

VIRGIN ISLANDS

FINANCIAL SERVICES (CONTINUITY OF BUSINESS) ACT, 2017

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No. 21 of 2017

**Financial Services
(Continuity of Business)
Act, 2017**

**Virgin
Islands**

I Assent

**(Sgd) Rosalie Adams
Acting Governor.**

4th December, 2017

VIRGIN ISLANDS

No. 21 of 2017

An Act to provide for special measures for the conduct, operation, licensing, regulation and supervision and generally for the continuity of financial services business in the Virgin Islands following the passage of Hurricane Irma and for other matters connected therewith.

[Gazetted 8th December, 2017]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title,
commencement
and duration.

1. (1) This Act may be cited as the Financial Services (Continuity of Business) Act, 2017.

(2) This Act shall be deemed to have come into force on the 7th day of September, 2017 and shall, subject to subsections (3) and (5), remain in force until the 31st day of December, 2017.

(3) The operation of this Act may, where special circumstances make its continuation necessary, be continued beyond the 31st day of December, 2017 for such period not exceeding 3 months in aggregate as the Minister, acting on the advice of the Commission and by an Order published in the Gazette, provides.

(4) Where subsection (3) applies, the operation of this Act shall come to an end on the day appointed in the Order.

(5) Subsections (2) and (3) shall not apply to section 11 and that section shall continue in force until such time as the Minister may, acting on the advice of the Commission and by an Order published in the *Gazette*, appoint.

(6) Where the Commission issues guidelines pursuant to section 2(3) or (5) in relation to section 11, those guidelines shall continue to have effect for the period that section 11 remains in force.

Interpretation.

2. (1) In this Act, unless the context otherwise requires –

“Board” means the Board of Commissioners of the Commission established under section 5 of the FSCA;

“Chairman” means the Chairman of the Board;

“Commission” means the Financial Services Commission established under section 3 of the FSCA;

“EC” means the Enforcement Committee established under section 14 of the FSCA;

“effective date” means the 7th day of September, 2017;

“financial services business” has the meaning specified in section 2 (1) of the FSCA;

“financial services legislation” means any principal legislation listed in Schedule 2 of the FSCA and any subsidiary legislation made thereunder;

“FSCA” means the Financial Services Commission Act;

“Internet site”, in relation to the Commission, means the principal public access Internet site for the time being maintained by, or on behalf of, the Commission;

“licence” means an authorisation or approval, a registration or recognition, or a licence, certificate or other form of document, which the Commission is empowered to provide, issue or grant under a financial services legislation or the FSCA;

“licensee” means a person holding a licence;

“LSC” means the Licensing and Supervisory Committee established under section 14 of the FSCA;

“Managing Director” means the Managing Director of the Commission appointed under section 10 of the FSCA; and

“Minister” means the Minister to whom responsibility for financial services is assigned.

(2) A reference in this Act to “other person” refers to any person that is subject to the FSCA or any financial services legislation or whose conduct is subject to or affected by the FSCA or any financial services legislation.

(3) Where any provision of this Act conflicts with any other provision of the FSCA or any financial services legislation, the provision of this Act takes precedence.

(4) The Commission may issue such guidelines as it considers necessary to provide guidance on, and clarify matters relating to, the implementation of the provisions of this Act.

Purpose and objectives.

3. (1) The purpose of this Act is to make special provisions, following the passage through the Virgin Islands of Hurricane Irma on 6th September, 2017, to facilitate the conduct, operation, licensing, regulation and supervision of financial services business which but for this Act would have made such conduct, operation, licensing, regulation and supervision difficult or impossible.

(2) The objects of this Act are –

(a) to enable the continuity of financial services business in the Virgin Islands;

(b) to permit licensees and other persons to shift the operation of their financial services business from the Virgin Islands to another jurisdiction for a limited period while at the same time ensuring compliance with the FSCA and financial services legislation;

(c) to clarify matters relating to the relocation within the Virgin Islands of licensees’ and other persons’ business operations;

(d) to clarify matters relating to the regulation and supervision by the Commission of licensees that have shifted their operation from the Virgin Islands to another jurisdiction;

(e) to clarify the status of certain activities that were pending prior to the effective date and how they are to be dealt with;

(f) to clarify matters to the payment of certain fees; and

(g) to provide for miscellaneous matters that relate to or are affected by the passage of Hurricane Irma through the Virgin Islands.

Application.

- 4.** (1) Subject to subsection (2), this Act does not apply to –
- (a) an insurer that holds a Category A or B licence under the Insurance Act;
 - (b) an insurance intermediary that is licensed under the Insurance Act; and
 - (c) a bank that holds a general banking licence or a restricted Class I or II banking licence under the Banks and Trust Companies Act.

No. 6 of 1992

(2) Sections 6, 8, 9 (save section 9 (1) (e) and (2) (d)) and 10 shall apply to the holder of any of the licences referred to in subsection (1).

Authority to relocate to another jurisdiction.

5. (1) Where prior to the effective date a licensee that was based and carrying on business in the Virgin Islands wishes to relocate to another jurisdiction temporarily on or after the effective date to continue the operation of its business it may, subject to this Act, do so.

(2) A licensee's relocation to another jurisdiction may comprise the whole or part of its business operations and the relocation of all or some of its staff, to the extent the licensee considers necessary for the continuity of its business.

(3) Where a licensee relocates from the Virgin Islands to another jurisdiction, it shall for all legal intents and purposes be deemed to be operating in the Virgin Islands and shall, subject to this Act, continue to be dealt with in accordance with the applicable laws of the Virgin Islands.

Relocating within the Territory.

6. (1) Where after the effective date a licensee or other person relocates from its registered address to a new address within the Virgin Islands on account of damage caused to the premises comprising the registered address or on account of those premises becoming unsuitable for the licensee or other person to conduct its business from, the licensee or other person shall notify the Commission of that fact in accordance with subsection (2).

(2) A notification under subsection (1) shall be in writing within one month of the licensee or other person relocating from its registered address, following the date on which this Act is published in the *Gazette* or the date on which it relocated, whichever is later, and shall include the following information –

- (a) details of the new address;

- (b) the date the licensee or other person relocated to its new address and, if it relocated over a period of time, the last date on which it completed its relocation;
- (c) whether the relocation to the new address is temporary or is expected to be permanent; and
- (d) if the relocation to the new address is temporary, to indicate the efforts it is undertaking or intends to undertake to relocate back to its registered address, having regard to the transition period provided under this Act.

(3) A temporary relocation of the registered address of a licensee or other person shall not be treated as a change of registered address under any financial services legislation and no fee is payable in relation thereto.

(4) Where a licensee or other person relocates from its registered address to a new address in the Virgin Islands on a permanent basis, the relocation shall be treated as a change of registered address and shall, subject to subsection (5), be dealt with in accordance with the FSCA or any applicable financial services legislation.

(5) Subsection (4) shall not apply in relation to the payment of any fee if the reason for relocating to a new address on a permanent basis is that the premises comprising the licensee's or other person's registered address remained damaged and unrepaired or are no longer available to the licensee or other person within the period specified in subsection (6).

(6) If after a period of 3 months from the date this Act ceases to have effect a licensee or other person fails to relocate to its registered address, the licensee or other person shall be deemed to have changed its registered office and shall, subject to subsection (5), be liable to be treated as such in accordance with the FSCA or any applicable financial services legislation.

(7) For the purposes of this section, "registered address" refers to a licensee's or other person's registered or principal office in the Virgin Islands.

Conditions for
relocating outside
the Virgin Islands.

7. (1) Where a licensee relocates from the Virgin Islands to another jurisdiction pursuant to section 5, it shall within one month of relocating, following the date on which this Act is published in the *Gazette* or the date on which it relocated, whichever is later, notify the Commission in writing of that fact stating the following matters –

- (a) the jurisdiction to which the licensee has relocated the operations of its business;

- (b) the date on which it relocated the operations of its business to the jurisdiction and, if it has relocated over a period of time, the last date on which it completed its relocation;
- (c) whether it has wholly or only partially relocated the operations of its business to another jurisdiction;
- (d) whether it has relocated its staff to another jurisdiction and, if so, provide a list of the staff it has relocated and those, if any, remaining in the Virgin Islands;
- (e) whether it has laid off any of its staff and, if so, provide a list of the staff laid off and indicate whether the laying off is temporary or permanent; and
- (f) the efforts the licensee is undertaking or intends to undertake to relocate the operation of its business back to the Virgin Islands and within what period, having regard to the transition period provided under this Act.

(2) Where the Commission receives information under subsection (1) (e), it may share the information with the Minister responsible for labour matters.

(3) Where a licensee relocates the operation of its business from the Virgin Islands to another jurisdiction pursuant to section 5, it shall –

- (a) segregate its Virgin Islands’ business, including all operations related thereto as was the case prior to the effective date, from any other business it may engage in or have in that other jurisdiction;
- (b) continue to comply with its obligations under the laws of the Virgin Islands as they relate to the licensee’s licence, including adhering to best practices with respect to its business; and
- (c) conduct itself and its business in a manner that does not contravene the laws of the jurisdiction to which it has relocated the operation of its business.

(4) Where a licensee has only partially relocated the operation of its business to another jurisdiction, it shall indicate what operations are relocated and the operations that remain in the Virgin Islands.

(5) Every licensee that has relocated the operations of its business, whether wholly or partially, from the Virgin Islands to another jurisdiction shall, following the initial notification to the Commission under subsection (1), provide the Commission with

a periodic report regarding the progress it is making in relocating the operations of its business back to the Virgin Islands.

(6) The periodic report referred to in subsection (5) shall be provided in writing every month from the date of the initial notification under subsection (1), unless the Commission in its discretion provides in writing a different reporting period or waives the periodic reporting in any particular case.

(7) If upon this Act ceasing to have effect a licensee or other person who had relocated the operation of its business in the Virgin Islands to another jurisdiction fails to relocate back to the Virgin Islands, the licensee or other person shall, unless the Commission determines otherwise for good reason, be deemed to have left the Virgin Islands permanently and shall be liable to be treated as such in accordance with the FSCA and any applicable financial services legislation.

(8) If a licensee or other person who had relocated the operation of its business in the Virgin Islands to another jurisdiction relocates back to the Virgin Islands to premises different from those of its registered office, it shall make the necessary filing for change of registered office without being liable for payment of any applicable fee in relation to such change.

(9) For the purposes of subsection (8), “registered office” refers to a licensee’s or other person’s registered or principal office in the Virgin Islands.

Outstanding obligations and liabilities prior to the effective date.

8. Except as otherwise provided in this Act, if any obligation or liability arose in relation to a licensee or other person with respect to a financial services business or any other matter under the FSCA or a financial services legislation, prior to the effective date which was liable to be enforced, complied with or in any way adhered to or disposed of and has not been discharged, the obligation or liability shall continue to apply until discharged.

Modification of certain obligations and liabilities.

9. (1) Where prior to the effective date –

(a) a licensee was required to be resident or to have a director or authorised agent resident in the Virgin Islands, such licensee, director or authorised agent may be resident outside the Virgin Islands for the period that this Act remains in force;

(b) a licensee or other person had applied for and received an extension of time to perform an obligation which remained outstanding on or after the effective date, irrespective of whether or not the extended time has come to an end, the Commission may further extend the time once for such period as it considers appropriate for the obligation to be performed;

- (c) an administrative penalty was imposed on a licensee or any other person which had not been satisfied on or before the effective date, the licensee or other person may apply to the Commission in writing for extension of time to effect payment of the penalty or to pay the penalty on an instalment basis pursuant to regulation 4 (7) of the Financial Services (Administrative Penalties) Regulations;
- (d) a licensee to which this Act applies was required to display its licence in accordance with section 14 (2) of the Regulatory Code, that requirement shall not apply if the licensee has relocated from the Virgin Islands to another jurisdiction and, in the case of a licensee that has relocated within the Virgin Islands from its principal office, section 14 (2) (a) of the Regulatory Code shall not apply; and
- (e) a licensee or other person was required to file a matter with the Commission or the Registrar of Corporate Affairs and the deadline for filing that matter was on or before the 30th day of September, 2017, that matter may be filed no later than 7 days after this Act is published in the Gazette without attracting any penalty for late filing.

(2) For purposes of –

- (a) subsection (1) (a), the licensee shall indicate to the Commission in writing the jurisdiction in which the director is currently residing;
- (b) subsection (1) (b), the Commission may set different periods for different licensees or other persons;
- (c) subsection (1) (c), an application for extension of time or payment of an administrative penalty on an instalment basis shall be submitted within one month following the date on which this Act is published in the Gazette and, in the absence of any application, payment of the administrative penalty shall be dealt with in accordance with the laws applicable thereto; and
- (d) subsection (1) (d), the disapplication of section 14 (2) of the Regulatory Code applies only if the licensee has relocated the whole of the operations of its financial services business to another jurisdiction.

(3) Where the Commission provides an extension of time to a licensee or other person under subsection (1) (b) to perform an obligation, the licensee or other person shall not be liable to the payment of any fee related to the grant of the extension of time.

(4) The provisions of the Insurance Act (including the Regulatory Code) relating to the licensing of loss adjusters are disapplied.

(5) Notwithstanding subsection (4), a loss adjuster who intends to perform or had since the effective date commenced performing the function of loss adjuster in the Virgin Islands shall, within ten days of the publication of this Act in the *Gazette*, apply to the Commission in writing to be registered as a loss adjuster.

(6) The Commission shall, upon receipt of an application pursuant to subsection (5), review the application and, unless it considers that granting the application is not in the public interest, register the applicant as a loss adjuster on such terms and conditions as the Commission considers fit.

(7) Where any other obligation or liability under the FSCA or any financial services legislation not provided in this section is brought to the attention of or considered by the Commission to require modification in order to facilitate the conduct of financial services business by any licensee or other person and such modification will not, in the opinion of the Commission, be contrary to the public interest, the Commission may, by an Order published on the Internet site, modify the obligation or liability in such manner as it considers fit.

Non-availability of information to complete an application.

10. (1) Where, in an application to the Commission for a licence or any other purpose, an applicant is required to provide information (hereinafter referred to as “specified information”) that is obtainable from a third party within the Virgin Islands which has been affected by Hurricane Irma and is therefore unable to provide such specified information to the applicant, the applicant may, subject to subsection (2), submit the application to the Commission without the specified information.

(2) Where an applicant submits an application without the specified information, he or she shall at the same time of submitting the application, make and provide a declaration containing the following information –

- (a) the specified information required with the application and ordinarily obtainable from the third party;
- (b) the name of the third party;
- (c) the date an attempt was made to obtain the specified information from the third party; and
- (d) the reason the specified information could not be obtained from the third party.

(3) The declaration required under subsection (2) shall be in such form as the Commission may, by a notice published on the Internet site, provide.

(4) For purposes of this section, “an applicant” refers to any person who is required under the FSCA or any financial services legislation to provide specified information with respect to an application for a licence.

11. (1) There is hereby established a tribunal to be known as the Insurance Tribunal.

(2) The Insurance Tribunal shall, subject to subsection (3), comprise five members who shall be appointed by the Minister, acting after consultation with the Commission.

(3) For the purposes of any proceedings before it, the Insurance Tribunal may comprise a panel of three members.

(4) The persons to be appointed as members of the Insurance Tribunal shall be individuals who –

- (a) are fit and proper in accordance with Schedule 1A of the Regulatory Code;
- (b) are physically resident in the Virgin Islands;
- (c) have at least seven years post qualification experience in their respective fields of professional expertise;
- (d) are capable of exercising sound and fair judgment;
- (e) are not members of the House of Assembly; and
- (f) have not been certified to be medically unsound.

(5) The functions of the Insurance Tribunal are -

- (a) to receive and investigate reports from persons (hereinafter referred to as the “insured”) who are aggrieved by a decision of an insurer with respect to any claim they have lodged or filed with the insurer;
- (b) to mediate between an insurer and the insured with the objective of enabling an amicable settlement between the insurer and the insured;
- (c) to advise an insured of its options in the event that the insurer and the insured are unable to reach an amicable settlement; and
- (d) to submit a written report to the Commission outlining the matters it has received and how it has disposed of them.

(6) Where in the course of an investigation or mediation, the Insurance Tribunal forms the view that an insurer might have committed or may be committing an offence or has failed to comply with a requirement of the FSCA, Insurance Act,

Insurance Regulations or Regulatory Code, or any condition attached to the insurer's licence, the Insurance Tribunal shall immediately notify the Commission in writing of that fact.

(7) For the purposes of performing its functions under this section, the Insurance Tribunal may request from an insurer such document or information as it considers necessary and the insurer shall comply accordingly.

(8) Where an insurer fails to comply with a request made by the Insurance Tribunal pursuant to subsection (7), the Insurance Tribunal shall report such failure to the Commission which may take enforcement action against the insurer as if the failure were a breach of financial service legislation.

(9) For the avoidance of doubt, the category of contravention and description under which the Commission may take enforcement action against an insurer under subsection (8) shall be that specified in category 10 (Other contravention) of Schedule 1 of the Financial Services (Administrative Penalties) Regulations.

(10) In the conduct of its proceedings, the Insurance Tribunal shall adopt such procedures as it considers appropriate.

(11) The Insurance Tribunal and members thereof shall not be liable for anything done in good faith, in the exercise of powers or performance of functions conferred or imposed by this Act, including any advice given pursuant to subsection (5)(c) or any action taken pursuant to guidelines made by the Commission in relation to this section.

Meetings of the Board.

12. The Board may not meet for the number of times stipulated in section 7 (1) of the FSCA, but shall meet at such times as the Chairman considers appropriate and convenient for the Board's discharge of its functions, including holding meetings by electronic means.

Exercising powers of the Board.

13. (1) Subject to subsection (4) where, after the effective date, any action or decision is required to be taken or made by the Board, that action or decision may be taken or made –

(a) by the Chairman in his absolute discretion; or

(b) by 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.

(2) Where the Managing Director acts under subsection (1) (b) without consulting with the Chairman, he shall soon after so acting inform the Chairman in writing of the action he has taken, outlining the urgency that necessitated the action.

(3) Nothing contained in this section prevents the Board from convening to perform its functions, and the Chairman and Managing Director shall present to the Board for its ratification any action or decision taken pursuant to subsection (1).

(4) This section applies only where any action or decision that should ordinarily be taken or made by the Board is considered by the Managing Director to be of an urgent nature and cannot wait for the convening of the Board for the action or decision to be taken or made.

Exercising powers
of EC and LSC.

14. (1) Where, in the opinion of the Managing Director, any decision that should ordinarily be taken by the EC or LSC, is of an urgent nature and it is not practicable to await the convening of the EC or LSC to take such decision, the Managing Director may, acting in his own discretion, take the decision.

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

(3) The Managing Director may, instead of acting under subsection (1), delegate to any director the authority to take a decision on a matter that should ordinarily be taken by the LSC.

(4) The reference to “director” in subsection (3) includes a deputy director and any other senior officer of the Commission.

Quorum, majority
vote, etc. waived.

15. For purposes of sections 13 and 14, where the FSCA or any 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.

Announcement of
cessation of this
Act.

16. The Commission shall, prior to the operation of this Act coming to an end in accordance with section 1, publish that fact on the Internet site.

Passed by the House of Assembly this 16th day of November, 2017.

(Sgd) Delores Christopher,
Deputy Speaker.

(Sgd) Joann Vanterpool,
Deputy Clerk of the House of Assembly.