

No. 22 of 2024

VIRGIN ISLANDS

FINANCIAL SERVICES COMMISSION (AMENDMENT) ACT, 2024

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I ASSENT

(Sgd.) Daniel Pruce
Governor.
29th October, 2024

VIRGIN ISLANDS

No. 22 of 2024

AN ACT TO AMEND THE FINANCIAL SERVICES COMMISSION ACT, REVISED EDITION 2020, TO PROVIDE FOR: THE COOPERATION WITH AND PROVISION OF ASSISTANCE TO FOREIGN NON-REGULATORY AUTHORITIES; THE ENHANCEMENT OF PRESCRIBED PENALTIES; A FRAMEWORK FOR DEVELOPING CONSUMER DUTIES; THE COMMISSION TO ADOPT A RISK-BASED APPROACH IN CARRYING OUT ITS SUPERVISORY RESPONSIBILITIES; THE COMMISSION TO MAKE DECISIONS IN EXCEPTIONAL CIRCUMSTANCES; A DECREASE IN THE NUMBER OF TIMES THE BOARD OF COMMISSIONERS MEETS AND THE PROVISION OF AN ADDITIONAL DISQUALIFICATION FOR MEMBERSHIP OF THE BOARD OF COMMISSIONERS; THE COMMISSION TO RECEIVE DONATIONS AND CONTRIBUTIONS FROM INDIVIDUALS AND ORGANISATIONS IN DEVELOPING AND PROMOTING EDUCATIONAL AND FINANCIAL LITERACY ACTIVITIES; THE BROADENING OF THE COMPLIANCE MANDATE OF THE COMMISSION; A DUTY FOR LICENSEES AND OTHER SPECIFIED PERSONS TO COOPERATE WITH THE COMMISSION; EMPLOYEES OF THE COMMISSION TO DISCLOSE ANY INTEREST OF A PERSONAL, BUSINESS, PROFESSIONAL AND PECUNIARY NATURE AND FOR OTHER MATTERS CONNECTED THEREWITH.

[Gazetted 7th November, 2024]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement

1. (1) This Act may be cited as the Financial Services Commission (Amendment) Act, 2024.

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

Section 2 amended

2. Section 2 of the Financial Services Commission Act, Revised Edition 2020 (hereinafter referred to as the “principal Act”), is amended in subsection (1) by inserting in its appropriate alphabetical order, the following new definition:

“consumer duty” means a standard of care that a regulated person is expected to give to consumers in financial services business;”.

Section 4 amended

3. Section 4 of the principal Act is amended

- (a) in subsection (1) (j) by inserting in sub-paragraph (iv) thereof after the words “financial services business”, the words “and financial literacy generally”;
- (b) in subsection (2) by deleting the word “may” in the opening paragraph and substituting the word “shall”; and
- (c) by inserting after subsection (2A), the following new subsection:

“(2AA) Without prejudice to subsection (2), the Commission shall, in carrying out its supervisory responsibility of licensees, adopt a risk-based approach and shall take into account the following:

- (a) the risk which each licensee presents;
- (b) the risk associated with licensees or any class of licensees; and
- (c) the risk which the Territory may be exposed to by any licensee or any class of licensees.”.

Section 4A amended

4. Section 4A of the principal Act is amended

- (a) by deleting the existing heading of the section and substituting the heading “**Crisis management, resolution proceedings and consumer duty powers of the Commission**”;
- (b) by deleting subsection (2) and substituting the following subsection:

“(2) The Commission may implement consumer duty measures and exercise powers in relation to

- (a) the governance of products and services relating to financial services business;
- (b) protection against discrimination;
- (c) consumers’ right to defined or definable contractual obligations;
- (d) consumer understanding as it relates to financial services business;
- (e) consumer support; and

- (f) protection of rights and interests of consumers of financial services generally and the public interest.”;
- (c) by inserting after subsection (2), the following new subsection:
 - “(2A) The Commission may set out principles governing consumer duty measures as they relate to pricing and valuing of products and services offered with respect to financial services business.”; and
- (d) in subsection (3) by deleting the word “protection” and substituting the word “duty”.

Section 5 amended

- 5. Section 5 of the principal Act is amended in subsection (5)
 - (a) in paragraph (e), by deleting the word “or” at the end of the paragraph;
 - (b) in paragraph (f), by deleting the full-stop and substituting “; or”;
 - and
 - (c) by adding after paragraph (f), the following new paragraph:
 - “(g) is or has during the two years preceding his or her appointment been a member, director, senior officer, or auditor of a regulated person.”.

Section 6 amended

- 6. Section 6 of the principal Act is amended in subsection (1)(c) by adding at the end of subparagraph (iii) before the semi-colon, the following words:
 - “, including the operation of an appropriate internal audit function.”.

Section 7 amended

- 7. Section 7 of the principal Act is amended by deleting subsection (1) and substituting the following subsection:
 - “(1) Subject to section 7A(2) and (7), the Board shall meet at least 6 times in each year at such place and time as the Chairman may designate.”.

Sections 7A, 7B and 7C inserted

- 8. The principal Act is amended by inserting after section 7, the following sections:

“Meeting and taking decisions in exceptional circumstances

7A. (1) The reference

- (a) in this section and section 7B to
 - (i) the Chairman, includes the Deputy Chairman where the Chairman is not available or is unable to act in

accordance with the provisions of this section where exceptional circumstances exist;

(ii) the managing Director, includes a Deputy Managing Director where the Managing Director is not available or is unable to act in accordance with the provisions of this section where exceptional circumstances exist; and

(iii) writing, includes communication by any electronic means; and

(b) in this section and sections 7A, 7B and 7C to exceptional circumstances, means a natural phenomenon, war, civil disobedience or any other act, that arises in or outside the Virgin Islands which, in the opinion of the Chairman and the Managing Director, has disrupted or severely affected the carrying out of normal business in and from within the Virgin Islands.

(2) The Board may not, in an exceptional circumstance, meet for the number of times stipulated in section 7(1), but shall meet at such other times and places, whether within or outside the Virgin Islands, as the Chairman considers appropriate and convenient for the Board to discharge its functions, including holding meetings by electronic means.

(3) For the purposes of subsection (2), the Chairman may determine that meetings of the Board shall be held by electronic means for such period or periods as he or she may determine.

(4) Subject to subsection (7), where any action or decision is required to be taken or made by the Board but an exceptional circumstance exists which makes it impossible for the Board to meet, that action or decision may be taken or made by

(a) the Chairman in his or her discretion; or

(b) the Managing Director, acting after consultation with the Chairman, unless where the Chairman cannot for any reason be contacted and the matter or decision is of an urgent nature.

(5) Where the Managing Director acts under subsection (4)(b) without consulting with the Chairman, he or she shall as soon as practicable after so acting inform the Chairman in writing of the action he or she has taken, outlining the urgency that necessitated the action.

(6) Nothing contained in this section prevents the Board from convening to perform its functions, and the Chairman and the Managing Director shall present to the Board for its ratification any action or decision taken pursuant to subsection (4).

(7) This section applies only where any action or decision that should ordinarily be taken or made by the Board is considered by the Chairman or the Managing Director, as the case may be, to be of an urgent nature and is impracticable to convene a meeting of the Board for the action or decision to be taken or made.

(8) Where this section is invoked, the provisions of section 7(1), (2), (3), (4) and (5) shall not apply.

Exercising powers of Enforcement Committee and Licensing and Supervisory Committee

7B. (1) Where, in exceptional circumstances, the Managing Director forms the view that any decision which should ordinarily be taken by the Enforcement Committee or the Licensing and Supervisory Committee, is of an urgent nature and it is impracticable to convene a meeting of the committee concerned to take such decision, the Managing Director may, acting in his or her own discretion, take the decision.

(2) Where the Managing Director acts pursuant to subsection (1), he or she shall as soon as practicable after taking the decision, inform the Enforcement Committee or the Licensing and Supervisory Committee, as the case may be, at its next convenient meeting of the decision he or she had taken, outlining the urgency that necessitated the decision.

(3) The Managing Director may, by notice in writing instead of acting under subsection (1), delegate to any member of his or her senior management team the authority to take a decision on a matter that should ordinarily be taken by the Enforcement Committee or the Licensing and Supervisory Committee.

Quorum, majority vote, etc. waived during a period of exceptional circumstances

7C. For purposes of sections 7A and 7B, where this Act or any applicable financial services legislation requires a quorum or majority vote for any action or decision to be taken or made, or the requisitioning by persons of a special meeting, that requirement shall not apply in relation to the exercise of powers under those sections during a period of exceptional circumstances.”.

Section 10 amended

9. Section 10 of the principal Act is amended in subsection (3) by inserting in paragraph (c) after the words “good governance”, the words “including the operation of an appropriate internal audit function”.

Section 17A amended

10. Section 17A of the principal Act is amended by adding after subsection (4), the following new subsection:

“(5) A licensee who fails to comply with subsection (4) commits an offence and is, unless a penalty for such an offence (however described) is provided in any other financial services legislation, liable on summary conviction to a fine not exceeding \$20,000.”.

Section 18 amended

11. Section 18 of the principal Act is amended in subsection (1)

- (a) in paragraph (e), by deleting the word “and”; and
- (b) by inserting after paragraph (e), the following new paragraph:
 - “(f) monies received by the Commission of contributions or donations from persons or organisations for the purpose of supporting the Commission’s performance of its functions under section 4(1)(j) and (k); and”; and
- (c) by redesignating the existing paragraph (f) as paragraph (g).

Section 33B amended

12. Section 33B of the principal Act is amended in subsection (10) by deleting the words “not exceeding \$5,000” and substituting the words “not exceeding \$50,000”.

Section 33C amended

13. Section 33C of the principal Act is amended

- (a) by redesignating the existing subsection (1) as subsection “(1A)”; and
- (b) by inserting the following as the new subsection (1):
 - “(1) The reference in this section and sections 33D and 35 to a “foreign regulatory authority” or “foreign regulatory authorities” shall be construed to include a foreign non-counterpart acting through a competent authority and, for this purpose, “foreign non-counterpart” means an authority in a country or territory outside the Virgin Islands that does not exercise similar responsibilities and functions as the Commission in relation to cooperation which is sought.”.

Section 33D amended

14. Section 33D of the principal Act is amended

- (a) in subsection (2) by deleting the words “for the purposes of its regulatory functions” and substituting the words “for its regulatory functions or purposes”; and
- (b) in subsection (5) by deleting the word “overseas”.

Section 35 amended

15. Section 35 of the principal Act is amended

- (a) in subsection (5) by deleting from paragraph (d), the words “for the purposes of the regulatory functions of the foreign regulatory authority” and substituting the words “for the regulatory functions or purposes of the foreign regulatory authority”; and
- (b) by deleting subsection (7A) and substituting the following subsection:

“(7A) The Commission may

- (a) conduct a compliance inspection of a relevant person in respect of any function outsourced by the relevant person;
- (b) in any case it considers it necessary, outsource its compliance inspection function in respect of a relevant person or a group or category of relevant persons; and
- (c) require a relevant person to appoint an independent person approved by the Commission to conduct a compliance inspection of the relevant person.”; and

(c) by inserting after subsection (7A), the following new subsection:

“(7B) Where, under subsection (7A), the Commission

- (a) outsources its compliance inspection function in respect of a relevant person or group of relevant persons, it may require the relevant person or group of relevant persons to bear the cost of the compliance inspection and they shall each comply accordingly; or
- (b) requires a relevant person to appoint an independent person to conduct a compliance inspection of the relevant person, the independent person shall, upon completion of the compliance inspection, submit a copy of the report of the compliance inspection to the Commission.”.

Section 37 amended

16. Section 37 of the principal Act is amended

- (a) in subsection (1)(a) by deleting from subparagraph (ix), the words “consumer protection” and substituting the words “consumer duty”; and
- (b) in subsection (2) by inserting in paragraph (f) after the words “provided for”, the word “in”.

Section 41 amended

17. Section 41 of the principal Act is amended in subsection (1)

- (a) by deleting the word “and” at the end of paragraph (b);
- (b) by inserting after paragraph (b), the following new paragraph:
 - “(c) the development and promotion of consumer duty; and”;
- (c) by redesignating the existing paragraph (c) as paragraph (d).

Section 47A inserted

18. The principal Act is amended by inserting after section 47, the following new section:

“Duty of employee to disclose interest

47A. (1) An employee of the Commission who has any direct or indirect personal, professional, business or pecuniary interest (herein after referred to as “interest”) in any matter he or she is assigned or involved in, or that is before a committee of which he or she is a member or is invited to participate in, shall immediately

- (a) in the case of an employee who is a member of a committee, disclose the interest to the Chairman of the committee before the matter concerned is discussed or as soon as he or she becomes aware that he or she has such an interest in the matter; and
- (b) in any other case, inform his or her supervisor that he or she has such an interest and not perform the assignment or participate in any discussion concerning the matter, unless his or her supervisor
 - (i) is satisfied that the interest is not of a material nature;
 - (ii) forms the view that the employee’s performance of or participation in the assignment or matter is sufficiently important and is not likely to compromise a decision with respect to the assignment or matter; and
 - (iii) specifically authorises the employee to perform or participate in the assignment or matter.

(2) Where an employee makes a disclosure in accordance with subsection (1), he or she shall

- (a) not continue his or her performance of, or involvement or participation in, the assignment or matter; and
- (b) where he or she has already commenced performing, or is already involved in or participating in, the assignment or matter, withdraw from the assignment or matter,

save where his or her supervisor has acted pursuant to subsection (1)(b) (i), (ii) and (iii).

(3) The disclosure required under subsection (1) may be made orally or required to be made formally in such form as the Commission may determine.

(4) The Commission may require every employee to make an annual or other periodic declaration of interest in such form as the Commission may determine.

(5) An employee who fails to disclose an interest as required under this section or, fails to make the declaration referred to in

subsection (4), is liable to disciplinary proceedings, which may include suspension, termination or dismissal.”.

Section 49B inserted

19. The principal Act is amended by inserting after section 49A, the following new section:

“Duty to cooperate with the Commission

49B. (1) Every licensee or other person subject to the requirements of, or exercise of powers under, this Act and any financial services legislation shall cooperate with the Commission in the discharge of its functions under this Act or any financial services legislation under or in relation to which the Commission exercises powers.

(2) Cooperation under subsection (1) may include but is not limited to

- (a) providing information that is within the domain of the licensee or other person concerned;
- (b) producing documents in the possession or under the control of the licensee or other person concerned; and
- (c) providing any other material which the licensee or other person has access to and authority to produce.

(3) A licensee or other person who acts contrary to subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$20,000.”.

Section 53 amended

20. Section 53 of the principal Act is amended in subsection (2) by

- (a) inserting the word “summary” before the word “conviction”; and
- (b) deleting the words “not exceeding \$5,000” and substituting the words “not exceeding \$75,000”.

Section 54 amended

21. Section 54 of the principal Act is amended in subsection (2)

- (a) in paragraph (a)
 - (i) by deleting the words “not exceeding \$10,000” and substituting the words “not exceeding \$25,000”; and
 - (ii) by deleting the words “not exceeding 3 years” and substituting the words “not exceeding 2 years”; and
- (b) in paragraph (b) by deleting the words “not exceeding \$25,000” and substituting the words “not exceeding \$75,000”.

Section 54A amended

22. Section 54A of the principal Act is amended

- (a) in subsection (2) by deleting the words “not exceeding \$7,500” and substituting the words “not exceeding \$50,000”; and
- (b) in subsection (4) by deleting the words “not exceeding \$25,000” and substituting the words “not exceeding \$50,000”.

Section 54B amended

23. Section 54B of the principal Act is amended in subsection (7) by deleting the words “not exceeding ten thousand dollars” and substituting the words “not exceeding \$25,000”.

Schedule 1 amended

24. Schedule 1 of the principal Act is amended in paragraph 2 by deleting the words “the Chairman of the Board” and substituting the following subparagraphs:

- “(a) the Chairman;
- (b) the Deputy Chairman, in the absence of the Chairman; or
- (c) the Managing Director, in the absence of both the Chairman and the Deputy Chairman.”.

Schedule 2 amended

25. Schedule 2 of the principal Act is amended in Part I by adding to the list of principal legislation, the following:

- “9. Virtual Assets Service Providers Act”.

Passed by the House of Assembly this 16th day of September, 2024.

(Sgd.) Corine N. George-Massicote,
Speaker.

(Sgd.) Bethsaida Smith-Hanley,
Clerk of the House of Assembly.