No. 14 of 2006

VIRGIN ISLANDS

BANKS AND TRUST COMPANIES (AMENDMENT) ACT, 2006

ARRANGEMENT OF SECTIONS

Section

1. Short title and commencement.
2. Interpretation.
3. Section 2 amended.
4. Section 3 repealed and replaced.
5. Section 4 amended.
6. Section 4A inserted.
7. Section 5 repealed and replaced.
8. Section 6 amended.
9. Section 8 amended.
10. Section 9 amended.
11. Section 10 amended.
12. Section 11 amended.
13. Section 12 repealed and replaced.
14. Section 13 repealed.
15. Section 14 repealed and replaced.
16. Section 15 repealed.
17. Section 16 amended.
18. Section 17 repealed and sections 17 to 17K substituted.
19. Section 18 amended.
20. Section 19 amended.
21. Insertion of section 19A.
22. Sections 20 to 22 repealed.
23. Section 23 amended.
24. Section 25 amended.
25. Section 26 amended.
26. Section 28 amended.
27. Section 28A inserted.
28. First and Second Schedules repealed.

I Assent

(Sgd.) DAVID PEAREY,
Governor.
16th October, 2006

VIRGIN ISLANDS

No. 14 of 2006

An Act to amend the Banks and Trust Companies Act, 1990 (No. 9 of 1990).

[Gazetted 2nd November, 2006]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement.

1. (1) This Act may be cited as the Banks and Trust Companies (Amendment) Act, 2006.

(2) The provisions of this Act come into operation on 15th January, 2007.

Interpretation. No. 9 of 1990.

2. In this Act, "the principal Act" means the Banks and Trust Companies Act, 1990.

Section 2 amended.

3. Section 2 of the principal Act is amended

(a) in subsection (1)

(i) in paragraph (b) of the definition of “auditor”, by deleting the words “the Commission, by order approves” and substituting the words “may be prescribed”,

(ii) in the definition of “authorised agent”, by deleting the words “bank or trust company” and substituting the word “licensee”,

(iii) by repealing the definition of “bank”,

(iv) by repealing the definition of “banking business” and substituting the following definition:

““banking business” means the business of accepting deposits of money which may be withdrawn or repaid on demand or after a fixed period or after notice, by cheque or otherwise and the employment of such deposits, either in whole or in part,

(a) in making or giving loans, advances, overdrafts, guarantees or similar facilities, or

(b) the making of investments,

for the account and at the risk of the person accepting such deposits;”,

(v) by repealing the definition of “licence” and substituting the following definition:

““licence” means a licence granted under section 4(4);”,

(vi) by repealing the definition of trust business and substituting the following definition:

““trust business” means the business of

(a) acting as a professional trustee, protector or administrator of a trust or settlement; or

(b) managing or administering any trust or settlement;”,

(vii) by repealing the definition of “trust company”, and

(viii) by inserting in the appropriate alphabetical order, the following definitions:

No. 12 of 2001

No. 8 of 1990

Cap. 291

""approved form" means a form approved by the Commission in accordance with section 50A of the Financial Services Commission Act, 2001;

"company management" and "company management business" have the meanings specified in the Company Management Act, 1990;

"prescribed" means prescribed in a Regulatory Code;

"registered agent services" has the meaning specified in subsection (1A);

"Regulatory Code" means a Regulatory Code issued under the Financial Services Commission Act, 2001;

"senior officer" means a person appointed to perform such supervisory or managerial functions with respect to a licensee as may be prescribed;

"significant interest", in respect of a licensee, means a holding or interest in the licensee or in any holding company of the licensee held or owned by a person, either alone or with any other person and whether legally or equitably, that entitles or enables the person, directly or indirectly

(a) to control five per cent or more of the voting rights of the licensee,

(b) to a share of five per cent or more in any distribution made by the licensee, or

(c) to a share of five per cent or more in any distribution of the surplus assets of the licensee;

"Virgin Islands company" means a company that is

(a) a company incorporated or continued under the International Business Companies Act;

(b) a company incorporated under the Companies Act; or Cap. 285

(c) a company incorporated, continued or re-registered under the BVI Business Companies Act, 2004."; and

(b) by inserting after subsection (1), the following subsection:

" (1A) A person provides registered agent services if he acts as the registered agent of

(a) a Virgin Islands company;

(b) a foreign company registered under the BVI Business Companies Act, 2004; or

(c) a limited partnership registered under the Partnership Act, 1996.". No. 5 of 1996

4. Section 3 of the principal Act is repealed and the following section substituted: Section 3 repealed and replaced.

"Prohibition on unauthorised business.

3. (1) No person shall carry on any kind of banking business in or from within the Virgin Islands unless the person holds a valid licence authorizing him to carry on that kind of banking business.

(2) No company shall carry on any kind of trust business in or from within the Virgin Islands unless the company holds a valid licence authorizing him to carry on that kind of trust business.

(3) For the purposes of subsections (1) and (2), a Virgin Islands company that carries on banking or trust business outside the Virgin Islands is deemed to be carrying on banking or trust business from within the Virgin Islands.

(4) A person who contravenes subsection (1) or a company that contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding two years or to both.".

Section 4 amended.

5. Section 4 of the principal Act is amended

(a) in subsection (1), by deleting the words "application therefor to the Commission in the prescribed form" and substituting the words "written application to the Commission in the approved form";

(b) by repealing subsections (2) and (3);

(c) by repealing subsection (4) and substituting the following subsections:

" (4) The Commission may issue a licence to an applicant if it is satisfied that

(a) the applicant satisfies the requirements of this Act and the Regulatory Codes in respect of the application and will, upon issuance of the licence, be in compliance with this Act and the Regulatory Codes;

(b) the applicant satisfies the Commission's fit and proper criteria;

(c) the organisation, management and financial resources of the applicant are adequate for the carrying on of the business in respect of which a licence is sought; and

(d) issuing the licence is not against the public interest."; and

(d) in subsection (6), by deleting the words "in the *Gazette*" and substituting the words "in such manner as shall be specified in regulations made under section 28".

Section 4A inserted.

6. The principal Act is amended by inserting after section 4 the following section:

"Fees.
No. 28 of 2005

4A. The fees prescribed by or under the Statutory Rates, Fees and Charges Act, 2005 in respect of and pertaining to this Act shall be payable to the Commission.".

7. Section 5 of the principal Act is repealed and the following section substituted: Section 5 repealed and replaced.

"Validity of licence. No. 12 of 2001

5. A licence is valid until it is suspended or revoked by the Commission in accordance with the Financial Services Commission Act, 2001.".

8. Section 6 of the principal Act is amended by inserting after subsection (2) the following subsection: Section 6 amended.

" (3) A person who is licensed under the Mutual Funds Act, 1996 as a manager or administrator and whose licence authorizes him to act as the manager or administrator of one or more unit trusts, is exempted from the requirement to obtain a licence under this Act for the purposes of managing or administering any unit trust that he is authorized under his licence to manage or administer.". No. 6 of 1996

9. Section 8 of the principal Act is amended Section 8 amended.

(a) by designating the existing provision as subsection (1);

(b) in the existing provision, by deleting the words "as soon as possible thereafter" and substituting the words "within fourteen days"; and

(c) by inserting after the existing provision the following subsection:

" (2) A licensee who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding $10,000.".

10. Section 9 of the principal Act is amended Section 9 amended.

(a) in subsection (1), by repealing paragraph (b) and substituting the following paragraph:

"(b) by name, two individuals resident in the Virgin Islands approved by the Commission to be that person's authorized agents;";

(b) in subsection (3), by deleting the words "It shall be a condition of every licence granted that the licensee shall forthwith notify" and substituting the words "A licensee shall obtain the prior written approval of the Commission for";

(c) in subsection (4), by deleting the words "paragraph (b) of subsection (1)" and substituting the words "subsection (1)(b) or (3)(b)"; and

(d) by inserting after subsection (4), the following subsection:

" (5) A licensee who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding $10,000.".

Section 10 amended.

11. Section 10 of the principal Act is amended

(a) in subsection (1)

(i) in paragraph (a), by deleting the words "without any restrictions on that business",

(ii) by repealing paragraphs (d) and (e) and substituting the following paragraphs:

"(d) a Class I trust licence, for the purposes of carrying on trust business and company management business;

(e) a Class II trust licence, for the purposes of carrying on trust business only;

(f) a Class III trust licence, for the purposes of carrying on company management business only.";

(b) by inserting after subsection (1), the following subsection:

" (1A) Without limiting section 4(4A)

(a) a Class II trust licence may be issued as a restricted Class II licence, in which case the holder of the licence shall not undertake trust business other than in connection with those trusts, not exceeding fifty, listed in a sworn undertaking; and

(b) a Class III trust licence may be issued as a restricted Class III licence, in which case the holder of the licence shall undertake no company management business, other than the provision of directors and officers, and

nominee shareholders, for Virgin Islands companies.";

(c) in subsection (2), by deleting the word "general" in each place in which it occurs and substituting the words "Class I or II";

(d) by inserting after subsection (2), the following subsections:

" (3) There may be listed in a schedule to the application for a general banking licence the name of any company engaging in banking business, being a subsidiary of the company applying for a general banking licence, together with a description of the particular type of banking business being carried on or to be carried on by the subsidiary and the Commission may, upon granting the general banking licence to the applicant company, include in the licence the name of each subsidiary, or category of business to be undertaken, to be included in the licence, together with the terms and conditions, if any, subject to which the licence is extended to include each subsidiary.

(4) A licensee who wishes to add a subsidiary to, or remove a subsidiary from, its licence may apply to the Commission in the approved form and shall, upon approval of the application, submit its licence to the Commission for the necessary amendment to be made.

(5) The holder of a restricted Class II trust licence that wishes to make any change in the trusts in connection with which it may undertake trust business, may apply to the Commission in the approved form attaching a sworn undertaking to replace that specified in subsection (1)(e) and the Commission may grant or refuse the application.".

12. Section 11 of the principal Act is amended

Section 11 amended.

(a) by designating the existing provision as subsection (1);

(b) in the existing provision, by inserting after the words "Class I" in both places where they occur, the words "or Class II"; and

(c) by inserting after the existing provision the following subsection:

" (2) A licensee who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not

exceeding $25,000 or to a term of imprisonment for one year or to both.”.

Section 12 repealed and replaced.

13. Section 12 of the principal Act is repealed and the following section substituted:

“Capital resource requirements and deposits.

12. (1) A company holding a general banking licence shall, at all times

(a) maintain capital resources of not less than the prescribed minimum or such greater capital resources as the Commission may require the licensee to maintain; and

(b) keep deposited or invested such sum as may be prescribed in such manner as may be prescribed.

(2) A company holding a restricted Class I banking licence or a restricted Class II banking licence shall, at all times

(a) maintain capital resources of not less than the prescribed minimum or such greater capital resources as the Commission may require the licensee to maintain; and

(b) keep deposited or invested such sum as may be prescribed in such manner as may be prescribed.

(3) A company holding a banking licence shall at all times maintain the prescribed risk weighted capital adequacy ratio, calculated in such manner and by such methods as may be prescribed.

(4) A company holding a Class I or Class II trust licence shall, at all times

(a) maintain capital resources of not less than the prescribed minimum or such greater capital resources as the Commission may require the licensee to maintain; and

(b) keep deposited or invested such sum of money, not exceeding the prescribed maximum, as may be required by the Commission, in such manner as may be prescribed.

(5) For the purposes of this section, the definition of "capital resources" and acceptable forms of capital may be prescribed in a Regulatory Code.

(6) A company that contravenes subsection (1)(b), (2)(b) or (4)(b) commits an offence and is liable on summary conviction to a fine not exceeding $25,000 or to a term of imprisonment not exceeding one year or to both.".

14. Section 13 of the principal Act is repealed.

Section 13 repealed.

15. Section 14 of the principal Act is repealed and the following sections substituted:

Section 14 repealed and replaced.

"Disposing of or acquiring significant interest in licensee.

14. (1) A person owning or holding a significant interest in a licensee shall not sell, transfer, charge or otherwise dispose of his interest in the licensee, or any part of his interest, unless the prior written approval of the Commission has been obtained.

(2) A person shall not, whether directly or indirectly, acquire a significant interest in a licensee unless the prior written approval of the Commission has been obtained.

(3) A licensee shall not, unless the prior written approval of the Commission has been obtained

(a) cause, permit or acquiesce in a sale, transfer, charge or other disposition referred to in subsection (1);

(b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation of its share capital that results in

(i) a person acquiring a significant interest in the licensee, or

(ii) a person who already owns or holds a significant interest in the licensee, increasing or decreasing the size of his interest.

(4) An application to the Commission for approval under subsection (1), (2) or (3) shall be made by the licensee.

(5) The Commission shall not grant approval under subsection (1), (2) or (3) unless it is satisfied that following the acquisition or disposal

(a) the licensee will continue to meet the criteria for licensing specified in section 4(4); and

(b) any person who will acquire a significant interest in the licensee satisfies the Commission's fit and proper criteria.

(6) An approval under subsections (1), (2) or (3) may be granted by the Commission on such conditions as it considers appropriate.

(7) A person who contravenes subsection (1) or (2) and a licensee that contravenes subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding $10,000.

Power to grant exemption.

14A. The Commission may exempt a licensee from the provisions of section 14, or any of them, on such conditions as it considers appropriate.".

Section 15 repealed.

16. Section 15 of the principal Act is repealed.

Section 16 amended.

17. Section 16 of the principal Act is amended

(a) in subsection (1)(a), by deleting the words "or "trust corporation"" and substituting the words ", "trust corporation" or "fiduciary"";

(b) in subsection (2), by deleting the words "or "trust corporation"" and substituting the words ", "trust corporation" or "fiduciary"";

(c) by repealing subsection (5); and

(d) by inserting after subsection (4) the following subsection:

" (5) A person who contravenes subsection (1) and a company that contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding $50,000 or a term of imprisonment not exceeding two years or to both.".

18. Section 17 of the principal Act is repealed and the following sections substituted:

Section 17 repealed and sections 17 to 17K substituted.

"Licensee to keep financial records.

17. (1) A licensee shall keep financial records that

(a) are sufficient to show and explain its transactions;

(b) will, at any time, enable it financial position to be determined with reasonable accuracy;

(c) will enable it to prepare the financial statements and make the returns required under this Act and any Regulatory Code; and

(d) will enable its financial statements to be audited in accordance with this Act and the Regulatory Code.

(2) A licensee shall retain all financial records for a period of at least five years after the completion of the transaction to which they relate.

(3) Subject to subsection (4), a licensee shall

(a) keep its financial records in the Virgin Islands; and

(b) if its financial records, or any of them, are kept at a place other than its principal office in the Virgin Islands, notify the Commission in writing of the place where those financial records are kept.

(4) A licensee that is not a Virgin Islands company shall

(a) keep accounting records in the Virgin Islands sufficient to comply with subsection (1) in respect of the business it undertakes in the Virgin Islands; and

(b) notify the Commission in writing the place, whether in or outside the Virgin Islands, where its financial records, other than those specified in paragraph (a) are kept.

(5) A licensee that holds a trust licence shall comply with such rules as may be prescribed concerning

(a) the segregation of its assets from trust assets and any client assets that it holds;

(b) the segregation of trust assets of one trust from those of another and from other client assets;

(c) the maintenance of separate bank and other accounts with respect to different trusts and clients;

(d) accounting rules and procedures to be applied with respect to trust and client assets.

(6) A licensee that contravenes this section commits an offence and is liable on summary conviction to fine not exceeding $25,000 or to imprisonment for a term not exceeding one year or to both.

Meaning of "financial statements".

17A. (1) In this Act, "financial statements" in relation to a licensee and to a financial year, means

(a) a statement of the financial position of the licensee as at the last date of the financial year;

(b) a statement of the financial performance of the licensee in relation to the financial year;

(c) a statement of cash flows for the licensee in relation to the financial year;

(d) such statement relating to the prospects for the licensee's business as may be prescribed or as may be required by the accounting standards in accordance with which the accounts are prepared; and

(e) such other statements as may be prescribed;

together with any notes or other documents giving information relating to the matters specified in paragraphs (a), (b), (c), (d) or (e).

Preparation of financial statements.

17B. (1) A licensee shall prepare financial statements for each financial year that comply with generally accepted accounting standards or such other accounting standards as may be prescribed.

(2) If, in complying with the accounting standards in accordance with which they are prepared, the financial statements do not give a true and fair view of the matters to which they relate, the notes to the financial statements shall contain such information and explanations as will give a true and fair view of those matters.

(3) The financial statements prepared under subsection (1) shall be

(a) approved by the directors of the licensee; and

(b) following approval under paragraph (a), signed by at least one director on behalf of all the directors.

(4)` The director signing the financial statements shall state the date when the financial statements were approved by the directors and the date when he signs the financial statements.

Submission of financial statements to Commission and publication.

17C. (1) The financial statements signed by a director in accordance with section 17B shall be submitted to the Commission within six months of the end of the financial year to which they relate accompanied by

(a) a directors' certificate;

(b) an auditor's report;

(c) any report on the affairs of the licensee made to the members of the licensee in respect of the relevant financial year;

(d) a certificate of compliance issued by the auditor that the information set out in the application for a licence, as modified by any subsequent notification of change in accordance with section 8, remains correct and gives an accurate summary of the business of the licensee; and

(e) such other documents as may be prescribed;

(2) Unless accompanied by the certificates, reports and documents specified in subsection (1), the financial statements referred to in subsection (1) are deemed not to have been submitted to the Commission.

(3) A licensee that holds a banking licence shall publish its financial statements, together with the auditors report, within six months of the end of the financial year to which they relate, in at least two newspapers published and circulating in the Virgin Islands.

(4) A licensee who contravenes this section commits an offence and is liable on summary conviction to fine not exceeding $10,000.

Submission of quarterly financial statements and report.

17D. (1)A licensee that holds a banking licence shall, in respect of each quarter, submit to the Commission, within such time period as shall be prescribed

(a) financial statements, that may be unaudited;

(b) a return in the approved form;

(c) such other information and documentation as may be prescribed.

(2) In this section, "financial statements" has the meaning specified in section 17A with the substitution of "quarter" for "financial year".

(3) A licensee who contravenes this section commits an offence and is liable on summary conviction to fine not exceeding $10,000.

Extension of time.

17E. (1) The Commission may, on the application of a licensee, extend the time for compliance with section 17C or section 17D for a period of, or where it grants more than one extension for an aggregate period not exceeding, three months.

(2) An extension under subsection (1) may be granted subject to such conditions as the Commission considers appropriate.

Amendment of financial statements.

17F. (1) If the Commission considers that any document submitted by a licensee under section 17C or 17D is inaccurate or incomplete or is not prepared in accordance with this Act or a Regulatory Code, it may by written notice require the licensee to amend the document or to submit a replacement document.

(2) If a licensee fails to comply with a notice under subsection (1), the Commission may reject the document.

Licensee to appoint auditor.

17G. (1) A licensee shall appoint an auditor, which in the case of a licensee that is a Virgin Islands company, shall be an auditor approved by the Commission, for the purposes of auditing its financial statements.

(2) The Commission shall not approve the appointment of an auditor under subsection (2) unless it is

satisfied that he has sufficient experience and is competent to audit the financial statements of the licensee.

(3) A licensee shall make such arrangements as are necessary to enable its auditor to audit its financial statements in accordance with this Act.

(4) The approval of the Commission is not required where the auditor appointed in respect of a financial year acted as the auditor of the licensee in the previous financial year.

(5) A licensee shall, within 14 days of the appointment of its auditor, submit a notice of appointment in the approved form to the Commission.

(6) A licensee shall not change its auditor without the prior written approval of the Commission.

(7) A licensee who contravenes this section commits an offence and is liable on summary conviction to fine not exceeding $10,000.

Audit report.

17H. (1) Upon completion of his audit of the financial statements of a licensee, the auditor shall provide an audit report to the licensee complying with the Regulatory Codes.

(2) The Commission may at any time, by notice in writing, direct a licensee to supply the Commission with a report, prepared by its auditor or other person nominated by the Commission, on such matters as the Commission may determine which may include an opinion on the adequacy of the accounting and control systems of the licensee.

(3) A report prepared under subsection (2) shall be at the cost of the licensee.

Obligations of auditors.

17I. (1) Notwithstanding anything to the contrary in any other enactment, the auditor of a licensee shall

(a) provide the Commission with a copy of the audit report provided to a licensee under section 17H;

(b) report immediately to the Commission any information relating to the affairs of a licensee that he has obtained in the course of acting as its auditor that, in his opinion, suggests

(i) that the licensee is insolvent or is likely to become insolvent or is likely to be unable to meet its obligations,

(ii) that a criminal offence has been or is being committed by the licensee or in connection with its business,

(iii) that the licensee is in breach of any provision of this Act or any Regulatory Code with respect to capital resources, liquidity or any other matter that may be prescribed,

(iv) that serious breaches of this Act or any Regulatory Code or such enactments, regulations or Codes relating to money laundering or the financing of terrorism as may have been prescribed have occurred in respect of the licensee or its banking or trust business;

(v) that the licensee has significant weaknesses in internal controls which render it vulnerable to significant risks or exposures that have the potential to jeopardise the licensee's financial viability.

(2) Where the appointment of an auditor is terminated, the former auditor shall

(a) forthwith inform the Commission of the termination of his appointment and disclose to the Commission the

circumstances that gave rise to such termination; and

(b) if, but for the termination of his appointment, he would have

(i) sent an audit report to the Commission under subsection (1)(a), or

(ii) reported information to the Commission under subsection (1)(b),

he shall send a copy of the report to the Commission, or report the information concerned to the Commission, as if his appointment had not been terminated.

(3) The Commission may require an auditor of a licensee to discuss any audit he has conducted or commenced with, or provide additional information regarding the audit to, the Commission.

(4) Where, in good faith, an auditor or former auditor provides a report or any information to the Commission under subsections (1), (2) or (3), he is deemed not to be in contravention of any enactment, rule of law or professional code of conduct to which he is subject and no civil, criminal or disciplinary proceedings shall lie against him in respect thereof.

(5) The failure, in good faith, of an auditor or former auditor to provide a report or any information to the Commission under subsections (1), (2) or (3) does not confer upon any other person a right of action against the auditor which, but for that failure, he would not have had.

Powers of Commission with regard to appointment of auditor.

17J. (1) Where the Commission is satisfied that the auditor of a licensee has failed to fulfil his obligations under this Act or any Regulatory Code, or is otherwise not a fit and proper person to act as the auditor of a licensee, it may, by written notice to the licensee, revoke the approval of the appointment of the auditor and the licensee shall appoint a new auditor in accordance with section 17G.

(2) A notice revoking the appointment of an auditor under subsection (1) shall be given to the auditor.

(3) If a licensee fails to appoint an auditor in accordance with section 17G, the Commission may appoint an auditor of the licensee.

(4) An auditor appointed under subsection (3) is deemed for the purposes of this Act to have been appointed by the licensee.

Group accounts.

17K. (1) Where a licensee is a member of a group of companies, the Commission may require the licensee to submit group accounts.

(2) The Commission may require that the group accounts are audited by the auditor of the licensee or by another auditor approved by the Commission.

(3) The Regulatory Codes may prescribe the form and content of group accounts to be submitted under this section.".

Section 18 amended.

19. Section 18 of the principal Act is amended,

(a) by designating the existing provision as subsection (1)

(b) in the existing provision, by inserting after the word "operate", the words "inside or"; and

(c) by inserting after the existing provision the following subsection:

"(2) A licensee who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding $25,000 or to imprisonment for a term not exceeding one year or to both.".

Section 19 amended.

20. Section 19 of the principal Act is amended by inserting after subsection (3) the following subsection:

" (4) A licensee who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding $10,000.".

Insertion of section 19A.

21. The principal Act is amended by inserting after section 19 the following section:

"Dormant accounts.

19A. (1) For the purposes of this section,

(a) "licensee" means a licensee holding a licence that authorises him to carry on banking business";

(b) an account is deemed to be a dormant account, where during the dormancy period, no transaction has been effected or instruction received by the licensee for the dormant account by the account holder; and

(c) "dormancy period" means a period of not less than four years.

(2) A licensee shall, in writing, notify the holder of a dormant account of the following:

(a) the name and current address of the licensee and any information regarding a change of name since the opening of the account concerned;

(b) that a dormant account to which the account holder appears to be entitled, is held with the licensee;

(c) that if a transaction or instruction received is not effected on the account within ninety days from the date of the notification, the moneys in the account will be transferred to a special fund without further notice to the account holder; and

(d) that the account holder is entitled, subject to this Act, to claim repayment of the moneys in the account from the licensee.

(3) A notification under subsection (2) shall be sent by ordinary post to the last known address of the account holder.

(4) A licensee shall, in relation to dormant accounts, publish or cause to be published in at least two newspapers published and circulating in the Virgin Islands, a public notification containing the following information, but not disclosing the names of the account holders:

(a) the name and current address of the licensee and any information regarding a change of name;

(b) that the licensee holds dormant accounts;

(c) that if a transaction or instruction received is not effected on a dormant account within ninety days from the date of the public notification, the moneys in the account will be transferred to a special fund without further notice to the account holder;

(d) that any interested person should contact the licensee to establish if he holds a dormant account with the licensee; and

(e) that the holder of a dormant account is entitled, subject to this Act, to claim repayment of the moneys in the account from the licensee.

(5) Where no transaction or instruction received is effected on a dormant account within ninety days from the date of a notification under subsection (2) or the date of a public notification under subsection (4), the licensee shall transfer the moneys in the dormant account to a special fund established for that purpose.

(6) A licensee shall state in its annual financial statements the total amount of moneys transferred to the special fund referred to in subsection (5) and the total

number of dormant accounts from which the moneys were transferred.

(7) A licensee shall keep a register of dormant accounts and shall enter in the register the following particulars:

(a) the name and address of the account holder;

(b) the account number;

(c) the date on which a notification under subsection (2) was sent to the account holder;

(d) the date on which the account was deemed to be a dormant account;

(e) the date on which moneys were transferred from the account to the special fund;

(f) the amount transferred from the account to the special fund; and

(g) if the moneys transferred to the special fund were repaid to the account holder, the date on which the moneys were repaid and the amount repaid.

Sections 20 to 22 repealed.

22. Sections 20, 21 and 22 of the principal Act are repealed.

Section 23 amended.

23. Section 23 of the principal Act is amended

(a) by designating the existing provision as subsection (1);

(b) in the existing provision, by deleting the words "and shall cease to carry on its business until the insurance has been reinstated or replaced"; and

(c) by inserting after the existing provision the following subsection:

"(2) A licensee who fails to effect a policy of insurance as required by the Commission under subsection (1), commits

an offence and is liable on summary conviction to a fine not exceeding $10,000.".

24. Section 25 of the principal Act is amended by repealing subsections (1) and (2). Section 25 amended.

25. Section 26 of the principal Act is amended by repealing paragraphs (a) and (c). Section 26 amended.

26. Section 28 of the principal Act is amended by deleting the words "into effect, and specifically, for the following purposes", by deleting paragraphs (a), (b) and (c) and by substituting the words "into effect." Section 28 amended.

27. The principal Act is amended by inserting after section 28 the following section: Section 28A inserted.

"Regulatory Codes. No. 12 of 2001

28A. Without limiting section 41 of the Financial Services Commission Act, 2001, the Commission shall issue Regulatory Codes under that section of the Act with respect to banking business and trust business.".

28. The First and Second Schedules to the principal Act are repealed. First and Second Schedules repealed.

Passed by the Legislative Council this 22nd day of September, 2006.

(Sgd.) V. INEZ ARCHIBALD,
Speaker.

(Sgd.) ALVA MC CALL,
Acting Clerk of the Legislative Council.