I. Government by the U.S. Treasury during the
10 Transfer Period and the Related Rights, to issue Matching Fund Securitization Bonds and the
11 Residual Certificate in order to pay the purchase price therefor and as otherwise authorized under
12 the act, and to direct the Secretary and the DOI to pay the Matching Fund Receipts directly into
13 the Deposit Account.

14 Section 3 of the bill ratifies all the actions taken under the previous acts, notwithstanding
15 their repeal. Section 4 of the bill ratifies the amendments to the Cruzan VIRIL and the Diageo
16 agreements.

17 There are very few major changes from the original acts. The definition of “cut-off date”
18 in internal section 1402 (g) is amended by changing the date from August 1 to November 1. In
19 internal section 1405, Bonds of the Corporation there is a major change in subsection (d),
20 paragraph (7), which originally provided in Act No. 8329 regarding the contents of the Resolution
21 authorizing the Corporation to issue bonds “The interest rate not to exceed 3.75 percent at par, to
22 be payable semi-annually, all as provided in or determined pursuant to, authorization under the
23 Resolution”. Under this bill, however, the phrase, not to exceed 3.75” has been omitted.
24 Nonetheless section 1405, subsection (c) still mandates: “A Resolution must authorize and
25 describe the terms of the Initial Matching Fund Securitization Bonds to be issued to finance the
26 Corporation’s acquisition of the Matching Fund Receipts.”

27 **REVIEWER’S NOTE**

28 **The absence of an interest rate for the Bonds is inconsistent with the Revised Organic**
29 **Act of the Virgin Islands.**

30
31 **BR 20-1412/November 25, 2020/Reviewed by YLT/ November 27,2020**