

No. 10 of 2018

VIRGIN ISLANDS

FINANCIAL SERVICES COMMISSION (AMENDMENT) ACT, 2018

ARRANGEMENT OF SECTIONS

Section

- 1... Short title.
- 2... Section 34A inserted.
- 3... Section 37 amended.

I Assent
(Sgd.) Augustus J. U. Jaspert,
Governor.
17th September, 2018

VIRGIN ISLANDS
No. 10 of 2018

An Act to amend the Financial Services Commission Act, 2001 (No. 12 of 2001).

[Gazetted 4th October, 2018]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

1. This Act may be cited as the Financial Services Commission (Amendment) Act, 2018.

Section 34A
inserted.

2. The Financial Services Commission Act (hereinafter referred to as “the principal Act”) is amended by inserting the following new section 34A

“Corporate
compliance.

34A. (1) Subject to section 34 and this section, the Commission may, upon receipt of an application in writing, approve a body corporate (hereafter referred to as “the applicant”) to undertake the duty of providing compliance function services for and on behalf of a licensee.

(2) No licensee shall engage the compliance function services of an applicant, unless

- (a) the licensee has submitted an application in writing identifying a senior officer within the licensee who shall have responsibility for overseeing the compliance function of the licensee; and
- (b) the senior officer is approved by the Commission as the person responsible for overseeing the licensee’s compliance function.

(3) An application received under subsection (1) shall only be considered and approved by the Commission if the Commission is satisfied that the following requirements have been met or will be met after the applicant is granted approval

- (a) the applicant is incorporated under the BVI Business Companies Act and has not been struck off or dissolved;
- (b) the applicant is physically resident in and carrying out its business within the Virgin Islands;
- (c) all of the applicant's employees are physically resident in the Virgin Islands and the absence of an employee from the Virgin Islands in any particular year does not exceed 90 days in aggregate;
- (d) the applicant has provided a written undertaking indicating that it will not assign or deploy any of its employees to perform compliance functions for and on behalf of a licensee unless such employees have been
 - (i) approved by the Commission for appointment as compliance officers in accordance with section 34 (3); and
 - (ii) appointed formally by the licensee in relation to which the Commission gave its approval;
- (e) the applicant's primary responsibility is to provide compliance function services to licensees that are based, and carrying on business, in or from within the Virgin Islands;
- (f) the applicant has, or will have within 180 days and before commencement of business, the relevant number of employees considered by the Commission to be qualified to perform compliance officer duties, having regard to the number, nature,

size and complexity of licensees the applicant intends to provide compliance function services to;

- (g) the applicant understands the type, nature and complexity of the business of the licensees which the applicant intends to provide compliance function services to; and
- (h) the Commission does not consider it to be against the public interest to grant approval.

(4) Where the Commission is not satisfied that one or more of the requirements outlined in subsection (3) has been met or will, if granted approval, be met, it may refuse to approve the application received pursuant to subsection (1).

(5) Where an applicant, after receiving approval under subsection (1), becomes aware that it no longer satisfies any of the requirements of subsection (3), it shall immediately notify the Commission of that fact, indicating whether it expects to satisfy the requirement concerned and, if so, within what time frame.

(6) Where the Commission receives a notification under subsection (5) or on its own motion discovers that an applicant no longer satisfies any requirement of subsection (3), it may

- (a) direct the applicant to remedy the requirement that is no longer satisfied within such period as the Commission considers fit, in which case the applicant's employees performing compliance functions for and on behalf of a licensee shall cease performing such functions within the period specified by the Commission or, if granted an extension under subsection (7), within the period of extension; or
- (b) withdraw the approval given to the applicant under subsection (1) and direct
 - (i) the applicant to cease providing compliance function services to licensees; and

- (ii) the applicant's compliance officers to cease performing compliance functions for and on behalf of licensees.

(7) The Commission may, for the purposes of subsection (6) (a) grant an extension of not more than 30 days (whether in aggregate or otherwise) to an applicant to remedy a requirement that it no longer satisfies.

(8) Where an applicant fails to comply with a directive under subsection (6) (a) within the period specified or within the period of extension granted under subsection (7) (if applicable), the Commission shall withdraw its approval of the applicant pursuant to subsection (6) (b).

(9) Where the Commission withdraws an approval given to an applicant under subsection (1), every employee of the applicant that had been approved for appointment as a compliance officer under section 34 (3) whose appointment is subsisting on the date of withdrawal of approval shall, subject to subsection (10), cease to function as a compliance officer.

(10) Subsection (9) is without prejudice to a compliance officer in the employment of the applicant applying to the Commission to be independently considered and approved to continue serving as the compliance officer of a licensee.

(11) An employee of an applicant that is approved for appointment as a compliance officer of a licensee shall not perform compliance functions for and on behalf of a licensee other than the licensee for which he or she has been approved and appointed, unless the Commission approves otherwise.

(12) Nothing contained in this section shall be construed as absolving an employee of an applicant appointed as a compliance officer of a licensee, from liability for any compliance failures or breaches attributable to a compliance officer under this Act, the Regulatory Code or other enactment, or in relation to the licensee.

(13) The Regulatory Code may

- (a) provide additional requirements in relation to the approval by the Commission of an application made under this section; and

- (b) require applicants under this section to provide such reports, including annual reports, to the Commission regarding the performance of their duties or other matters concerning the compliance officers in their employment as the Commission considers fit.

(14) For the purposes of subsections (1), (2), (3) (e), (f) and (g) and (6) (b) (i), “compliance function services” refers to the provision by an applicant of compliance officers approved by the Commission to a licensee to perform compliance functions for and on behalf of the licensee.”.

Section 37
amended.

- 3. Section 37 of the principal Act is amended by repealing subsection (8).

Passed by the House of Assembly this 14th day of August, 2018.

(Sgd.) Archibald Christian,
Deputy Speaker.

(Sgd.) Phyllis Evans,
Clerk of the House of Assembly.