

**VIRGIN ISLANDS**

**FINANCIAL INVESTIGATION AGENCY ACT, 2003**

**ARRANGEMENT OF SECTIONS**

1. Short title and commencement.
  2. Interpretation.
  3. Establishment of the Agency, the Board and the Steering Committee.
  4. Functions of the Agency, the Board and the Steering Committee.
  5. Directions of the Board.
  6. No order for evidence.
  7. Immunity of officers from suit.
  8. No criminal or civil liability for providing information.
  9. Confidentiality.
  10. Duty to take oath.
  11. Annual report.
  12. Funds and resources.
  13. Annual budget.
  14. Accounts and audit.
  15. Annual meeting between Executive Council and Board.
  16. Exemption from taxation, etc.
  17. Appointment of staff.
  18. Secondment of public officers and police officers to the Agency.
  19. Regulations.
  20. Commission to issue guidelines.
  21. Consultation on proposed guidelines.
  22. Commission to make guidelines available.
  23. Review of guidelines.
  24. Consequential amendments and revocation.
- SCHEDULE 1  
SCHEDULE 2

No. 19 of 2003

**Financial Investigation  
Agency Act, 2003**

**Virgin  
Islands**

**I Assent**

**THOMAS MACAN  
Governor**

**L.S.**

**16<sup>th</sup> January, 2004**

**VIRGIN ISLANDS**

**NO. 19 OF 2003**

An Act to provide for the establishment of a body to be known as the Financial Investigation Agency, the functions and powers of that body and for other matters connected therewith.

[Gazetted 19<sup>th</sup> February, 2004]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and  
commencement.

**1.** This Act may be cited as the Financial Investigation Agency Act, 2003 and shall come into operation on such day as the Governor may, by Proclamation published in the *Gazette*, appoint.

Interpretation.

**2.** In this Act, unless the context otherwise requires,

“Agency” means the Financial Investigation Agency established by section 3;

“Board” means the Board of the Agency referred to in section 3(2);

“Chairman” means the Chairman of the Board referred to in section 3(2);

No. 12 of 2001

“Commission” means the Financial Services Commission established under section 3(1) of the Financial Services Commission Act, 2001

“Director” means the Director of the Agency referred to in section 3(3);

“financial offence” means an offence under any financial services legislation;

No. 12 of 2001

“financial services legislation” means any legislation listed in Schedule 2 of the Financial Services Commission Act, 2001;

“foreign financial investigation agency” means such body or bodies in a foreign jurisdiction as may from time to time be designated by Order of the Governor and which performs functions similar to those of the Agency;

“Minister” means the Minister to whom responsibility for finance is assigned;

“Steering Committee” means the committee referred to in section 3(3);

“suspicious transaction guidelines” means guidelines issued by the Commission under section 20(1).

**3. (1)** There is hereby established a body corporate to be known as the Financial Investigation Agency which shall have power to do all such things as are necessary or incidental to the performance of its functions and the provisions of section 21 of the Interpretation Act shall apply accordingly.

Establishment of the Agency, the Board and the Steering Committee.  
Cap. 136

(2) There shall be a Board of the Agency which shall comprise

- (a) the Deputy Governor or a retired Judge appointed by the Executive Council as Chairman;
- (b) the Attorney General;
- (c) the Financial Secretary;
- (d) the Commissioner of Police;
- (e) the Comptroller of Customs; and
- (f) the Managing Director of the Commission.

(3) The Agency shall have a committee styled the Steering Committee, which is hereby established to comprise

- (a) the Attorney General as Chairman;
- (b) the Managing Director of the Commission; and
- (c) the Director of the Agency.

(4) Schedule 1 shall have effect with respect to the meetings of the Board, the administration and proceedings of the Agency, the Director and otherwise in relation to the Agency.

Schedule 1

Functions of the Agency, the Board and the Steering Committee.

4. (1) In the exercise of its functions under subsection (2), the Agency shall be responsible for receiving, obtaining, investigating, analysing and disseminating information which relates or may relate to

- (a) a financial offence or the proceeds of a financial offence; or
- (b) a request for legal assistance from an authority in a foreign jurisdiction which appears to the Agency to have the function of making such requests.

(2) Without limiting subsection (1) and notwithstanding any other law to the contrary, the Agency

- (a) shall receive all disclosures of information required to be made pursuant to any financial services legislation which is relevant to its functions, including information from any foreign financial investigation agency;
- (b) may, upon receipt of the disclosures referred to in paragraph (a), order in writing any person to refrain from completing any transaction for a period not exceeding seventy-two hours;
- (c) may, upon receipt of a request (whether through the Governor, Attorney General, Commission or otherwise) from a foreign financial investigation agency or a law enforcement authority, including the Commissioner of Police, order any person to freeze a person's bank account for a period not exceeding five days if satisfied that the request relates to the proceedings of a financial offence;
- (d) may require the production of such information, excluding information subject to legal professional privilege, that the Agency considers relevant to the performance of its functions;
- (e) shall retain a record of all information that it receives for a minimum of five years after the information is received;
- (f) shall, subject to such conditions as may be determined by the Director, provide information to the Commissioner of Police where the information may relate to the commission of a financial offence;

- (g) may provide information relating to the commission of a financial offence to any foreign financial investigation agency, subject to any conditions as may be considered appropriate by the Attorney General;
- (h) may, subject to section 19 of the Virgin Islands (Constitution) Order, 1976 and subsection (3) (b), enter into an understanding, in writing, with a foreign financial investigation agency which the Governor considers necessary or desirable for the discharge or performance of the functions of the Agency;
- (i) shall inform the public and financial and business entities of their obligations under measures that have been or might be taken to detect, prevent and deter the commission of financial offences.

U.K. S.I. 1976  
No. 2145

(3) The Board shall be responsible for making the policy of the Agency and, in addition to any powers conferred by or under this Act, shall,

- (a) subject to section 13, approve the budget of the Agency;  
and
- (b) exercise supervisory functions over the Agency in relation to the power specified in subsection (2)(h).

(4) Any person failing or refusing to provide the information required under subsection (2)(d) commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding two years or to both.

(5) The Steering Committee shall be responsible for steering the conduct of investigations of the Agency and shall, in addition to any powers conferred by or under this Act,

- (a) on its own volition or upon the request of the Board or the Commission, investigate or cause the investigation of any matter referred to in any financial services legislation or which is the subject of a request for legal assistance pursuant to an enactment;
- (b) perform, subject to subsection (3), any of the functions referred to in subsection (2).

(6) A person who is aggrieved by an order under subsection (2)(c), may apply to a Judge in Chambers to discharge the order of the Agency and shall, if he so applies, serve notice on the Agency to join in the proceedings, but the order shall remain in force until the Judge determines otherwise.

(7) The Board may appoint to the service of the Agency, such investigating officers as it thinks fit, who shall have all the powers of police officers and shall, without prejudice to the generality of this subsection, be subject to such specific or general directions of the Governor, the Attorney General or any other authority in accordance with any relevant law.

(8) Where, in the performance of its functions, the Agency becomes aware of evidence that a criminal offence has or may have been committed in the Territory, the Agency shall report the matter to an appropriate officer of the Police Force, and that officer or such other officer as the Commissioner of Police may designate shall from that time take over the investigation.

(9) Where an investigation has been taken over by the Police Force under subsection (8), the Agency shall not participate further in the investigation unless ordered to do so by the Governor or the Attorney General, or requested to assist in the investigation by the Commissioner of Police.

Directions of the Board.

5. The Board may, without prejudice to section 4 (3), issue directions in writing of a general nature as to the policy to be followed by the Agency in the performance of its functions as appear to the Board to be necessary or expedient in the public interest and the Agency shall give effect to those directions.

No order for evidence.

6. Notwithstanding the provisions of any other enactment, no order for the provision of information, documents or evidence may be issued against the Agency, the Board or Steering Committee or any member thereof, the Director, officers or personnel of the Agency or any person engaged pursuant to this Act.

Immunity of officers from suit.

7. No action shall lie against the Agency, the Director, officers or personnel of the Agency or any person acting under the direction of the Agency or the Director for anything done or omitted to be done in good faith in the discharge or purported discharge of any functions, duties or powers under this Act.

No criminal or civil liability for providing information.

No. 8 of 1993  
No. 5 of 1992

8. (1) No proceeding for breach of banking or professional confidentiality may be instituted against any person or against any director or employee of a financial or business entity who in good faith transmits information or submits reports in accordance with any financial services legislation, or the Criminal Justice (International Co-operation) Act, 1993 or the Drug Trafficking Offences Act, 1992 or any other enactment relating to the provision of mutual legal assistance.

(2) No civil or criminal action may be brought nor any professional sanction taken against any person who, or against any director or employee of a financial or business entity that, in good faith transmits information or submits reports to the Agency.

**9.** (1) Any person who obtains information in any form as a result of his connection with the Agency shall not disclose that information to any person except so far as it is required or permitted under this Act or any other enactment. Confidentiality.

(2) Any person who communicates any information in breach of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year, or to both.

**10.** (1) The members of the Board, the Director and the staff of the Agency shall, prior to assuming office with the Agency, subscribe to the Oath of Confidentiality set out in Schedule 2. Duty to take oath. Schedule 2

(2) The Oath of Confidentiality referred to in subsection (1) shall be taken before a Magistrate, Additional Magistrate, Registrar of the High Court or a Justice of the Peace.

(3) The Director shall keep a record of all Oaths of Confidentiality taken pursuant to this section.

**11.** (1) The Director shall Annual report.

- (a) from time to time advise the Board on the work of the Agency and, in particular, on matters that could affect public policy or the priorities to be set by the Agency;
- (b) prepare and submit to the Board on or before the 30<sup>th</sup> day of June in each year an annual report reviewing the work of the Agency during the previous year

(2) The Chairman shall forward a copy of every annual report to the Executive Council, which shall cause the report to be laid on the table of the Legislative Council before the end of the year immediately following the year to which the annual report relates.

**12.** (1) The funds and resources of the Agency shall consist of such monies as may be appropriated by the Legislative Council for the purposes of the Agency and any assets obtained by the Government under an asset sharing agreement. Funds and resources.

(2) The Agency shall open and maintain with a reputable bank licensed and operating in the Territory and approved by Executive Council, an account to be known as “the Asset Sharing Fund”.

(3) Monies provided to the Agency by Legislative Council and proceeds arising out of an asset sharing agreement shall be paid into the Asset Sharing Fund.

(4) The Asset Sharing Fund shall be for the exclusive use of the Agency.

(5) Where there is a surplus on the budget approved for the Agency’s expenditure for any financial year, such surplus shall be paid into a reserve account to be established by the Agency, unless otherwise agreed upon with the Executive Council.

Annual budget.

**13.** (1) The Board shall, not later than three months before the commencement of each financial year, prepare in respect of the financial year, and submit for the approval of the Executive Council, estimates of the expected expenditure and expected income of the Agency.

(2) The Board shall seek the views of the Minister concerning the estimates referred to in subsection (1) before submitting the estimates for the approval of the Executive Council.

(3) Notwithstanding that the Appropriation Act in respect of a financial year has not come into force by the beginning of that financial year, the Minister may authorise the withdrawal from the Consolidated Fund of such monies not exceeding the amount appropriated to the Agency for the immediately preceding financial year as may be necessary to carry on the operations of the Agency until such time as the Appropriation Act comes into force.

(4) Any monies withdrawn from the Consolidated Fund under subsection (3) shall, upon the coming into force of the Appropriation Act referred to in that subsection, be set off against the amount appropriated to the Agency by that Appropriation Act.

Accounts and audit.

**14.** (1) The Agency shall keep proper accounts and other records in relation thereto, and shall prepare in respect of each financial year a statement of accounts.

(2) The accounts of the Agency for each financial year shall be audited by the Auditor General or such other auditor as may be appointed by the Board with the prior written approval of the Minister.

(3) The financial year of the Agency shall be the period commencing on 1<sup>st</sup> January and ending on 31<sup>st</sup> December in each year.

(4) As soon as the accounts have been audited, the Agency shall submit a copy thereof to the Minister together with a copy of any report made by the Auditor General or other auditor.

(5) The Minister shall lay on the table of the Legislative Council before the end of the immediately subsequent year a copy of every such audited accounts, together with a copy of any report made by the Auditor General or other auditor on the accounts.

**15.** (1) The Executive Council and the Board shall in each year meet for the Board Annual meeting between Executive Council and Board.

- (a) to apprise the Executive Council of the operations of the Agency; and
- (b) to discuss with the Executive Council issues relating to
  - (i) the operation, management and performance of the Agency;
  - (ii) the initiatives and future direction of the Agency;
  - (iii) Government policy with respect to the Agency;
  - (iv) international developments which may affect the operations of the Agency; and
  - (v) such other matters as either party may consider essential for strengthening the role of the Agency.

(2) The meeting referred to in subsection (1) shall be arranged by the Chairman after consultation with the Chief Minister.

**16.** The Agency is exempt from the payment of all taxes, levies and licence fees on its income and operations and from the payment of all taxes, duties and rates on its property and documents. Exemption from taxation, etc.

**17.** (1) The Board may appoint such officers, employees and agents as it considers necessary and proper for the administration, management and performance by the Agency of its functions under this Act. Appointment of staff.

(2) Appointments under this Act shall be on such terms as to remuneration, expenses, pensions and other conditions of service as the Board thinks fit.

(3) The Board may, by Rules, establish and maintain such schemes or make such other arrangements as it thinks fit for the payment of pensions and other benefits in respect of its officers and employees.

Secondment of public officers and police officers to the Agency.

**18.** (1) A public officer may, with his own consent and the approval of the Director of Human Resources, be seconded to the Agency.

(2) A member of the Police Force may, with his own consent and the approval of the Commissioner of Police, be seconded to the Agency.

(3) A person who is seconded to the Agency shall draw the full pay of the post to which he is seconded and is eligible for any increment that is normally payable in that post.

(4) The pay of a person who is seconded to the Agency shall be paid by the Agency.

(5) During the period that a person is seconded to the Agency, he shall be deemed to remain on

- (a) the establishment of the Government department from which he is seconded, in the case of a public officer, or
- (b) the establishment of the Police Force, in the case of a member of the Police Force,

and he shall be eligible for promotion *in absentia* on the basis of the performance evaluation reports submitted under subsection (6).

(6) The Board shall cause the performance evaluation reports of a person who is seconded to the Agency to be forwarded to

- (a) the Director of Human Resources and the head of the Government department from which he is seconded, in the case of a public officer; and
- (b) the Commissioner of Police, in the case of a member of the Police Force.

(7) The service of a person who is seconded to the Agency shall,

- (a) in the case of a public officer, count as service with the Government department from which he is seconded for the purposes of the Pensions Act; or Cap. 161
- (b) in the case of a member of the Police Force, count as service with the Police Force for the purposes of Part VI of the Police Act. Cap. 165

(8) A person who is seconded to the Agency is eligible for leave applicable to the post to which he is seconded and while on such leave he shall be paid the pay of that post.

(9) Where a member of the Police Force is permanently appointed to a post on the establishment of the Agency, he shall retain his rank as a member of the Police Force and the Board may, with the approval of the Commissioner of Police, promote him in rank as if he were a member of the Police Force.

(10) Where a member of the Police Force is seconded or permanently appointed to a post on the establishment of the Agency, he shall continue to have the powers and immunities conferred upon members of the Police Force by law.

**19.** (1) The Executive Council may, on the advice of the Agency, make such regulations as it thinks necessary or expedient for carrying out or giving effect to this Act. Regulations.

(2) Without prejudice to the generality of subsection (1), such regulations may in particular

- (a) require financial and other institutions as may be prescribed to establish and maintain procedures relating to the keeping of records and the making of reports and training;
- (b) create criminal offences and penalties triable summarily for failing to comply with the regulations;
- (c) provide that in determining whether a person has complied with the regulations the trial court shall take account of any relevant guidelines issued by the Agency;
- (d) prescribe all matters required or permitted by this Act to be prescribed.

**20.** (1) Subject to section 21, the Commission shall from time to time issue, in respect of a financial institution to which this Act applies, guidelines Commission to issue guidelines.

- (a) setting out the features of a transaction that may give rise to suspicion that the transaction is or may be relevant to the enforcement of this Act;
- (b) setting out the procedures for reporting a suspicious transaction orally.

(2) Suspicious transaction guidelines shall be issued in such manner as the Commission shall from time to time determine.

(3) The Commission may from time to time issue an amendment or revocation of any suspicious transaction guidelines.

(4) Without limiting subsection (1), suspicious transaction guidelines issued under this section may relate to one or more kinds of financial institution and such guidelines may make different provisions for different kinds of financial institutions and different kinds of transactions.

Consultation of proposed guidelines.

**21.** (1) The Commission shall, before issuing any suspicious transaction guidelines,

- (a) consult with such other agencies and entities as the Board may by Order designate and shall have regard to any representations made by such agencies and entities;
- (b) publish in the *Gazette* and in a newspaper circulating in the Territory, notice of its intention to issue the guidelines, which notice shall contain an invitation to financial institutions that are likely to be affected by the proposed guidelines, and industry organisations that are representative of those financial institutions, to express to the Commission, within such reasonable period as is specified in the notice, their interest in being consulted in the course of the development of the guidelines; and
- (c) consult with, and invite representations from, those financial institutions and industry organisations which express such an interest, and shall have regard to any such representations.

(2) Nothing in subsection (1) prevents the Commission from

- (a) adopting any additional means of publicising the proposal to issue any suspicious transaction guidelines or of

consulting with interested parties in relation to such a proposal; and

- (b) taking a final decision on matters arising from consultations.

(3) This section also applies in respect of any amendment or revocation of any suspicious transaction guidelines.

**22.** On request by any financial institution in respect of which any suspicious transaction guidelines are for the time being in force, or by any industry organisation that represents any such financial institution, the Commission shall, without charge,

Commission to make guidelines available.

- (a) make those guidelines, and all amendments to those guidelines, available for inspection, by that financial institution or, as the case requires, that industry organisation, at the Commission's offices; and
- (b) provide copies of those guidelines, and all amendments to those guidelines, to that financial institution, or, as the case requires, that industry organisation.

**23.** (1) The Commission shall from time to time review any suspicious transaction guidelines for the time being in force.

Review of guidelines

(2) Section 21 applies, with all necessary modifications, in relation to any such review as if the review were a proposal to issue suspicious transaction guidelines.

**24.** (1) Section 27(2) of the Proceeds of Criminal Conduct Act, 1997 is repealed.

Consequential amendments and revocation.  
No. 5 of 1997  
S.I. 1998 No. 11

(2) The Reporting Authority (Constitution and Procedure) Order, 1998 is revoked.

(3) A reference in any enactment to the Reporting Authority established under section 27(2) of the Proceeds of Criminal Conduct Act, 1997 repealed by subsection (1) and the Reporting Authority (Constitution and Procedure) Order, 1998 revoked by subsection (2), shall be construed as a reference to the Steering Committee.

## SCHEDULE 1

(Section 3 (4))

### **PROVISIONS RELATING TO THE MEETINGS OF THE BOARD, THE ADMINISTRATION AND PROCEEDINGS OF THE AGENCY AND THE DIRECTOR OF THE AGENCY**

Meetings of the  
Board.

**1.** (1) The Board shall meet at least once every quarter at such place and time as may be designated by the Chairman.

(2) At every meeting of the Board, the Chairman shall preside.

(3) The quorum of the Board shall be four.

(4) At any meeting for the conduct of its business, the Board shall take its decision by a majority vote of the members present and in the event of a tie the Chairman shall have a casting vote.

(5) The Chairman shall at any time convene a special meeting of the Board upon receipt of a request signed by at least three members calling upon him to do so, and such meeting shall be held not later than fourteen days after receipt of the request.

(6) No act or proceeding of the Board shall be invalid by reason only of the existence of a vacancy among its members or of any defect in the appointment of a member.

(7) Notwithstanding anything contained in this paragraph, the Chairman may, in any matter he considers exceptional, make arrangements for a decision of the Board to be taken on such matter through a process of consultation without the need for an actual meeting.

(8) Subject to the provisions of this act, the Board shall establish its own rules of procedure for the purposes of the conduct of its meetings.

Official seal of  
the Agency.

**2.** (1) The Agency shall have an official seal for the authentication of documents issued by the Agency and the application of the seal of the Agency shall be authenticated by the signature of the Chairman or a person authorised to do so by the Board.

(2) A document purported to be executed under the seal of the Agency, or signed on its behalf, shall be received in evidence and, unless the contrary is proved, shall be taken to be so executed or signed.

- 3.** Anything permitted or required to be done by the Agency may be done by any member of the Board or any employee of the Agency who is authorized for that purpose by the Agency either generally or specifically. Things required to be done.
- 4.** The Board may establish committees which may include persons who are not members of the Board or the Steering Committee. Ad hoc committees.
- 5.** (1) The Director shall, subject to the provisions of this paragraph, be appointed by the Board and hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for re-appointment. Appointment of Director.
- (2) The Director shall not be appointed or re-appointed for a period exceeding five years.
- 6.** (1) The Director shall not, while holding office as such, hold any other officer or employment, whether remunerated or not, without the prior approval of the Board.
- (2) Subject to subparagraph (1), a person may not be appointed or remain Director who
- (a) is a member of the Legislative Council;
  - (b) is a public officer; or
  - (c) is director, officer or employee of, or has a controlling interest in, any financial institution.
- 7.** The Board may appoint a Deputy Director or any person eligible to be appointed as Director to act temporarily in the place of the Director whenever the Director is absent or is unable to act. Deputy Director and Acting Director.
- 8.** The Director may at any time by notice in writing to the Chairman resign his office. Resignation of Director.
- 9.** If the Board is satisfied that the Director
- (a) has become bankrupt or made arrangements with his creditors,
  - (b) is incapacitated by physical or mental illness,
  - (c) has been convicted of an offence and sentenced to a penalty of a fine or imprisonment, or
- Vacancy of office of Director.

(d) is otherwise unable or unfit to discharge the functions of Director,

the Board may declare the office of Director vacant and shall notify that fact in such manner as the Board thinks fit, and thereupon that office shall become vacant.

Remuneration of Director.

**10.** The Director shall receive such remuneration whether by way of salary, allowance or fees, as the Board may determine and, if a person ceases to be the Director and it appears to the Board that there are special circumstances which make it right that the person should receive compensation, the Board may direct a sum of such amount as the Board may determine to be paid to that person.

Director responsible for administration of Agency.

**11.** The Director shall have charge of the day-today management and operation of the agency and shall be accountable therefor.

**SCHEDULE 2**

(Section 10(1))

**OATH OF CONFIDENTIALITY**

I, \_\_\_\_\_, being a Board member / the Director / an officer / an employee / an agent / an adviser\* of the Financial Investigation Agency solemnly swear / affirm\* that I shall keep confidential all information which comes to my knowledge in my capacity as a Board member / the Director / an officer / an employee / an agent / an adviser\* of the Agency and I shall not divulge such information except as authorized by and in accordance with law.

So help me God! (omit if affirming)

Sworn / Affirmed before me, a Magistrate / Additional Magistrate / Registrar of the High Court / Justice of the Peace\* this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Name of person swearing / affirming)

\_\_\_\_\_  
(Magistrate / Additional Magistrate/  
Registrar of the High Court/  
Justice of the Peace)\*

\* Delete as appropriate

Passed by the Legislative Council this 30<sup>th</sup> day of December, 2003.

V. INEZ ARCHIBALD,  
Speaker.

DENNISTON FRASER,  
Clerk of the Legislative Council.