

VIRGIN ISLANDS
FINANCING AND MONEY
SERVICES ACT, 2009

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NO. 9 OF 2009

**FINANCING AND MONEY
SERVICES ACT, 2009**

**Virgin
Islands**

I ASSENT



**DAVID PEAREY
Governor**

29th June, 2009

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VIRGIN ISLANDS

No. 9 of 2009

An Act to provide for the licensing, registration and supervision of persons who carry on financing business and money services business and for connected matters.

[Gazetted _____, 2009]

ENACTED by the Legislature of the Virgin Islands as follows:

PRELIMINARY

- Short title and commencement. 1. (1) This Act may be cited as the Financing and Money Services Act, 2009.
(2) The provisions of this Act come into force on such date or dates as may be appointed by the Governor by Proclamation published in the *Gazette* and different dates may be appointed for different provisions and different purposes.
- Interpretation. 2. (1) In this Act, unless the context otherwise requires,
 - “approved form” means a form approved by the Commission under the Financial Services Commission Act, 2001;
 - “auditor” means a person qualified under the Regulatory Code to act as an auditor under this Act;
 - “BVI business company” means a company that is on the Register

No. 12 of 2001

of Companies maintained under the BVI Business Companies Act, 2004;

No. 16 of 2004

“BVI licensee” means a licensee that is a BVI business company;

“Cabinet” means the Cabinet established under the Virgin Islands Constitution Order 2007;

U. K. S. I. 2007
No. 1678

“capital resources”, with respect to a licensee, means its capital resources calculated in accordance with the Regulatory Code;

“Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act, 2001;

“Court” means the High Court;

“credit” includes a cash loan, a deferred payment and any other form of financial arrangement;

“director” has the meaning specified in the BVI Business Companies Act, 2004;

No.16 of 2004

“document” means a document in any form and includes

- (a) any writing or printing on any material,
- (b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium, including discs and tapes,
- (c) books and drawings, and
- (d) a photograph, film, tape, negative or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced,

and without limiting the generality of paragraphs (a) to (d), includes any application to, or order of, a court or tribunal, any other legal process and any notice;

“financial statements” has the meaning specified in section 21;

“financial year” in relation to financial statements, has the meaning specified in section 20;

“financing agreement” has the meaning specified in section 4(1)(a);

“financing business” has the meaning specified in section 5;

“financing lease” has the meaning specified in section 4(1)(c);

“foreign company” means a company incorporated, registered or formed outside the Virgin Islands, but excludes a BVI business company;

“lease” has the meaning specified in section 4(1)(b);

“licence” means a financing licence or a money services licence;

“licensee” means a BVI business company or foreign company holding a licence under this Act;

“money services business” has the meaning specified in section 6;

“post office” means a post office established under the Post Office Act;

“prescribed” means prescribed in the Regulatory Code;

“public interest” shall be construed in accordance with subsection (2);

“Regulations” means the Regulations made under section 49;

“Regulatory Code” means the Regulatory Code issued by the Commission under the Financial Services Commission Act, 2001;

“resident in the Virgin Islands” is to be construed in accordance with regulations made pursuant to subsection (3);

“senior officer” means a person appointed to perform supervisory or managerial functions with respect to a licensee; and

“significant interest” in respect of a company, means a holding or interest in the company, or in any holding company of the company 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 ten per cent or more of the voting rights of that company at a meeting of the company or of its members;
- (b) to a share of ten per cent or more in any distribution made by the company;
- (c) to a share of ten per cent or more in any distribution of the surplus assets of the company; or
- (d) to appoint or remove one or more directors of the company.

(2) Where the Commission is permitted or required by this Act to consider the "public interest", the "public" includes

- (a) the public inside and outside the Virgin Islands; and
- (b) any person who has a legitimate interest in the decision to be made by the Commission.

(3) Unless the context otherwise requires, any reference to this Act includes a reference to the Regulations made under this Act.

(4) The incorporation or continuation of a company in the Virgin Islands does not, of itself, result in the company being resident in the Virgin Islands for the purposes of this Act.

(5) Subject to subsection (4), the Regulations shall make provision for determining whether a person is resident in the Virgin Islands for the purposes of this Act.

(6) Notwithstanding the definition of "senior officer" in subsection (1), the approval of a director or senior officer under section 13 may be effected in accordance with such guidelines as the Commission may issue.

3. (1) This Act does not apply to a person that holds a general banking licence issued under the Banks and Trust Companies Act, 1990.

(2) A post office is not required to obtain a money services licence in respect of any money services business that it carries on.

Exemption from
application of
this Act.
No. 9 of 1990

(3) Notwithstanding subsection (2),

(a) a post office, when carrying on money services business, is deemed to be a "licensee" for the purposes of this Act and the Financial Services Commission Act, 2001; and

(b) this Act and the Financial Services Commission Act, 2001 are modified with respect to a post office, when carrying on money services business, to the extent set out in Schedule 1.

No. 12 of 2001

Schedule 1

Definition of "financing agreement", "lease" and "financing lease".

4. (1) For the purposes of this Act,

(a) a "financing agreement" is an agreement whereby a person provides, or promises to provide, another person ("the borrower") with credit;

(b) a "lease" is an agreement whereby a person ("the lessor") grants another person ("the lessee") the right to possession and use of any moveable property for an agreed period in return for periodic payments; and

(c) a "financing lease" is a lease whereby the property to be leased is acquired by the lessor from a third party ("the supplier") for the purposes of leasing it to the lessee under the lease.

(2) For the purposes of subsection (1)(c), the supplier is a third party notwithstanding that the supplier may be a subsidiary or holding company of the lessor, in the same group of companies as the lessor or otherwise connected or associated with the lessor.

Definition of "financing business".

5. (1) Subject to subsection (2), a person carries on financing business if

(a) he or she carries on, in the Virgin Islands, the business of providing credit under financing agreements to borrowers resident in the Virgin Islands;

(b) in the course of any business carried on by him or her in the Virgin Islands, he or she provides credit under a financing agreement, in an amount or to a value exceeding \$50,000 to a borrower in the Virgin Islands;

(c) he or she carries on, in the Virgin Islands, the business of leasing property to a person resident in the Virgin Islands under a financing lease; or

(d) he or she carries on such other business or activity as may be

specified in the Regulations as financing business.

(2) The Regulations may provide for the exemption of specified classes or descriptions of activity or business from the definition of “financing business”.

6. A person carries on money services business if that person carries on the business of

Meaning of
“money services
business”.

(a) providing any of the following services:

- (i) money transmission services;
- (ii) cheque cashing services;
- (iii) currency exchange services;
- (iv) the issuance, sale or redemption of money orders or traveller’s cheques; or
- (v) other services as may be specified in the Regulations; or

(b) operating as an agent or franchise holder of a person carrying on a business specified in paragraph (a).

PART I

REGULATION AND SUPERVISION OF FINANCING AND MONEY SERVICES BUSINESS

7. (1) A person shall not carry on, or hold himself or herself out as carrying on, financing business unless the person is a BVI business company or foreign company licensed under section 9.

Prohibition on
unauthorised
financing and
money services
business.

(2) A person shall not carry on, or hold himself or herself out as carrying on, money services business in or from within the Virgin Islands, unless the person is a BVI business company or foreign company licensed under section 9.

(3) For the purposes of subsection (2), a BVI business company that carries on, or holds itself out as carrying on, money services business outside the Virgin Islands is deemed to carry on, or hold itself out as carrying on, money services business from within the Virgin Islands.

(4) Subsections (1) and (2) do not apply to any person exempted from the relevant subsection by virtue of Regulations made under section 40C of the Financial Services Commission Act, 2001.

(5) A person who contravenes subsection (1) or (2) commits an offence.

Licensing

Categories of licence.

8. (1) A licence issued under this Act shall be in one of the following categories:

(a) a financing licence, authorising the holder to carry on financing business; or

(b) a money services licence, authorising the holder to carry on money services business.

(2) A BVI business company or foreign company may be granted both a financing licence and a money services licence.

(3) A licence issued under this Act

(a) shall state the category of licence issued to the holder, and

(b) is subject to such conditions as may be imposed by the Commission under section 40B of the Financial Services Commission Act, 2001.

No. 12 of 2001

Application for and issuance of licence.

9. (1) Application for a licence may be made to the Commission by a BVI business company or a foreign company.

(2) Subject to subsections (3) and (4), the Commission may issue a licence to an applicant if it is satisfied that

(a) the applicant intends, if issued with the licence, to carry on the licensed business;

(b) the applicant satisfies the requirements of this Act and the Regulatory Code with respect to the application;

(c) the applicant will, on the issuance of the licence, be in compliance with this Act, the Regulatory Code and any other enactment or practice direction applicable to the applicant;

(d) the applicant, the applicant's directors and senior officers and

any persons having a significant interest in the applicant satisfy the Commission's fit and proper criteria;

- (e) the organisation, management and financial resources of the applicant are, or on the issuance of the licence will be, adequate for the carrying on of the licensed business; and
- (f) issuing the licence is not against the public interest.

(3) Without limiting the discretion given to the Commission under subsection (2), the Commission may refuse to issue a licence to an applicant if

- (a) it is of the opinion that any person having a share or other interest in the applicant, whether legal or equitable, does not satisfy the Commission's fit and proper criteria; or
- (b) it is not satisfied with any of the matters outlined in subsection (2).

(4) A licence issued under subsection (2) shall

- (a) be in writing and in the approved form; and
- (b) be prominently displayed on the premises where the licensed business is carried on.

Obligations of, and Restrictions on, Licensees

10. (1) A licensee shall, at all times, maintain its business in a financially sound condition by

Maintenance of financially sound condition.

- (a) having assets,
- (b) providing for its liabilities, and
- (c) generally conducting its business,

so as to be in a position to meet its liabilities at all times.

(2) If a licensee forms the opinion that it does not comply with subsection (1), it shall forthwith notify the Commission in writing.

(3) A licensee that contravenes subsection (2) commits an offence.

Modification of sections 12 to 14 with respect to foreign companies.

11. The requirements of sections 12 to 14 are disapplied or modified with respect to a licensee that is a foreign company in such circumstances, and to such extent, as may be specified in the Regulatory Code.

Maintenance of capital resources and deposit.

12. (1) A licensee shall ensure that at all times its capital resources are maintained in such amount as may be prescribed.

(2) If the capital resource of a licensee fall below such amount as it is required to maintain under subsection (1), it shall forthwith notify the Commission in writing.

(3) A licensee shall keep deposited or invested such sum as may be prescribed and in such manner as may be prescribed.

(4) A licensee who contravenes subsection (2) or (3), or in the case of a licensee that is a foreign company, subsection (2) or (3) as modified by the Regulatory Code, commits an offence.

Appointment and termination of directors and senior officers.

13. (1) A licensee shall not appoint a director or senior officer without the prior written approval of the Commission and the Commission shall not grant its approval unless it is satisfied that the person concerned satisfies the Commission's fit and proper criteria and any other criteria required pursuant to the Regulatory Code or any guidelines issued by the Commission.

(2) A licensee shall, within seven days after a director or senior officer ceases to hold office with, or to be employed by, the licensee, provide written notice to the Commission of that fact.

(3) The notice provided under subsection (2) shall include a statement of the reasons for the director or senior officer ceasing to hold office with, or to be employed by, the licensee, including any other matter required under the Regulatory Code or any guidelines issued by the Commission.

(4) A licensee that contravenes subsection (1) or (2), or in the case of a licensee that is a foreign company, subsection (1) or (2) as modified by the Regulatory Code, commits an offence.

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 or her interest in the licensee, or any part of his or her 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, including of its share structure, 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 or her 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, any person who will acquire a significant interest in the licensee satisfies the Commission's fit and proper criteria.

(6) Subject to section 11, a person who knowingly contravenes subsection (1) or (2) or a licensee that contravenes subsection (3), commits an offence.

(7) A licensed foreign company commits an offence if it contravenes this section, as modified by the Regulatory Code.

15. (1) A licensee shall establish and maintain a place of business in the Virgin Islands, approved by the Commission, which shall be its principal office in the Virgin Islands for its licensed business.

Licensee to establish and maintain principal office.

(2) A licensee shall not, without the prior written approval of the Commission, change the location of its principal office in the Virgin Islands.

(3) A licensee that contravenes subsection (1) or (2) commits an offence.

16. (1) A licensee shall not, without the prior written approval of the Commission, open, maintain or carry on business through a branch or a representative or contact office

Authorisation to open branch or representative office.

(a) in the case of a BVI licensee, within or outside the Virgin

Islands; and

(b) in the case of a licensee that is a foreign company, within the Virgin Islands.

(2) A licensee that contravenes subsection (1) commits an offence.

Corporate Governance

Directors of BVI
licensee.

17. (1) A BVI licensee shall at all times have at least two directors.

(2) A person shall not be appointed, or accept appointment, as the director of a BVI licensee unless that person is an individual.

(3) The Regulatory Code may provide for the duties and responsibilities of the directors of a licensee.

Management
systems and
controls.

18. (1) A licensee shall take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors, senior officers and key functionaries so that

(a) it is clear who has which of those responsibilities; and

(b) the business and affairs of the licensee can be adequately monitored and controlled by the directors and its relevant senior officers.

(2) A licensee shall establish and maintain such systems and controls as are appropriate to its business.

(3) The systems and controls established and maintained under subsection (2) shall take into account

(a) the nature, scale, complexity and diversity of the licensee's business; and

(b) the degree of risk associated with each area of its business.

(4) Subsections (1), (2) and (3) apply to a licensee that is a foreign company with respect to its business in the Virgin Islands.

(5) Without limiting this section, the Regulatory Code may specify or provide for

(a) the systems and controls, including internal controls, to be maintained by a licensee;

(b) policies and procedures to be maintained by licensees with respect to the assessment and management of risk; and

(c) principles and rules of corporate governance to be adhered to by licensees.

(6) A licensee that contravenes subsection (1) or (2) commits an offence.

19. (1) Subject to subsection (2), a BVI licensee shall keep at its principal office in the Virgin Islands records that are sufficient Maintenance of records.

(a) to show and explain its transactions;

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

(c) to enable it to prepare such financial statements and make such returns as it may be required to prepare and make under this Act; and

(d) if applicable, to enable its financial statements to be audited in accordance with this Act.

(2) A licensee that is a foreign company shall

(a) keep at its principal office in the Virgin Islands, records that are sufficient

(i) to show and explain all transactions in respect of the business it carries on in the Virgin Islands; and

(ii) to enable it to prepare such returns as it is required to prepare and make under this Act and the Regulatory Code; and

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

(3) The Regulatory Code may prescribe

(a) the form and manner in which the records specified in subsections (1) and (2) are to be maintained; and

- (b) other records required to be maintained by a licensee under this Act and the form, manner and place in which such records are to be maintained.

(4) A licensee and, where the licence of a licensee is revoked, a former licensee, shall retain the records required to be maintained under this section for a period of at least five years after the completion of the transaction to which they relate.

(5) A licensee, or former licensee, that contravenes this section commits an offence.

Financial Statements and Audit

Meaning of
"financial year".

20. (1) A BVI licensee shall, no later than eleven months after the date that its licence is issued to it, provide the Commission with a notice of its financial year end in accordance with the requirements of the Regulatory Code.

(2) Subject to subsection (3), for the purposes of this Act, the financial year of a BVI licensee is,

- (a) in the case of its first financial year, the period from the date of its incorporation to the last day of the month specified in the notice provided to the Commission under subsection (1); and
- (b) in the case of subsequent financial years, the period of one year commencing on the day immediately after the end of its previous financial year.

(3) Subsection (1) applies whether or not financial statements have actually been prepared for the financial year in question.

(4) The Commission may, on the application of a BVI licensee, in respect of any financial year, direct that the financial year shall be a period, not less than three months and not exceeding fifteen months, that is different to that determined in accordance with subsection (1).

Meaning of
"financial
statements".

21. In this Act and in the Regulatory Code, "financial statements", in relation to a BVI 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).

22. (1) A BVI licensee shall prepare financial statements for each financial year that comply with the Regulatory Code and with such accounting standards as may be prescribed.

Preparation of financial statements.

(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

- (a) be approved by the directors of the BVI 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.

23. (1) The financial statements of a BVI licensee signed by a director in accordance with section 22 shall be submitted to the Commission within six months of the end of the financial year to which they relate accompanied by

Submission of financial statements to the Commission.

- (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; and
- (d) 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 considered not to have been submitted to the Commission.

(3) A BVI licensee that contravenes this section commits an offence.

Submission of periodic financial statements and report.

24. (1) A BVI licensee shall, in respect of such periods of less than one year as may be prescribed, submit to the Commission, within such time period as may be prescribed,

(a) financial statements, that may be unaudited;

(b) a return in the approved form; and

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

(2) In this section, “financial statements” has the meaning specified in section 21 with the substitution of the period for which the financial statements are prepared for “financial year”.

(3) A BVI licensee that contravenes this section commits an offence.

Extension of time.

25. (1) The Commission may, on the application of a BVI licensee, extend the time for compliance with section 23 or section 24 for a period of one month, 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.

26. (1) If the Commission considers that any document submitted by a BVI licensee under section 23 or section 24 is inaccurate or incomplete or is not prepared in accordance with this Act or the Regulatory Code, it may by written notice require the licensee to amend the document or to submit a replacement document within such period as the Commission may specify in the written notice.

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

BVI licensee to appoint auditor.

27. (1) A BVI licensee shall appoint and at all times have an auditor for the purposes of auditing its financial statements.

(2) An auditor shall not be appointed under subsection (1) unless

(a) he or she is qualified under the Regulatory Code to act as the

auditor of a BVI licensee for the purposes of this Act;

(b) he or she has consented to act as auditor, and

(c) the Commission has given its prior written approval to his or her appointment in accordance with such guidelines as the Commission may issue.

(3) The Commission shall not approve the appointment of an auditor under subsection (2) unless it is satisfied that he or she has sufficient experience and is competent to audit the financial statements of the licensee.

(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 BVI licensee shall, within fourteen days of the appointment of its auditor, submit a notice of appointment in the approved form to the Commission.

(6) A BVI licensee shall make such arrangements as are necessary to enable its auditor to audit its financial statements in accordance with this Act and the Regulatory Code, including

(a) giving the auditor a right of access at all reasonable times to its financial records and to all other documents and records, and

(b) by providing the auditor with such information and explanations,

as, in either case, the auditor reasonably requires for the purposes of the audit.

(7) A BVI licensee commits an offence if,

(a) subject to subsection (8), it does not have an auditor;

(b) it appoints an auditor contrary to subsection (2); or

(c) it contravenes subsection (5) or (6).

(8) Where, for whatever reason, a person ceases to be the auditor of a BVI licensee, the licensee does not commit an offence under subsection (7) if it appoints another auditor in accordance with this section within two months of the date that the person who was previously appointed auditor ceased to hold that appointment.

Audit and audit report.

28. (1) The auditor of a BVI licensee shall carry out sufficient investigation to enable him or her to form an opinion on

- (a) the financial statements of the licensee, and
- (b) the licensee's compliance with its obligations under the Anti-money Laundering Regulations, 2008, Anti-Money Laundering and Terrorist Financing Code of Practice, 2008, Regulatory Code and such other enactments, codes or guidelines relating to money laundering or the financing of terrorism as may be prescribed,

and prepare an audit report in compliance with the Regulatory Code.

(2) Upon completion of his or her audit under subsection (1), the auditor shall provide an audit report to the licensee complying with the Regulatory Code.

(3) 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 such other person as may be nominated by the Commission, on such matters as the Commission may determine.

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

(5) Subsections (3) and (4) apply to a BVI licensee and a licensee that is a foreign company.

Obligations of auditors.

29. (1) Notwithstanding anything to the contrary in any other enactment, the auditor of a BVI licensee shall report immediately to the Commission any information relating to the affairs of the licensee that he or she has obtained in the course of acting as its auditor that, in his or her opinion, suggests that

- (a) the licensee is insolvent or is likely to become insolvent or is likely to be unable to meet its obligations;
- (b) a criminal offence has been or is being committed by the licensee or in connection with its business;
- (c) the relevant licensee is in breach of section 10 or 12;
- (d) a serious breach of this Act or the Anti-money Laundering Regulations, 2008, Anti-money Laundering and Terrorist Financing Code of Practice, 2008, Regulatory Code or such other enactments, codes or guidelines relating to money laundering or the financing of terrorism as may be applicable

has occurred in respect of the licensee or its business.

(2) Where the appointment of an auditor of a BVI licensee is terminated, or the auditor resigns, the auditor whose appointment has been terminated, or who has resigned, shall

(a) forthwith inform the Commission of the termination of his or her appointment, or his or her resignation, and disclose to the Commission the circumstances that gave rise to such termination or resignation; and

(b) if, but for the termination of his or her appointment, or his or her resignation, he or she would have reported information to the Commission under subsection (1), he or she shall report the information concerned to the Commission, as if his or her appointment had not been terminated or, he or she had not resigned.

(3) The Commission may require an auditor of a BVI licensee to discuss any audit he or she 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 any information to the Commission under subsection (1), (2) or (3), he or she is deemed not to be in contravention of any enactment, rule of law, agreement or professional code of conduct to which he or she is subject and no civil, criminal or disciplinary proceedings shall lie against him or her 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 subsection (1), (2) or (3) does not confer upon any other person a right of action against the auditor or former auditor which, but for that failure, he or she would not have had.

(6) An auditor or former auditor who contravenes subsection (1) or (2) commits an offence.

30. (1) Where the Commission is satisfied that the auditor of a BVI licensee has failed to fulfill his or her obligations under this Act 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 27.

Powers of Commission concerning appointment of auditor.

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

(3) If a BVI licensee fails to appoint an auditor, the Commission may

appoint a qualified person to act as the 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 and the licensee shall be responsible for his or her costs and fees.

Group accounts. 31. (1) Where a BVI 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 Code may provide for the form and content of group accounts to be submitted under this section.

General Supervisory Provisions

Regulations may provide for approval of individuals for appointment by licensee. 32. Without prejudice to the provisions of this Act, the Regulations may provide for circumstances in which an individual is required to be approved by the Commission for appointment by a licensee, whether as an employee, as an agent or in such other capacity as may be specified in the Regulations.

Professional indemnity and other insurance. 33. (1) A licensee shall at all times maintain such professional indemnity and other insurance as may be prescribed.

(2) A licensee that contravenes subsection (1) commits an offence.

Submission of returns and reporting of information to Commission. 34. (1) A licensee shall report to the Commission such information, or submit to the Commission such returns or documents, as may be prescribed within such time and verified in such form and manner as may be prescribed.

(2) If the Commission considers that any document submitted by a licensee under subsection (1) is inaccurate or incomplete or is not prepared in accordance with this Act or the Regulatory Code, it may by written notice require the licensee to amend the document or to submit a replacement document within such period as may be prescribed in the notice.

(3) A licensee who contravenes subsection (1) or who fails to comply with a notice issued under subsection (2) commits an offence.

Advertisements. 35. (1) A licensee shall not issue, or cause or permit to be issued, any advertisement, statement, brochure or other similar document which is misleading or which contains an incorrect statement of fact.

(2) If the Commission is of the opinion that any advertisement, statement, brochure or other similar document issued, or to be issued, by or on behalf of a licensee is misleading, contains an incorrect statement of fact or is contrary to the public interest, it may

- (a) direct the licensee in writing not to issue the document or to withdraw it; or
- (b) authorise the licensee in writing to issue the document with such changes as the Commission may specify.

(3) A licensee that issues or causes or permits to be issued an advertisement, statement, brochure or other similar document intending it to mislead or knowing that it contains an incorrect statement of fact, commits an offence.

(4) A licensee that issues or causes or permits to be issued an advertisement, statement, brochure or other similar document

- (a) contrary to a direction or authorisation of the Commission under subsection (2), or
- (b) contrary to any provision of the Regulatory Code that is stated in the Regulatory Code as a provision to which this subsection applies,

commits an offence.

36. (1) A licensee shall take all reasonable steps to protect its customers and to ensure that its customers are treated fairly at all times. Market conduct.

(2) Without limiting subsection (1), the Regulatory Code may specify market conduct rules to be followed by licensees or particular categories or descriptions of licensee, including rules providing for the disclosure of information to customers and prospective customers.

(3) A licensee that fails to comply with subsection (1) commits an offence.

37. (1) Notwithstanding anything contained in any other enactment, a licensee shall not, without the prior written approval of the Commission, Change of name.

- (a) in the case of a BVI licensee, change its corporate name or the name under which it carries on business; or
- (b) in the case of a licensee that is a foreign company, change the name under which it carries on business in the Virgin Islands.

(2) A licensee that is a foreign company shall forthwith notify the Commission in writing if it changes its corporate name or the name under which it carries on business.

(3) A licensee that contravenes subsection (1) or (2) commits an offence.

Commission may require licensee to change name under which it carries on business.

38. (1) The Commission may, by written notice, direct a BVI licensee to change the name under which it is incorporated or under which it carries on business and a licensee that is a foreign company to change the name under which it carries on business in the Virgin Islands, if the Commission is of the opinion that the name is

(a) identical to that of any other person, whether within or outside the Virgin Islands, or which so nearly resembles that name as to be likely to deceive; or

(b) otherwise misleading or undesirable.

(2) A licensee who fails to comply with a direction of the Commission made under subsection (1) commits an offence.

Bearer shares.
No. 16 of 2004

39. (1) A BVI licensee shall not issue any bearer shares, and for this purpose, "bearer share" has the meaning specified in the BVI Business Companies Act, 2004.

(2) A licensee that contravenes sub-section (1) commits an offence.

PART II

MISCELLANEOUS PROVISIONS

Exemption from application of Cap. 200.
Cap. 200

40. For purposes of this Act, the Business, Professions and Trade Licenses Act shall not apply to a BVI business company or foreign company licensed under this Act.

Administration

Applications.

41. (1) Every application made under this Act shall

(a) be in writing and, where a form has been approved under the Financial Services Commission Act, 2001, shall be in the approved form; and

No. 12 of 2001

(b) have included with it such documents or information as may be specified by this Act or the Regulatory Code.

(2) The Commission may require an applicant to

(a) provide it with such documents and information, in addition to those specified in subsection (1)(b), as it reasonably requires to determine the application and any information required shall be in such form as the Commission may specify; and

(b) verify any document and information provided in support of an application in such manner as the Commission may specify.

(3) If, before the determination of an application by the Commission,

(a) there is a material change in any information or documentation provided by or on behalf of the applicant to the Commission in connection with the application, or

(b) the applicant discovers that any such information or documentation is incomplete, inaccurate or misleading,

the applicant shall forthwith give the Commission written particulars of the change or of the incomplete, inaccurate or misleading information or documentation.

(4) An applicant that contravenes subsection (3) commits an offence.

42. (1) The Commission shall maintain

Registers.

(a) a Register of Licensees, and

(b) such other registers as may be specified in the Regulations,

containing such information as may be specified in the Regulations.

(2) The registers and the information contained in any document filed with the Commission may be kept in any form the Commission considers fit including, either wholly or partly, by means of a device or facility

(a) that records or stores information in magnetic or electronic form; and

(b) that permits the information to be inspected and reproduced in legible and useable form.

Inspection of registers and information held by Commission.

43. (1) Subject to subsection (2), a person may

- (a) inspect the registers and any records kept by the Commission that are specified as public records in the Regulations; and
- (b) require the Commission to furnish him or her with a copy or certified copy of, or extract from, any document that he or she would be entitled to inspect under paragraph (a), subject to the payment of such fee as may be prescribed.

(2) In respect of documents filed or kept in electronic form, the rights granted under subsection (1) extend only to reproductions of those documents in useable written form produced in such manner as the Commission considers appropriate.

(3) A copy or reproduction of, or extract from, any document or record that is kept by the Commission and certified as such by it is admissible in evidence in all legal proceedings to the same extent as the original document.

Electronic filing of documents.

44. (1) In this section, a document in electronic form is a document in a computer processable message format that is capable of being transmitted electronically.

(2) The Regulations may provide for a system enabling documents required or permitted to be filed with the Commission under this Act to be filed in electronic form.

(3) A system for the filing of documents in electronic form shall provide for

- (a) the criteria for authorising persons to file documents in electronic form; and
- (b) the security and authentication of the documents filed.

Fees, penalties and charges payable to Commission.
No. 12 of 2001

45. (1) The fees and penalties specified in Regulations made pursuant to the Financial Services Commission Act, 2001 in relation to this Act are payable to the Commission.

(2) The Commission may refuse to take any action required of it with respect to a licensee under this Act for which a fee is payable until the fee and any other fees, penalties and charges payable by, or in respect of, the licensee have been paid.

(3) Any fee, charge or contribution which is owed to the Commission under this Act may be recovered in civil proceedings as a debt due to the Commission.

Offences and Penalties

46. (1) A person who makes or assists in making a representation, statement, report or return, whether oral or written, False or misleading representations, statements, reports or returns.

(a) that is required or permitted by this Act to be made to or, in the case of a document, filed with the Commission, and

(b) that

(i) contains a false statement of a material fact, or

(ii) omits to state a material fact required to be provided to the Commission or necessary to avoid the statement or document being materially misleading,

commits an offence.

(2) A person does not commit an offence under subsection (1) if he or she did not know and, with the exercise of reasonable diligence, could not have known that the representation or statement contained a false statement or omitted a material fact.

47. (1) A person who commits an offence under the section set out in Column 1 of Schedule 2 is liable on summary conviction, Punishment of offences. Schedule 2

(a) if an individual, to the penalty set out opposite the offence in column 4 of Schedule 2; or

(b) if not an individual, to the penalty set out opposite the offence in column 3 of Schedule 2.

(2) Where an offence under a section set out in Column 1 of Schedule 2 is committed by a body corporate, a director of that body corporate who knowingly authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on conviction to the same penalty as the body corporate of which he or she is a director.

48. Where a person is convicted of an offence under this Act, the court having jurisdiction to try the offence may, in addition to any punishment it may impose, order that person to comply with the provision of this Act for the contravention of which he or she has been convicted. Order to comply.

49. (1) The Cabinet may, on the advice of the Commission, make Regulations Regulations.

- (a) generally for giving effect to this Act and for its administration by the Commission;
- (b) specifically in respect of anything required or permitted by this Act to be contained in the Regulations;
- (c) applying different provisions in relation to different persons, circumstances or cases as permitted under this Act; and
- (d) providing, subject to subsection (2), for offences and penalties for any contravention of, or failure to comply with, specified requirements of the Regulations.

(2) A penalty provided for an offence under the Regulations shall not exceed,

- (a) in the case of a fine, the sum of twenty thousand dollars; and
- (b) in the case of a period of imprisonment, the term of two years.

Final Provisions

Transitional provisions.

50. (1) In this section,

- (a) "commencement date" means the date that this Act comes into force; and
- (b) "relevant period" means the period starting on the commencement date and ending on a date six months after the commencement date.

(2) A person who, immediately before the commencement date, was carrying on financing business or money services business does not commit an offence under section 7 and shall be deemed not to be carrying on unauthorised financial services business within the meaning of the Financial Services Commission Act, 2001 by virtue of him or her carrying on that business

No. 12 of 2001

- (a) during the relevant period; or
- (b) if the person applies for a licence during the relevant period, on or from the commencement date until the date that the application is determined, including as a result of any appeal to the Appeal Board of the Commission, or is withdrawn.

51. Schedule 2 to the Financial Services Commission Act, 2001 is amended by adding after item 6 under Part 1 (Regulatory Legislation), the following item:

Consequential amendment to No. 12 of 2001.

“(7) Financing and Money Services Act, 2009”.

SCHEDULE 1

[Section 3(3)]

DISAPPLICATION AND MODIFICATION OF THIS ACT AND THE FINANCIAL SERVICES COMMISSION ACT, 2001

Financing and Money Services Act, 2009

This Act is disappplied and modified with respect to a post office, when carrying on money services business, to the extent specified below:

1. Sections 10, 12, 13, 14, 15, 17, 21 to 31, 34(3), 35(3), 35(4), 37, 38, 45, 46, 47 and 48 do not apply to a post office.
2. Section 16 does not apply to a post office, but a post office shall provide the Commission with written notice,
 - (a) within two months of the commencement of this Act, of the address of every office in the Virgin Islands from which it carries on money services business; and
 - (b) as soon as reasonably practicable after ceasing or commencing to carry on money services business at an office, of the details thereof.
3. Sections 18, 19(1)(a) and (b), (3) and (4) apply with respect to the money services business of a post office.

Financial Services Commission Act, 2001

Sections 33, 33A, 33B, 33D(1)(b) to (d), 33D(3), 35(4) to (7), 36, 36A, 37, 37A, 38, 39, 40, 40B, 40D, 50A to 50D and 54 to 57A of the Financial Services Commission Act do not apply to a post office, when carrying on money services business.

SCHEDULE 2

[Section 47]

OFFENCES UNDER THIS ACT

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>	<u>Column 4</u>
<i>Section of Act creating offence</i>	<i>General nature of offence</i>	<i>Penalty (corporate body)</i>	<i>Penalty (individual)</i>
7 (5)	Person carrying on, or holding himself out as carrying on, financing business or money services business without a licence.	\$60,000	\$40,000 or imprisonment for three years, or both
10 (3)	Licensee failing to notify the Commission in writing of non-compliance with section 10 (1).	\$25,000	\$15,000
12 (4)	Licensee failing to notify the Commission in writing its capital resources have fallen below required minimum.	\$20,000	\$20,000
12 (4)	Licensee failing to keep prescribed sum deposited or invested in prescribed manner.	\$20,000	\$15,000
13 (4)	Licensee appointing director or senior officer without approval of Commission.	\$15,000	\$10,000

13 (4)	Licensee failing to provide notice to Commission that director or senior officer has ceased to hold office.	\$10,000	\$10,000
13 (4)	Licensee that is foreign company failing to comply with section 13(1) or (2) as modified by Regulatory Code.	\$15,000	\$10,000
14 (6)	Person selling, transferring, charging or otherwise disposing of significant interest in licensee without prior written approval of Commission contrary to section 14(1).	\$30,000	\$20,000
14 (6)	Person acquiring significant interest in licensee without prior written approval of Commission contrary to section 14 (2).	\$30,000	\$20,000
14 (6)	Licensee contravening section 14(3).	\$30,000	\$20,000
16 (7)	Licensee that is foreign company contravening section 14 as modified by Regulatory Code.	\$30,000	\$20,000
15 (3)	Licensee failing to establish or maintain place of business approved by Commission.	\$20,000	\$15,000
15 (3)	Licensee changing location of principal office without approval of Commission.	\$20,000	\$15,000
16 (2)	Licensee opening, maintaining or carry on business through a branch	\$15,000	\$10,000

	or a representative or contact office contrary to section 16 (1).		
18 (6)	Licensee failing to take reasonable care to maintain clear and appropriate apportionment of significant responsibilities among directors, senior officers and key functionaries.	\$10,000	\$10,000
18 (6)	Licensee failing to establish and maintain systems and controls appropriate to business.	\$20,000	\$15,000
19 (5)	Licensee or former licensee contravening section 19.	\$40,000	\$30,000
23 (3)	BVI licensee failing to submit audited financial statements to Commission in accordance with section 23.		\$10,000
24 (3)	BVI licensee failing to submit financial statements to Commission in accordance with section 24.	\$10,000	\$10,000
27 (7) (a)	BVI licensee failing to have an auditor.	\$15,000	\$10,000
27 (7) (a)	BVI licensee appointing an auditor contrary to section 27 (2).	\$10,000	\$10,000
27 (7) (a)	BVI licensee failing to make arrangements necessary to enable auditor to audit financial statements.	\$15,000	\$10,000

29 (6)	Auditor or former auditor failing to report to Commission in accordance with section 29(1) or (2).	\$15,000	\$15,000
33	Licensee failing to maintain professional indemnity and other insurance as prescribed.	\$40,000	\$25,000
34 (4)	Licensee failing to report information or file documents or returns with Commission contrary to section 34(1).	\$10,000	\$10,000
34 (3)	Licensee who fails to comply with notice issued by Commission under section 34 (3).	\$10,000	\$10,000
35 (3)	Licensee issuing or causing or permitting to be issued, advertisement, statement, brochure or other similar document intending it to mislead or knowing that it contains an incorrect statement of fact.	\$60,000	\$25,000 or imprisonment for one year, or both
35 (4)	Licensee issuing or causing or permitting to be issued advertisement, statement, brochure or document contrary to direction or authorisation of Commission or Regulatory Code.	\$60,000	\$25,000 or imprisonment for one year, or both
36 (3)	Failure to take reasonable steps to protect and ensure fair treatment of customers.	\$10,000	\$10,000
37 (3)	Licensee changing corporate name or name	\$10,000	\$10,000

	under which carries on business contrary to section 37(1).		
37 (3)	Licensee that is a foreign company changing name under which it carries on business in the Virgin Islands contrary to section 27 (1).	\$10,000	\$10,000
28 (2)	Licensee failing to comply with direction of Commission to change name.	\$10,000	\$7,000
41(4)	Applicant failing to give Commission written particulars of change of, or incomplete, inaccurate or misleading information or documentation in, application.	\$60,000	\$25,000 or imprisonment for one year, or both
46	Person making or assisting in making representation, statement, report or return, containing false statement or omitting to state a material fact.	\$60,000	\$40,000 or imprisonment for two years, or both

Passed by the House of Assembly this 26th day of May, 2009.


ROY HARRIGAN,
 Speaker.


PHYLLIS EVANS,
 Clerk of the House of Assembly.

LEGAL REPORT

This Act introduces a regime for the licensing and supervision of financing business and money services business carried on in or from within the Virgin Islands. The Act, in effect, seeks to fully comply with the Financial Action Task Force (FATF) Recommendation 23 which, amongst other things, requires that natural and legal persons who provide money or value transfer services, or money or currency changing services, should be licensed or registered. Thus the Act provides the legislative framework for the licensing, regulation and supervision of a BVI business company or foreign company that engages in the provision of money or value transfer services, including money or currency changing services (respectively brought under the rubric of "financing business" and "money services business").

2. In essence, a BVI business company or foreign company carries on financing business if

- (a) the company carries on, in the Virgin Islands, the business of providing credit under financing agreements to persons resident in the Virgin Islands;
- (b) in the course of any business, he or she provides credit under a financing agreement in an amount or to a value in excess of \$50,000;
- (c) the company carries on the business of leasing property under financing leases; or
- (d) the company carries on such other business or activity as may be specified as financing business.

3. On the other hand, the Act considers a BVI business company or foreign company as carrying on money services business if the company provides any or all of the following services: (a) money transmission; (b) cheque cashing; (c) buying and selling foreign currency, including spot and forward exchange transactions and wholesale money market dealings; (d) the issuance, sale or redemption of money orders or traveller's cheques; and (e) such other services as may be prescribed in Regulations; this also includes the business of operating as an agent or franchise holder of any such business.

4. As provided by clause 3, the Act would not apply to a BVI business company or foreign company licensed under the Banks and Trust Companies Act, 1990 (No. 9 of 1990) (for which a separate statutory licensing regime exists), or a post office operated by the Government and carrying on money services business, unless such person is operating as an agent or franchise holder of a non-bank financial business or a money services business. These would continue to offer

all the services that they would normally offer and they would continue to do so without the need to be licensed under the proposed Act. They would, however, be governed by the current laws governing anti-money laundering and countering the financing of terrorism activities.

5. Under the proposed regime, non-bank financial businesses and money services businesses would be licensed and regulated by the Financial Services Commission. By virtue of clause 32, the Act (when enacted) would be included in the list of regulatory legislation in Part 1 of Schedule 2 to the Financial Services Commission Act, 2001 (No. 12 of 2001). Thus, the Commission would, in addition to its powers under the proposed Act, be able to administer and enforce the Act (when the enactment process is completed), and regulate non-bank financial businesses and money services businesses, in accordance with the Financial Services Commission Act, 2001.

6. The Act makes it a criminal offence for a person to carry on a non-bank financial business or money services business unless it is a BVI business company or foreign company licensed under the Act. Furthermore, it provides that such a business would not be licensed unless it fully complies with the requirements of the Act (see clauses 9 and 12). The Act also makes provisions relating to a licensee's obligations with respect to the appointment and termination of directors and other senior officers, the disposal or acquisition of significant interest (defined in clause 2 (1)) in the licensee, the establishment and maintenance of a principal office in the Virgin Islands and restrictions on the opening of branch or representative offices by a licensee. The Act further deals with the issue of corporate governance in relation to the need for a licensee to maintain an adequate number of directors (the minimum being two – clause 17), develop and maintain clear and appropriate management systems and controls and keep and maintain proper records.

7. A BVI business company or foreign company licensed to carry on financing business or money services business (and one BVI business company or foreign company may be licensed to carry on both activities – clause 8 (2)) is required to comply with certain imperatives relating to the preparation of financial statements and the conduct of audit (clauses 20 – 31). Financial statements, including periodic financial statements and reports, are required to be submitted to the Financial Services Commission (“the Commission”) within a period of six months after the end of a licensee's financial year; this would enable the Commission to satisfy itself that the licensee is operating its business in a sound manner in accordance with the precepts of the Act. Furthermore, every licensee is obligated to appoint, with the prior approval of the Commission, a qualified person to audit its financial statements and compliance with anti-money laundering and countering the financing of terrorism measures as contained in other enactments. An auditor is required to report to the Commission any information relating to the affairs of a licensee which, in his or her opinion, suggests that the licensee is insolvent, is engaged or had engaged in a criminal

activity, is in breach of any condition of its licence or has breached any enactment relative to money laundering or terrorist financing. Where an auditor fails to fulfil his or her obligations under the Act, the Commission may revoke the auditor's appointment and require the licensee to appoint another person in his or her stead.

8. The Act makes further provisions relating to general supervisory matters – the need to maintain professional indemnity and other insurance, submitting returns and reporting of information to the Commission, prohibition against issuing misleading or incorrect literature concerning a licensee's business, adopting reasonable steps to protect and ensure the fair treatment of customers, seeking prior approval from the Commission before changing a licensee's name (including the Commission's power to require a change of name where existing name is likely to deceive or mislead or is simply undesirable and prohibition against the issuing of any bearer shares (clauses 32 – 39).

9. The Act concludes with miscellaneous provisions which essentially outline the manner of submitting applications for licences, maintenance of a register of licensees and inspection thereof, electronic filing, offences and penalties and consequential amendments. There are two Schedules to the Act, respectively dealing with modifications to the Act and the Financial Services Commission Act, 2001 in relation to a post office and the applicable penalties to the offences outlined in the Act.

10. The enactment of this Act will further strengthen the Virgin Islands' continued regulation of relevant business entities in its financial services sector and demonstrate the Territory's continued compliance with established international standards relating to efficient, prudential and effective regulation.

11. The Act was introduced in the House of Assembly on the 23rd day of December, 2008 and passed through the remaining stages on the 26th day of May, 2009.

12. In my opinion, His Excellency the Governor may properly assent to this Act in the name and on behalf of Her Majesty.



Attorney General
9th June, 2009