

No. 13 of 2012

VIRGIN ISLANDS

SECURITIES AND INVESTMENT BUSINESS (AMENDMENT) ACT, 2012

ARRANGEMENT OF SECTIONS

Section

- 1... Short title and commencement.
- 2... Section 2 amended.
- 3... Section 11 amended.
- 4... Section 21 amended.
- 5... Section 48 amended.
- 6... Section 49 amended.
- 7... Section 56 amended.
- 8... Section 68 amended.
- 9... Section 79 amended.
- 10.. Section 95 amended.
- 11.. Section 97A inserted.

I Assent

**(Sgd.) Boyd McCleary, CMG, CVO,
Governor.
15th November, 2012**

VIRGIN ISLANDS

NO. 13 of 2012

An Act to amend the Securities and Investment Business Act, 2010 (No. 2 of 2010).

[Gazetted 26th November, 2012]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and
commencement.

1. (1) This Act may be cited as the Securities and Investment Business (Amendment) Act, 2012.

(2) The provisions of this Act come into force on such date as may be appointed by the Governor by proclamation published in the Gazette.

Section 2
amended.
No. 2 of
2010

2. The Securities and Investment Business Act, 2010 (hereinafter referred to as “the principal Act”) is amended in section 2 (1) by deleting the definition of “Investment Business Regulations”.

Section 11
amended.

3. The principal Act is amended in section 11 by

- (a) inserting in subsection (1) after the words “shall not”, the words “, whether directly or indirectly,”;
- (b) inserting after subsection (3), the following new subsection:

“(3A) Where a sale, transfer, charge or other disposition referred to in subsection (1) takes place, the licensee shall, for the purposes of subsection (3), be deemed to have caused, permitted or acquiesced in the sale, transfer, charge or other disposition referred to in subsection (1).”;

- (c) adding in subsection (4) after the word “licensee”, the words “and any fees payable for the application and any approval of the application in that regard shall be paid by the licensee”; and
- (d) adding immediately after subsection (5), the following new subsection:

No. 12 of
of 2001

“(6) Where the Commission, in exercise of its powers under the Financial Services Commission Act, 2001 or any other enactment, is minded to take enforcement action for the breach of subsection (1) or (2), such enforcement action may be taken against the licensee as if the licensee has caused, permitted or acquiesced in the sale, transfer, charge or other disposition or in the acquisition as referred to in the subsection.”.

4. Section 21 of the principal Act is amended

Section 21
amended.

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

“(1) The Cabinet may, on the advice of the Commission make Regulations in relation to investment business and for the administration of this Act by the Commission as it relates to investment business.”.

- (b) in subsection (2) by deleting the words “The investment Business Regulations may,” and substituting the words “Regulations made under subsection (1) may,”;
- (c) by inserting after subsection (2), the following new subsection:

“(2A) Without prejudice to the generality of subsection (2) but subject to subsection (2B), Regulations made under subsection (1) may, in particular,

- (a) establish a regime for the approval by the Commission of persons who conduct or engage in certain investment business as may be specified in the Regulations, and such persons shall not be required to be licensed under this Act so long as they continue to be approved or deemed approved as such by the Commission; and
- (b) disapply or limit the scope of application of this Act to any person approved or deemed approved by the Commission by virtue of paragraph (a).

(2B) Regulations made under subsection (2A)

- (a) shall outline the functions that may be performed by a person approved by the Commission as mentioned in subsection (2A) (a);
- (b) shall take into account risks that may be posed by or associated with approving a person mentioned in subsection (2A) (a) not requiring a licence under this Act and provide such restrictions and conditions as may be considered necessary;
- (c) may provide an asset threshold that a person mentioned in subsection (2A) (a) may have under his management;
- (d) may require a person mentioned in subsection (2A) (a) to file with the Commission periodic returns on such matters as may be considered necessary;
- (e) may require the keeping and maintenance of a register of persons mentioned in subsection (2A) (a); and
- (f) may provide for such other matters as may be considered necessary to the efficient and effective functioning of a regime of persons mentioned in subsection (2A) (a).”; and

(d) in subsection (3) by deleting the words “the Investment Business Regulations” and substituting the words “Regulations made under subsection (1)”.

Section 48 amended. **5.** Section 48 of the principal Act is amended

(a) by deleting subsection (2) and substituting the following subsection:

“(2) The date of a prospectus shall be the date the prospectus is registered by the Commission and such date shall be clearly written on the prospectus.”; and

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

“(2A) The date of registration of a prospectus shall not be construed to prevent the prospectus from bearing a different date of issue.

(2B) Where a prospectus bears a date of issue that is different from the date of registration of the prospectus by the Commission, the date of issue of the prospectus shall not be earlier than the date of registration of the prospectus by the Commission.”.

6. Section 49 of the principal Act is amended in subsection (5) (a) by deleting the words “a certificate of registration” and substituting the words “written confirmation of its approval”. Section 49 amended.
7. Section 56 of the principal Act is amended in subsection (2) (b) by deleting the words “the prescribed investment warning” and substituting the words “the investment warning prescribed in the Mutual Funds Regulations”. Section 56 amended.
8. Section 68 of the principal Act is amended in subsection (3) by deleting “Subsection (1) and substituting “Subsection (2)”. Section 68 amended.
9. Section 79 of the principal Act is amended Section 79 amended.
- (a) by deleting subsection (1) and substituting the following subsection:
- “(1) Where a relevant licensee is a member of a group of companies, the relevant licensee may submit to the Commission its group financial statements, so long as the group financial statements are presented in a manner that would enable a proper evaluation of the licensee’s financial position.”; and
- (b) in subsection (2) by inserting the word “relevant” before the word “licensee”.
10. Section 95 of the principal Act is amended in subsection (1) by deleting the words “Subject to subsections (2) and (3)” and substituting the words “Subject to subsection (2)”. Section 95 amended.
11. The principal Act is amended by inserting immediately after section 97, the following new section: Section 97A inserted.
- “Power to make Regulations generally. 97A. The Cabinet may, on the advice of the Commission, make regulations in respect of any matter, for which specific regulation-making powers are not provided under this Act, in order to achieve the objectives of this Act.”.

Passed by the House of Assembly this 15th day of October, 2012.

(Sgd.) Ingrid Moses-Scatliffe,
Speaker.

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