

No. 9 of 2018

VIRGIN ISLANDS

FINANCING AND MONEY SERVICES (AMENDMENT) ACT, 2018

ARRANGEMENT OF SECTIONS

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**Financing and Money Services
(Amendment) Act, 2018**

**Virgin
Islands**

I Assent

(Sgd.) Augustus J. U. Jaspert,

Governor.

17th September, 2018

VIRGIN ISLANDS

No. 9 of 2018

An Act to amend the Financing and Money Services Act, 2009 (No. 9 of 2009).

[Gazetted 4th October, 2018]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and
commencement.

1. (1) This Act may be cited as the Financing and Money Services (Amendment) Act, 2018.

(2) This Act shall come into force on such date as the Minister may, by Notice published in the *Gazette*, determine.

Section 2
amended.

2. Section 2 of the Financing and Money Services Act, 2009 (hereafter referred to as the “principal Act”) is amended

(a) in subsection (1) by inserting after the definition of “Commission”, the following definition:

“controlling interest”, in relation to a licensee, means the ownership or interest in the licensee or in any holding company of the licensee by a person of

(a) more than 50% of the voting rights of the licensee; or

(b) a significant interest in the licensee which, although not constituting more than 50% of

the voting rights of the licensee (in aggregate or otherwise), gives the person a considerable advantage in the voting rights of the licensee if the remaining votes in the licensee are not voted on;”;

- (b) in the definition of “senior officer” by adding after the word “licensee”, the words “as may be prescribed”; and
- (c) by deleting subsection (6) and substituting the following:

“(6) Where in this Act reference is made to the Commission’s fit and proper criteria it shall be construed as a reference to the fit and proper criteria set out in Schedule 1A of the Regulatory Code, 2009.”.

S.I. 2009 No. 60

- 3. Section 3 of the principal Act is amended by adding after subsection (3), the following: Section 3 amended.

“(4) This Act does not apply to the Social Security Board established under the Social Security Act in relation to financing provided by the Social Security Board, provided that the financing is provided to the Government of the Virgin Islands or a statutory body established under an enactment and owned by the Government of the Virgin Islands.”.

Cap. 266

- 4. Section 5 of the principal Act is amended Section 5 amended.

- (a) in subsection (1)
 - (i) by deleting paragraph (b) and substituting the following:
 - “(b) he or she provides, as a business, credit, including pay day advances, or consumer finance loan, under a financing agreement to a borrower in the Virgin Islands;”;
 - (ii) by deleting the word “or” at the end of paragraph (c);
 - (iii) by deleting paragraph (d) and substituting the following:

“(d) he or she carries on such other business or activity as may be specified in regulations as financing business; or;” and

(iv) by adding after paragraph (d), the following paragraph:

“(e) he or she carries on business in international financing and lending in relation to a Class F licence.” and

(b) by adding after subsection (2), the following:

“(3) For the purposes of subsection (1) (b), “consumer finance loan” means a loan of money, credit, goods or choses in action including, except as otherwise specifically prescribed, provision of a line of credit, in an amount or to a value of not less than \$5,000 and not more than \$35,000 for which the lender charges, contracts for, collects or receives interest at a rate prescribed unless the borrower has defaulted.”.

Section 6 amended.

5. Section 6 of the principal Act is amended by deleting paragraph (a) and substituting the following:

“(a) providing any of the following services:

(i) the dispensing of money, the facilitation of deposits, payments, transfer of money or the reporting of account information via automated teller machines;

(ii) transmission of money in any form, including electronic money, mobile money or payments of money;

(iii) cheque cashing services;

(iv) currency exchange services;

(v) the issuance, sale or redemption of money orders or traveller’s cheques; or

(vi) other services as may be specified in the Regulations; or”.

6. following:

“Classes of licence.

Section 8 of the principal Act is repealed and substituted by the following:
8. (1) A licence issued under this Act shall be in one or more of the following Classes:

Section 8 repealed and substituted.

- (a) Class A, which permits the holder to carry on the business of transmitting money in any form, including electronic and mobile payments of money;
- (b) Class B, which permits the holder to carry on the business of issuing, selling or redeeming money orders or traveller’s cheques, cheque cashing and currency exchange;
- (c) Class C, which permits the holder to engage in financing business;
- (d) Class D, which permits the holder to carry on the business of financing lease;
- (e) Class E, which permits the holder to carry on the business of operating Automatic Teller Machines (ATMs);
- (f) Class F, which permits the holder to carry on the business of international financing and lending in the peer-to-peer (P2P) FinTech market, including peer-to-business (P2B) and business-to-business (B2B) markets;
- (g) Class G, which permits the holder to carry on the business of such other service as may be specified in the Regulations.

(2) A licence issued under subsection (1)

- (a) shall state the Class or Classes of licence issued to the holder and the business or businesses the holder is authorised to carry on; and

(b) does not authorise the holder to carry on any Class of business that is not specified on the licence.

(3) The Commission shall not issue a Class F licence under subsection (1) unless Regulations are made to provide additional measures for the licensing and regulation of that Class of licence.

(4) Where the Commission issues a Class G licence under subsection (1), it may, subject to subsection (5), issue the licence in such different categories as the Commission may determine.

(5) The Minister, acting on the advice of the Commission, may, by an Order published in the *Gazette*, amend subsection (1) to remove, vary or add a Class of licence and shall, in the case of a variation or addition of a Class of licence, indicate the type of business the holder of the licence is authorised to carry on.”.

Section 12 amended.

7. Section 12 of the principal Act is amended

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

“(2A) Where a licensee provides to the Commission a notification under subsection (2), it shall at the same time as providing the notification prepare and submit to the Commission a plan indicating how the licensee intends to reconstitute its capital resource in the amount prescribed and within a specified period not exceeding 30 days.

(2B) The Commission may, in relation to a plan submitted by a licensee under subsection (2), extend, upon the application of the licensee or on the Commission’s own initiative, the period within which the licensee’s capital resource is to be reconstituted to such further period as the Commission considers fit.

(2C) Where the Commission is not satisfied with a plan submitted by a licensee under subsection (2A), it may require the licensee to resubmit another plan incorporating such matters as the Commission considers necessary.” and

- (b) by inserting after subsection (3), the following new subsection:

“(3A) Where a licensee fails to

- (a) submit a plan on reconstituting its capital resource satisfactory to the Commission, or
- (b) implement a plan on reconstituting its capital resource within a specified period or, if such period is extended, within the extended period,

the Commission may take such enforcement action as it deems appropriate, including revoking or cancelling the licensee’s licence.”.

8. Section 13 of the principal Act is amended in subsection (1) by deleting the words “the Regulatory Code or”. Section 13 amended.

9. Section 14 of the principal Act is amended Section 14 amended.

- (a) by deleting subsection (1) and substituting the following:

“(1) A person owning or holding a significant interest or controlling interest in a licensee shall not sell, transfer, merge, 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.”;

- (b) in subsection (2) by inserting after the words “significant interest”, the words “ or controlling interest”;

- (c) in subsection (3)

- (i) in paragraph (a), by inserting the word “merge,” after the word “transfer”; and

- (ii) in paragraph (b) (ii), by inserting the words “or controlling interest” after the words “significant interest”; and

- (d) in subsection (5), by inserting after the words “significant interest”, the words “or controlling interest”.

Sections 19A,
19B and 19C
inserted.

10. The principal Act is amended by inserting after section 19, the following new sections:

“Duty to ensure
compliance
with the law.

19A. (1) Every director, senior officer and other person that is concerned in the management of a licensee shall take all reasonable steps to ensure that the licensee complies with the requirements of this Act and any enactment relating to money laundering, terrorist financing and proliferation financing.

(2) A director, senior officer and other person that is concerned in the management of a licensee that fails to take reasonable steps as required under subsection (1) commits an offence.

Prudential
guidelines.
No. 12 of 2001

19B. The Commission, acting in accordance with section 41A of the Financial Services Commission Act, 2001, may issue guidelines generally and, in particular, with respect to the following in relation to a licensee

- (a) the policies, practice and procedures for evaluating the quality assets;
- (b) the policies, procedures and systems for identifying, monitoring and controlling transfer risk, liquidity risk, operational risk and such other risk as the Commission may specify;
- (c) corporate governance;
- (d) the retention of auditors to perform audits; and
- (e) procedures to be adopted in dealing with the Commission.

Segregating
customer
accounts.

19C. (1) Where a licensee receives money from a customer for transmission or delivery to a payee customer, the licensee shall segregate the money exclusively for the purpose of effecting payment of the money immediately or in due course to the payee customer

and, for this purpose, shall establish a separate customer account which it shall segregate from the licensee's own account.

(2) A licensee shall be liable for the payment of any money it has received from a customer which the licensee fails to transmit or deliver to the payee customer.

(3) Any money that has not been transmitted or delivered to a payee customer shall be a first charge on the assets of a bankrupt or otherwise insolvent licensee that was supposed to transmit or deliver the money.

(4) For purposes of subsection (3), the money received pursuant to that subsection shall be repaid to the payee customer or paid to the payee customer either by the licensee or by the receiver, liquidator or administrator of the licensee.

(5) Notwithstanding anything to the contrary contained in the Insolvency Act, 2003 or the BVI Business Companies Act, 2004, any money delivered to a licensee by or on behalf of a customer prior to the issue of an order of bankruptcy, winding-up or receivership against the licensee shall be utilised by the licensee, receiver or liquidator solely to discharge the licensee's contractual obligations to the customer.

No. 5 of 2003
No. 16 of 2004

(6) The liability of a licensee under subsection (2) is without prejudice to any other action that a customer may have against or in relation to the licensee.”.

11. Section 29 of the principal Act is amended by deleting subsection (3) and substituting the following:

Section 29
amended.

“(3) The Commission may require an auditor of a BVI licensee to

- (a) discuss any audit he or she has conducted or commenced with, or provide additional information regarding the audit to, the Commission; and

- (b) submit a report on the financial and accounting system and risk management controls of the licensee.”.

Section 35A inserted.

12. The principal Act is amended by inserting after section 35, the following new section:

“Prohibition against solicitation or receipt of money.

35A. (1) No person, other than a licensee or a person exempted under or in relation to this Act, shall in any way solicit or receive money from another person for the purpose of carrying on money services business or financing business in or from within the Virgin Islands.

(2) A person who contravenes the provisions of subsection (1) commits an offence.”.

Section 36 amended.

13. Section 36 of the principal Act is amended in subsection (2) by deleting the word “categories” and substituting the word “classes”.

Section 36A inserted.

14. The principal Act is amended by inserting after section 36, the following:

“Additional consumer protection measures. No. 12 of 2001

36A. In implementing consumer protection measures pursuant to section 4A (2) of the Financial Services Commission Act, 2001, the Commission may, in relation to money services business and financing business, provide measures

- (a) placing restrictions on interest rates that may be charged;
- (b) placing a cap on the rate of interest chargeable upon default in meeting an obligation;
- (c) requiring public disclosure of specified information;
- (d) permitting or requiring instalment payments;
- (e) placing restrictions on unreasonable debt collection practices;
- (f) prohibiting or limiting excessive charges; and

(g) requiring the provision of loan statements and receipts to customers.”.

15. Section 47 of the principal Act is amended by adding after subsection (2), the following subsection: Section 47 amended.

“(3) The Cabinet may, by an Order published in the *Gazette*, amend Schedule 2.”;

16. Section 49 of the principal Act is amended Section 49 amended.

(a) in subsection (1) by deleting paragraph (b) and substituting the following new subsection:

“(b) specifically in respect of anything required or permitted by this Act to be contained in the Regulations and, in particular, to make specific provision for the licensing and regulation of Class F licensees outlining the nature of peer-to-peer (P2P) FinTech markets, processes and procedures involved, restrictions and prohibitions to be applied, safeguarding against risk, providing relevant mitigating measures, and all other related matters;”;

(b) by inserting after subsection (2) the following new subsection:

“(3) Regulation made under the section shall be subject to a negative resolution of the House of Assembly.”.

17. Schedule 2 of the principal Act is amended by inserting in their appropriate numerical order and columns, the following: Schedule 2 amended.

“19A	Director, senior officer or other person concerned in management of licensee failing to take reasonable steps to ensure licensee complies with the Act and other enactment relating to money laundering, terrorist financing and proliferation financing.	\$0	\$30,000
35A	Person, not being licensed or exempted, soliciting or receiving	\$75,000	\$50,000”.

	money from another for purposes of carrying on money services business or financing business in or from within the Virgin Islands.		
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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.