

No. 19 of 2006

VIRGIN ISLANDS

FINANCIAL SERVICES COMMISSION (AMENDMENT) ACT, 2006

ARRANGEMENT OF SECTIONS

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No. 19 of 2006

**Financial Services Commission
(Amendment) Act, 2006**

**Virgin
Islands**

I Assent

**(Sgd.) DANCIA PENN, OBE, QC
Acting Governor**

L. S.

23rd November, 2006

VIRGIN ISLANDS

No. 19 of 2006

An Act to amend the Financial Services Commission Act, 2001 (No. 12 of 2001) and to repeal the Financial Services (International Co-operation) Act, 2000 (No. 18 of 2000).

[Gazetted 7th December, 2006]

ENACTED by the Legislature of the Virgin Islands as follows:

1. This Act may be cited as the Financial Services Commission (Amendment) Act, 2006 and shall come into force on 15th January, 2007. Short title and commencement.

2. Section 2 of the Financial Services Commission Act, 2001 (referred to in this Act as “the principal Act”) is amended Section 2 amended.

(a) in subsection (1)

(i) in the definition of “Chairman” by inserting after the words “under section 5” the words “and, where the Chairman is absent from the Territory or unable for any reason to perform the functions of Chairman, includes the Deputy Chairman”,

(ii) by repealing the definition of “Committee”,

- (iii) by inserting after the definition of “Court” the following definitions:

““document” means a document in any form and includes

- (a) any writing or printing on any material,
- (b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium, including discs and tapes,
- (c) books and drawings, and
- (d) a photograph, film, tape, negative or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced,

and without limiting the generality of the foregoing, includes any Court application, order and other legal process and any notice;

“Enforcement Committee” means the Enforcement Committee established under section 14;”;

- (iv) by repealing the definition of “financial services business” and substituting the following definition:

““financial services business” means

- (a) a business or activity for which a licence is required; or
- (b) a business or activity that is specified by the regulations as financial services business;”;

- (v) by repealing the definition of “licence” and substituting the following definitions:

““licence” means an authorisation, licence, registration or recognition issued or granted under any regulatory legislation;

“licensee” means a person holding a licence;”;

- (vi) by inserting after the definition of “licensee” the following definition:

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

- (vii) by inserting after the definition of “Minister”, the following definition:

““registry legislation” means any financial services legislation listed in Part II of Schedule 2;”;

- (viii) by inserting after the definition of “regulated person”, the following definition:

““regulations” means regulations made under section 62;”;

- (ix) in the definition of “Regulatory Code”, by deleting the words “the Code” and substituting the words “the Regulatory Code”; and
(x) by inserting after the definition of “Regulatory Code”, the following definitions:

“regulatory legislation” means any financial services legislation listed in Part I of Schedule 2;

“unauthorised financial services business” has the meaning specified in subsection (2).”; and

- (b) by inserting after subsection (1), the following subsection:

“(2) A person carries on unauthorised financial services business if he carries on financial services business without having the appropriate licence.”.

3. Section 4 of the principal Act is amended

Section 4 amended.

- (a) in subsection (1),
- (i) in paragraph (a), by deleting the words “regulated persons” and substituting the word “licensees”,
- (ii) by inserting after paragraph (b),

- “(ba) to take action against persons carrying on unauthorised financial services business in or from within the Territory;”,
- (iii) by repealing paragraph (c) and substituting the following paragraphs:
- “(c) to receive, review and determine applications for licences;
- (ca) to monitor compliance by licensees, and by such other persons who are subject to them, with the Anti-Money Laundering Code of Practice and with such other Acts, regulations, codes or guidelines relating to money laundering or the financing of terrorism as may be prescribed;
- (cb) to administer the registry legislation;”;
- (iv) in paragraph (f), by deleting the words “relating to financial services business”;
- (v) in paragraph (h)(ii), by deleting the words “regulated persons” and substituting the word “licensees”;
- (vi) in paragraph (i), by deleting the words “and international associations of regulatory authorities” and substituting the words “, international associations of regulatory authorities and other international associations or groups relevant to its functions”; and
- (vii) in paragraph (k), by inserting after the words “financial services business”, the words “or the registry legislation”;
- (viii) in paragraph (m), by inserting after the words “financial services business”, the words “or to services provided under, or with respect to, any financial services legislation”; and
- (ix) in paragraph (o), by deleting the words “and maintain a safe and sound financial services legislation” and substituting the words “a safe and sound financial services environment”;
- (b) in subsection (2)

- (i) by inserting after the words “relating to financial services business”, the words “or to other businesses or activities subject to the financial services legislation”;
- (ii) in paragraph (a), by deleting the words “including investors,”;
- (c) by inserting after subsection (2) the following subsection:
 - “(2A) For the purposes of subsection (2)(a), “the public” includes investors and customers and potential customers of persons engaged in financial services business in or from within the Territory.”; and
- (d) in subsection (3), by deleting the words “or (2)(a) or (c) and substituting the words “or (2)”.

4. Section 5(5) of the principal Act is amended by deleting the words “for appointment” and substituting “from appointment”. Section 5 amended.

5. Section 6(1) of the principal Act is amended Section 6 amended.

- (a) in paragraph (b), by deleting the words “by the Commission”; and
- (b) in paragraph (c)
 - (i) by deleting in subparagraph (ii), the word “and” after the semi colon;
 - (ii) by inserting in subparagraph (iii), the word “and” after the semi colon; and
 - (iii) by inserting after subparagraph (iii), the following subparagraph:
 - “(iv) the Commission fulfils its statutory obligations and properly discharges its functions;”.

Section 9
amended.

6. Section 9 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(5) This section does not apply to the Managing Director whose resignation and removal from office shall be governed by the terms and conditions of his employment with the Commission.”.

Section 10
amended.

7. Section 10 of the principal Act is amended

(a) in subsection (1)

(i) by deleting the words “The Council shall, on the recommendation of the Board,” and substituting the words “The Board shall, after consultation with the Minister,”; and

(ii) by deleting the words “as are considered” and substituting the words “as it considers”; and

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

“(3) In discharging his functions, the Managing Director shall use his best endeavours to ensure that

(a) the resources of the Commission are utilised economically and efficiently;

(b) the internal financial and management controls of the Commission are adequate;

(c) the Commission is operated in accordance with principles of good governance; and

(d) the Commission fulfils its statutory obligations and properly discharges its functions.”.

8. The heading to Part II of the principal Act is deleted and replaced with the following: Heading to Part II amended.

“PART II

COMMITTEES OF THE COMMISSION”.

9. Section 14 of the principal Act is repealed and the following section substituted: Repeal and replacement of section 14.

“Establishment of committees. 14. (1) The following committees of the Commission are established:

(a) the Licensing and Supervisory Committee;

(b) the Enforcement Committee.”.

(2) In this Part, “committee” means a committee established under subsection (1).”.

10. Section 15 of the principal Act is amended Section 15 amended.

(a) in the marginal note, by deleting the word “Committee” and substituting the word “committees”;

(b) in subsections (1), by deleting the words “The Committee” and substituting the words “The Licensing and Supervisory Committee”;

(c) by repealing subsection (2) and substituting the following subsection:

“(2) The Enforcement Committee shall comprise

(a) the Managing Director;

(b) the head of the division of the Commission having responsibility for enforcement; and

(c) such other senior officers of the Commission as the Board may appoint.”; and

- (d) by repealing subsection (3) and substituting the following subsections:

“(3) The Managing Director shall appoint a secretary for each committee.

(4) The secretary of each committee

- (a) shall be an employee of the Commission; and
- (b) shall carry out such duties as may be specified in the committee’s rules of procedure and as may otherwise be determined by the committee.

(5) The Managing Director may co-opt onto a committee such officers of the Commission as he may determine to assist the committee in the performance of its functions.”.

Section 16 amended.

11. Section 16 of the principal Act is amended

- (a) in the marginal note, by deleting the words “and decisions of the Committee” and substituting the words “of the Licensing and Supervisory Committee”;
- (b) in subsection (1),
 - (i) by deleting the words “The functions of the Committee are” and substituting the words “The Licensing and Supervisory Committee shall exercise the following functions on behalf of the Commission:”;
 - (ii) by repealing paragraph (a), including the proviso to that paragraph, and substituting the following:

“(a) to receive, review and determine applications for licences;”;
 - (iii) in paragraph (b), by deleting the words “regulated persons” and substituting the word “licensees”; and
 - (iv) in paragraph (c), by deleting the words from “or certificates under a financial services legislation” to the end of the paragraph;

- (c) by repealing subsection (2) and substituting the following subsections:

“(2) The Board has no power to determine, or direct the Committee with respect to, any particular application for a licence, and the Board shall not make any such determination or give any such direction to the Committee.

(2A) Subsection (2) does not limit or affect the Board’s power to establish the policy of the Commission with respect to licensing.”;

- (d) in subsection (3), by deleting the words “a licence or for registration or recognition under a financial services legislation, it” and substituting the words “a licence, the Commission”; and
- (e) by repealing subsection (4).

12. The principal Act is amended by inserting after section 16 the following section: Insertion of section 16A.

“Functions of the Enforcement Committee.

16A. The Enforcement Committee shall exercise the following functions on behalf of the Commission:

- (a) subject to section 17, to consider and determine the exercise by the Commission of its powers to take enforcement action under Part V or pursuant to any financial services legislation;
- (b) to report to the Board all enforcement action taken by the Commission;
- (c) to review the enforcement provisions of the Act and to advise the Board on such amendments or revisions as it considers necessary; and
- (d) to perform such other enforcement functions not inconsistent with this Act or other financial services legislation as the Board may authorise.”.

13. The principal Act is amended in section 17 Section 17 amended.

- (a) by deleting the marginal note and substituting “Provisions

relating to each committee.”;

- (b) by designating the existing provision as subsection (1);
- (c) in the existing provision
 - (i) by deleting the words “The Committee” and substituting the words “A committee”;
 - (ii) in paragraph (a), by inserting after the words “may determine”, the words “or as may be provided for or specified in the committee’s rules of procedure”; and
 - (iii) by deleting paragraph (c) and substituting the following paragraph:

“(c) report to the Board in writing on the performance of its functions not less than once each quarter.”; and
- (d) by inserting after the existing provision, the following subsections:

“(2) A committee may, by notice in writing, delegate the performance of any of its functions or the exercise of any of its powers to a senior officer of the Commission or to a Commissioner where authorised to do so

(a) in its rules of procedure; or

(b) by the Board.

(3) In the performance of a function, or the exercise of a power delegated by a committee under this section, the delegate must act in accordance with any directions of the committee.

(4) The performance of a function or the exercise of a power by a delegate is as effective as if performed or exercised by the committee.”.

Section 19
amended.

14. The principal Act is amended in section 19

- (a) by deleting in subsection (5)
 - (i) the words “On the last working day of each quarter” and substituting the words “Within 5 working days of the last day of each quarter”, and

- (ii) the words “on the previous working day” and substituting the words “on the day before the last day of that quarter”;
 - (b) by inserting in subsection (6), after the words “bank account”, the words “for use by the Commission”; and
 - (c) by inserting in subsection (7), after the word “Chairman”, the words “, or in his absence the Deputy Chairman,”.
- 15.** The principal Act is amended in section 20(4) Section 20 amended.
- (a) by deleting the words “on the last working day of each quarter” and substituting the words “within 5 working days of the last day of each quarter”; and
 - (b) by deleting the words “on the previous working day” and substituting the words “on the day before the last day of that quarter”.
- 16.** The heading to Part IV is deleted and the following heading substituted: Deletion and substitution of heading to Part IV.
- “INFORMATION GATHERING AND COOPERATION WITH FOREIGN REGULATORY AUTHORITIES”**
- 17.** The principal Act is amended by repealing section 29. Section 29 repealed.
- 18.** Section 30 of the principal Act is amended by repealing subsections (2) to (5). Section 30 amended.
- 19.** Section 32 of the principal Act is amended Section 32 amended.
- (a) in subsection (1), by deleting the words from “such person” to the end of the subsection and substituting the following:
 - “such person
 - (a) to provide specified information or information of a specified description; or
 - (b) to produce specified documents or documents of a specified description.”;

- (b) in subsection (2)
 - (i) by repealing paragraph (a) and substituting the following paragraph:
 - “(a) may be issued to
 - (i) a licensee;
 - (ii) a former licensee;
 - (iii) a person whom the Commission reasonably believes to be carrying on, or to have at any time carried on, unauthorised financial services business;
 - (iv) a person connected with a person specified in sub-paragraph (i), (ii) or (iii);
 - (v) a person reasonably believed to have the information or documents to which the notice relates; and”;
 - (ii) by deleting in paragraph (b), the full stop and substituting “; and”, and
 - (iii) by inserting after paragraph (b), the following paragraph:
 - “(c) may require that the information is to be provided to, or the documents are to be produced to, such person as may be specified in the notice.”; and
- (c) by repealing subsections (6) and (7).

Section 33 amended.

20. Section 33(1) of the principal Act is amended by deleting the words “a member” and substituting the words “an officer”.

Insertion of sections 33A to 33D.

21. The principal Act is amended by inserting after section 33 the following sections:

“Examination under oath before a Magistrate.

33A. (1) Where the Commission considers it necessary to examine a person on oath, the Commission may apply to a Magistrate to have that person examined before the Magistrate and to have the results of that examination transmitted to the Commission.

(2) Subject to subsections (3) and (4), on an application under subsection (1), the Magistrate may order the examination of a person under oath on such terms and conditions as he considers fit.

(3) Where the Magistrate orders the examination of a person under subsection (2), that person may choose to be represented by a legal practitioner, and the proceedings of the examination shall be held in camera.

(4) An application to a Magistrate under subsection (1) shall be processed by the Magistrate within seven days of the application and the results of the examination shall be transmitted to the Commission within a reasonable period, not exceeding fourteen days, from the date of the examination.

Examination
under oath by
the
Commission.

33B. (1) Where the Commission on reasonable grounds believes that a person (referred to in this section as “the examinee”) can provide information that is reasonably required for the purposes of discharging its functions or ensuring compliance with any financial services legislation, the Commission may, by notice in writing, require the examinee to attend before a specified Commissioner or officer of the Commission (referred to in this section as “the examiner”) to be examined under oath.

(2) A notice under subsection (1) shall state

- (a) the general nature of the matters on which the examinee is to be examined;
- (b) the date, time and place of the examination; and
- (c) the entitlement of the examinee to be represented by a legal practitioner in accordance with subsection (5).

(3) Any change in the matters required to be stated in the notice under subsection (2) shall be confirmed by the Commission to the examinee in writing.

(4) The examiner is entitled to administer an oath

to the examinee for the purposes of this section, notwithstanding that the examiner may not otherwise be entitled to administer an oath.

(5) An examinee may be represented at the examination by a legal practitioner of his choice who may, at such times as the examiner determines,

- (a) address the examiner; and
- (b) examine the examinee on any matters on which the examiner has examined the examinee.

(6) Subject to subsection (7), an examination under this section shall be in camera.

(7) The examiner may in his discretion permit to be present at the examination

- (a) any officer or employee of the Commission and any other person that, in the opinion of the examiner, is essential to the examination; and
- (b) any person whom the examinee requests to be present.

(8) The examiner shall cause a written record to be made of the examination and shall, within a reasonable period following the examination, provide a written copy of the record to the examinee, subject to such conditions (including a condition as to disclosure of the record or any part thereof or information relating thereto) as the examiner may impose.

(9) A person commits an offence if,

- (a) having received a notice under subsection (1), he fails or refuses to submit to examination in accordance with the notice;
- (b) as an examinee, he fails to answer a question properly put to him by the examiner; or

- (c) having been issued with a record of an examination pursuant to subsection (8), he fails to comply with any condition imposed by an examiner.

(10) A person who commits an offence under subsection (9) is liable on summary conviction to a fine not exceeding five thousand dollars.

Duty to cooperate.

33C. (1) Subject to the provisions of this Act, the Commission shall take such steps as it considers appropriate to co-operate with

- (a) foreign regulatory authorities; or
- (b) persons, in or outside the Virgin Islands, who have functions in relation to the prevention or detection of financial crime, including money laundering, financing of terrorism, misconduct in, or misuse of information relating to, financial markets and offences involving fraud or dishonesty.

(2) Co-operation may include

- (a) the sharing of documents and information which the Commission is not prevented by this Act or any other enactment from disclosing;
- (b) making requests for assistance to foreign regulatory authorities; and
- (c) making application for the examination of a person by a Magistrate under section 33A or requiring a person to be examined under section 33B.

(3) Nothing contained in this section or section 33D shall be construed as compelling the Commission to provide any assistance relating to matters of taxation.”.

Provision of assistance to foreign regulatory authorities.

33D. (1) Subject to subsection (2), the Commission may, on the written request of a foreign regulatory authority and subject to such conditions as it considers appropriate

- (a) exercise the power conferred on it by section 32;
- (b) appoint one or more competent persons as examiners to investigate any matter;
- (c) make an application for the examination of a person under section 33A or require a person to be examined under section 33B; or
- (d) disclose information, or provide documentation, to the foreign regulatory authority, whether such information or documentation is already in the Commission's possession or whether it is obtained pursuant to the exercise of a power under paragraph (a), (b) or (c).

(2) The Commission shall not exercise the power conferred on it by subsection (1) unless it is of the opinion that the information or documentation to which the request relates, or the investigation is sought, is reasonably required by the foreign regulatory authority for the purposes of its regulatory functions.

(3) Sections 36(2) to (5) apply to an examiner appointed under subsection (1)(b).

(4) In deciding whether or not to exercise the powers conferred on it by subsection (1), the Commission may take into account, in particular

- (a) whether corresponding assistance would be given to the Commission in the country or territory of the foreign regulatory authority concerned;
- (b) the nature and seriousness of the matter to which the request for assistance relates, the importance of the assistance

to be provided in the Virgin Islands and whether the assistance can be obtained by other means;

- (c) the relevance of the information or documentation to the enquiries to which the request relates; and
- (d) whether it is otherwise appropriate in the public interest to provide the assistance sought.

(5) For the purposes of subsection (5)(a), the Commission may require the foreign overseas regulatory authority making the request to give a written undertaking, in such form as the Commission may require, to provide corresponding assistance to the Commission.

(6) If a foreign regulatory authority fails to comply with a requirement of the Commission made under subsection (5), the Commission may refuse to provide the assistance sought by the foreign regulatory authority.

(7) Without limiting the discretion of the Commission under this section, the Commission may decide that it will not, on the request of a foreign regulatory authority, exercise its powers under this section unless

- (a) the foreign regulatory authority undertakes to make such contribution towards the cost of exercising its powers as the Commission considers appropriate;
- (b) it is satisfied that the foreign regulatory authority is subject to adequate legal restrictions on further disclosure of the information and documents and that it will not, without the written permission of the Commission obtained at the time of the request or thereafter
 - (i) disclose information or documents provided to it to any person other

than an officer or employee of the foreign regulatory authority engaged in the exercise of its supervisory functions; or

(ii) take any action on information or documents provided to it; and

(c) it has received satisfactory assurances from the foreign regulatory authority that any information provided to it will not be used in any criminal proceedings against the person furnishing it, other than proceedings for an offence of perjury or any equivalent offence.”.

Amendment of heading to Part V.

22. The heading to Part V is amended by inserting at the beginning of the heading, the words “**COMPLIANCE AND**”.

Repeal and replacement of section 34.

23. Section 34 of the principal Act is repealed and the following section substituted:

“Compliance function.

34. (1) A licensee shall establish and maintain adequate systems and controls for ensuring its compliance with the requirements of, and its obligations under

(a) this Act and the financial services legislation;

(b) the Regulatory Code, or any Guidance issued by the Commission, that applies to the licensee;

(c) any directives issued by the Commission that apply to the licensee.

(2) Without limiting subsection (1), a licensee shall establish and maintain a compliance procedures manual complying with such requirements as may be specified in the Regulatory Code.

(3) A licensee shall appoint an individual approved by the Commission as its compliance officer to have responsibility for overseeing the licensee’s compliance function as specified in subsection (1), and for

- (a) reporting
 - (i) to the Commission, in such manner as with such frequency as may be specified in the Regulatory Code, and
 - (ii) to the directors of the licensee; and
- (b) acting as the liaison between the licensee and the Commission;

with respect to the licensee's compliance function.

(4) The Commission shall not approve an individual as a licensee's compliance officer unless it is satisfied that he satisfies the Commission's fit and proper criteria.

(5) Without limiting subsection (3), the compliance officer of a licensee shall have responsibility for

- (a) establishing and maintaining a program for training the staff and other officers of the licensee concerning the licensee's compliance function, and their individual responsibilities with respect thereto; and
- (b) overseeing the implementation of the compliance procedures manual.

(6) The Regulatory Code may include provisions with respect to the compliance function and with respect to the responsibilities of compliance officers.

(7) Without limiting subsection (6), the Regulatory Code may specify or provide for

- (a) requirements for the systems and controls to be established and maintained by a licensee under subsection (1), including requirements for the establishment and maintenance

of one or more compliance procedures manuals;

- (b) persons who may, or who may not, be appointed by a licensee to oversee its compliance function under subsection (2);
- (c) the requirements for the person appointed under subsection (2) to report to the directors of the licensee, including the manner and frequency of such reporting; and
- (d) the requirements for the person appointed under subsection (2) to report to the Commission, including the manner and frequency of such reporting;

(7) A person appointed by a licensee to serve as its Compliance Officer for the purposes of any Code of Practice or regulations relating to the prevention of money laundering may, with the approval of the Commission, be appointed to oversee the licensee's compliance function under subsection (2)."

Section 35
amended.

24. Section 35 of the principal Act is amended

- (a) in subsection (1), by deleting the words "regulated person" in each of the places where they occur in paragraphs (a), (b) and (c) and substituting the word "licensee";
- (b) in subsection (2)
 - (i) by deleting the words "for the purposes of the prudential supervision of a financial services business carried on in or from within the Territory" and substituting the words "for a purpose or purposes specified in subsection (2A)",
 - (ii) by deleting in paragraph (a), the words "including the systems" and substituting the words "including the procedures, systems";
 - (iii) by deleting in paragraph (b), the word "and" after the semi colon;

- (iv) by deleting in paragraph (c), the full stop and substituting “; and”; and
- (v) by inserting after paragraph (c), the following paragraph:
 - “(d) seek information and explanations from the officers, employees, agents and representatives of relevant person, whether verbally or in writing, and whether in preparation for, during or after a compliance inspection.”.
- (c) by inserting after subsection (2), the following subsection:
 - “(2A) A compliance inspection may be undertaken for the following purposes:
 - (a) the supervision of financial services business carried on in or from within the Virgin Islands, including monitoring and assessing a relevant person’s compliance with
 - (i) this Act and the financial services legislation;
 - (ii) the Regulatory Code, or any Guideline issued by the Commission, that applies to the licensee; and
 - (iii) any directives issued by the Commission that apply to the licensee; and
 - (b) monitoring and assessing a relevant person’s compliance with the requirements of, and its obligations under, the Anti-Money Laundering Code of Practice, 1999 and with such other Acts, regulations, codes or guidelines relating to money laundering or the financing of terrorism as may be prescribed for the purposes of section 4(1)(ca).”.
- (d) in subsection (3), by deleting the words “The Commission” and substituting the words “Subject to subsection (3A), the Commission”;
- (e) by inserting after subsection (3), the following subsection:

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“ (3A) Where it appears to the Commission that the circumstances so justify, the Commission may exercise its powers under subsection (2) without giving notice to the relevant person.”;

- (f) by repealing subsection (5) and substituting the following subsections:

“ (5) The Commission shall not permit a foreign regulatory authority to take part in a compliance inspection under subsection (4) unless it is of the opinion that the participation of the foreign regulatory authority is reasonably required

- (a) for the effective supervision of a licensee; or
- (b) for the purposes of the regulatory functions of the foreign regulatory authority.

(6) In deciding whether to permit a foreign regulatory authority to take part in a compliance inspection under subsection (4), the Commission may take into account, in particular, whether the foreign regulatory authority is subject to adequate legal restrictions on further disclosure and, in particular, whether it is likely, without the written permission of the Commission

- (a) to disclose information obtained or documents examined or obtained during the compliance inspection to any person other than an officer or employee of the authority engaged in prudential supervision; or
- (b) to take any action on information obtained or documents examined or obtained during the compliance inspection.

(7) The Commission may, in the Regulatory Code, specify circumstances in which a relevant person may be required to contribute towards the costs of a compliance inspection, except that a relevant person shall not be required to contribute more than seventy five percent of the total costs of any compliance inspection.

(8) Nothing in this section shall be taken to limit the Commission's powers under this Part or Part IV.”.

25. Section 36 of the principal Act is amended

Section 36
amended.

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

“ (1) The Commission may appoint one or more competent persons as examiners to conduct an investigation on its behalf

(a) where it appears to the Commission on reasonable grounds that there are, or may be, grounds for taking enforcement action against a licensee; or

(b) where it appears to the Commission on reasonable grounds that any person is carrying on, or has carried on, unauthorised financial services business.”.

- (b) in subsection (2)

(i) by deleting the words “regulated person” in each of the places where they occur in paragraphs (a), (b) and (c) and substituting the words “person under investigation”;

(ii) by deleting in paragraph (b), the word “and” after the semi colon;

(iii) by deleting in paragraph (c), the full stop and substituting a semi colon;

(iv) by inserting after paragraph (c), the following paragraphs:

“(d) in the case of a licensee, whether there are grounds for taking enforcement action against the licensee; and

(e) in the case of any other person, whether the person under investigation is carrying on, or has carried on, unauthorised financial services business.”;

- (c) by inserting after subsection (2), the following subsections:

“ (2A) Subject to subsection (2B), an examiner appointed under this section shall have the powers of the Commission under sections 32, 33, 33A and 33B.

(2B) The Commission may give directions to the examiner concerning any one or more of the following:

- (a) the scope of the investigation;
- (b) the period for the conduct of the investigation; and
- (c) the manner in which the examiner shall report to him.”; and

(d) by inserting after subsection (4), the following subsection:

“ (5) An examiner shall submit a report of his investigation to the Commission.”.

Insertion of section 36A.

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

“Appointment of qualified person.

36A. (1) Where it appears to the Commission that there are or may be grounds for taking enforcement action against a licensee, it may, by notice in writing, require the licensee to appoint a qualified person, at the cost of the licensee,

- (a) to advise the licensee on the proper conduct of his business and affairs; and
- (b) to provide the Commission with a report on, or on any aspect of, the licensee’s business and affairs.

(2) The Commission may require the report provided under subsection (1) to be in such form as may be specified in the notice.

(3) The person appointed under subsection (1) shall be a person

- (a) nominated or approved by the Commission; and

- (b) appearing to the Commission to have the skills necessary to make a report on the matter concerned.

(4) A licensee or any person who is providing, or who at any time has provided, services to a licensee in relation to a matter on which a report is required, shall give the person appointed to prepare the report all such assistance as he may reasonably require.”.

27. Section 37 of the principal Act is amended

Section 37 amended.

- (a) in subsections (1) and (2), by deleting the words “regulated person” in each of the places where they occur and substituting the word “licensee”;
- (b) in subsection (1)(a),
 - (i) by deleting in subparagraph (i), the words “or the Regulatory Code” and substituting the words “, the Regulatory Code or a practice direction”,
 - (ii) by repealing subparagraph (ii) and substituting the following subparagraph:

“(ii) has contravened or is in contravention of the Anti-Money Laundering Code of Practice, 1999 or such other enactments or Guidelines relating to money laundering or the financing of terrorism as may be prescribed for the purposes of section 4(1)(ca);”;
 - (iii) by deleting in subparagraph (vi), the words “term or”;
 - (iv) by repealing subparagraph (vii) and substituting the following subparagraph:

“(vii) does not satisfy the Commission’s fit and proper criteria; or”, and
 - (v) by deleting in subparagraph (viii), the words “licence, registration or recognition or subsequent to the issue of a licence or a certificate of registration or recognition” and substituting the words “licence or subsequent to the issue of the licence”;
- (c) in subsection (1)(c), by deleting the word “or” at the end of the

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paragraph;

- (d) in subsection (1)(d)(i)
 - (i) by inserting before the word “officer”, the word “senior”, and
 - (ii) by deleting the words “or certificate holder” in both places where they appear;
- (e) by deleting the full stop at the end of subsection (1)(d)(ii) and substituting “; or”;
- (f) by inserting in subsection (1), after paragraph (d), the following paragraph:
 - “(e) the licensee fails to pay an administrative penalty imposed pursuant to regulations made under section 62 on or before the date on which the penalty is due to be paid.”; and
- (g) in subsection (2)
 - (i) by deleting in paragraph (a), the words “or certificate”,
 - (ii) by repealing paragraph (c) and substituting the following paragraph:
 - “(c) require the licensee to appoint a qualified person under section 36A;”,
 - (iii) in paragraph (e), by deleting the words “or Regulatory Code” and substituting the words “or the Regulatory Code”;
 - (iv) by redesignating paragraph (f) inserted by the Insolvency (Amendment and Consequential Provisions) Act, 2004 as paragraph (ea), and
 - (v) by deleting in the redesignated paragraph (ea), the words “section 162(1)(c) or section 163(1)(b)” and substituting the words “section 162(1) or section 163(1)”.

28. The principal Act is amended by inserting after section 37 the following section:

Insertion of section 37A.

“Public statements.

37A. (1) Where the Commission is entitled to take enforcement action against a licensee, or former licensee, the Commission may issue a public statement in such manner as it considers fit setting out the reasons for the enforcement action and the enforcement action that it intends to take, or has taken, against the licensee or former licensee.

(2) Where it considers it in the public interest to do so, the Commission may issue a public statement in such manner as it considers fit with respect to

- (a) any person who, in the opinion of the Commission, is carrying on, intends to carry on or is likely to carry on, unauthorised financial services business including as to any action that the Commission intends to take or has taken against that person;
- (b) any person who, not being a licensee, is holding himself out as a licensee;
- (c) any matter relating to financial services business where the Commission considers that the statement is desirable for
 - (i) the protection of the public, whether within or outside the Territory, against financial loss arising out of the dishonesty, incompetence, malpractice or insolvency of persons engaged in financial services business in the Territory,
 - (ii) the protection and enhancement of the reputation of the Territory as a financial services centre, and

- (iii) the reduction of crime and other unlawful activities relating to financial services business.

(3) Subject to subsection (4), where a public statement is to be issued under this section in relation to a licensee or former licensee, the Commission shall give that person three days written notice of its intention to issue the public statement and the reasons for the issue of the statement.

(4) If the Commission is of the opinion that it is necessary to do so to protect the public interest or the interests of any of the customers, creditors or investors of a licensee or former licensee, it may issue a public statement under subsection (3) without notice to the licensee or former licensee or with such shorter period as it considers appropriate.”.

Section 38
amended.

29. Section 38 of the principal Act is amended

- (a) in the marginal note, by deleting the words “and certificate”;
- (b) in subsections (1), (2), (3) and (4), by deleting the words “or certificate” in each place that they occur;
- (c) in subsections (1) and (4), by deleting the words “regulated person” in each of the places where they occur and substituting the word “licensee”; and
- (d) by repealing subsection (5).

Section 39
amended.

30. Section 39 of the principal Act is amended

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

“ (1) The Commission may apply to the Court for a protection order under this section with respect to

- (a) a licensee where his licence is about to be revoked or where the Commission is entitled to take enforcement action against him under section 37;

- (b) a former licensee; or
 - (c) a person carrying on unauthorised financial services business.”;
- (b) in subsection (2),
 - (i) by deleting the words “regulated person, or the interests of its clients” and substituting the words “person with respect to whom the application is made, or the interests of his clients”;
 - (ii) by deleting in paragraph (a), the words “regulated person” and substituting the words “person concerned”;
 - (iii) by deleting in paragraph (b), the words “regulated person” and substituting the words “person concerned”, by deleting the words “or certificate” and by deleting the word “and” after the semi colon;
 - (iv) by deleting in paragraph (d), the full stop and substituting “; and”; and
 - (v) by inserting after paragraph (d), the following paragraph:
 - “(e) where the person concerned is in contravention of this Act, the financial services legislation, or the Regulatory Code, an order requiring the person concerned to take such action, or to refrain from taking such action, as is necessary to bring him back into compliance with this Act, the financial services legislation or the Regulatory Code.”; and
- (c) in subsection (3)
 - (i) by deleting the words “in relation to the financial services business of the regulated person”; and
 - (ii) by deleting in paragraph (c), the words “regulated person or the business carried on by the regulated person” and substituting the words “person with respect to whom the order is made or the business carried on by that person”.

Repeal and replacement of section 40.

31. Section 40 of the principal Act is repealed and the following section substituted:

“Power to issue directives.

40. (1) Where the Commission is entitled to take enforcement action against a licensee, the Commission may issue a directive

- (a) imposing a prohibition, restriction or limitation on the financial services business that may be undertaken by the licensee, including
 - (i) that the licensee shall cease to engage in any class or type of business; or
 - (ii) that the licensee shall not enter into any new contracts for any class or type of business;
- (b) requiring the licensee to take such other action as the Commission considers may be necessary to protect the property of, or in the custody, possession or control of, the licensee or to protect customers or creditors or potential customers or creditors of the licensee.

(2) A directive issued under subsection (1) may include one or more of the matters set out in paragraphs (a) and (b).

(3) Where it appears to the Commission that a person is carrying on unauthorised financial services business, the Commission may issue a directive to that person

- (a) requiring him to cease carrying on that business;
- (b) requiring him to take such other action as the Commission considers may be necessary to protect his property, or property in his custody, possession or control, or to protect his customers or

creditors or potential customers or creditors of him.”.

32. The principal Act is amended by inserting after section 40 the following Part: Insertion of Part VA.

“PART VA

GENERAL SUPERVISORY POWERS

“Practice directions.

40A. (1) The Commission may issue practice directions that are not inconsistent with this Act, the financial services legislation or the Regulatory Code.

(2) A practice direction may extend to

(a) licensees generally, or to specific types or descriptions of licensees;

(b) persons performing such functions on behalf of licensees as may be specified in the direction, including directors, senior officers and compliance officers.

(3) The regulations may provide for the manner of the publication of practice directions and for the manner and extent to which the Commission may consult prior to issuing a practice direction.

(4) Any directive or direction issued under a regulatory legislation prior to the coming into force of this Act shall continue in operation until revoked as if it was issued pursuant to this section.”.

Conditions.

40B. (1) In this section, “condition” means a condition attached to a licence issued, or an approval granted, under a regulatory legislation and includes a condition, as varied in accordance with this section.

(2) A licence issued or an approval granted under a regulatory legislation may be issued or granted subject to such conditions as the Commission considers appropriate.

(3) If a licence is issued, or an approval granted, subject to one or more conditions

- (a) the Commission shall, together with the licence or approval, issue a written notice specifying the condition or conditions; and
- (b) if, in respect of any conditions, it considers that it is in the public interest to do so, the Commission may state those conditions on the licence or approval.

(4) The Commission may, upon giving reasonable written notice to a licensee, at any time

- (a) vary or revoke any condition; or
- (b) impose new conditions on the licence or approval.

(5) A licensee may apply to the Commission in writing for a condition to be revoked or varied and, if the Commission is satisfied that the condition is no longer necessary or should be varied, it may revoke or vary the condition.

(6) Where the Commission revokes or varies a condition or imposes a new condition, the licensee shall, if requested to do so by the Commission, deliver its licence to the Commission for re-issue.

Exemptions.

40C. (1) Unless otherwise provided by this Act or a regulatory legislation, the regulations may

- (a) exempt specified persons or specified classes of persons from the requirement to obtain a licence under a regulatory legislation to undertake an activity for which a licence would otherwise be required;
- (b) exempt specified licensees or specified classes of licensees from a requirement under this Act or a financial services legislation;

- (c) provide for the circumstances in which the Commission may exempt specified licensees or specified classes of licensees from specified requirements under this Act or a financial services legislation.

(2) Subject to subsection (3), the Commission may, on the application of, or with the consent of, a licensee, by notice in writing direct that specified provisions in the Regulatory Code

- (a) shall not apply to the licensee; or
- (b) shall apply to the licensee subject to such modifications as the Commission may specify.

(3) An exemption or modification under subsection (2) may be given subject to such conditions as the Commission considers appropriate, and section 40B applies to such conditions as if they were licence conditions.

(4) The Commission may, at any time, revoke or vary an exemption or modification from the Regulatory Code given under subsection (2).

Power to require licensee to remove directors and other persons.

40D. (1) Where the Commission is of the opinion that a person to which this section applies does not satisfy its fit and proper criteria, it may require the licensee to remove that person and, if it considers it appropriate, to replace him with another person acceptable to the Commission.

- (2) This section applies to
 - (a) a director of a licensee;
 - (b) a senior officer of a licensee;
 - (c) compliance officer; or
 - (d) a person undertaking any function that may be specified by the regulations for the purpose of this paragraph.”.

Section 41
amended.

33. Section 41 of the principal Act is amended

- (a) by repealing subsections (1) and (2) and substituting the following subsections:

“(1) The Commission may, after consultation with the Minister and the approval of the Board, issue a Regulatory Code with respect to

- (a) the conduct required of licensees and officers and agents of licensees; and
- (b) such other matters as may be required or permitted by this Act or any financial services legislation.

(2) The Commission may, after consultation with the Minister and the approval of the Board, amend the Regulatory Code in such manner and to such extent as it may determine.”;

- (b) in subsection (3),
- (i) by deleting the words “A Regulatory Code issued under this section shall” and substituting the words “The Regulatory Code”;
 - (ii) by repealing paragraphs (a) and (b);
 - (iii) by inserting in paragraph (c), before the word “provide”, the word “may” and by deleting the words “regulated persons” and substituting the word “licensees”; and
 - (iv) by inserting in paragraph (d), before the words “be published”, the word “shall”; and
- (c) by repealing subsections (4) and (5).

Section 41A
inserted.

34. The principal Act is amended by inserting after section 41 the following sections:

“Guidelines. **41A. (1)** The Commission may issue Guidelines with respect to the procedures to be followed by and the conduct expected of financial institutions in the operation of their licensed businesses and with respect to any other matter concerning this Act.

(2) The Guidelines may make different provision in relation to different persons, circumstances or cases.

(3) The Commission shall publish the Guidelines and any amendments thereto in such manner as may be specified in the regulations.

(4) Failure to follow guidelines issued under this section shall not, of itself, render a person liable to proceedings of any kind, but such failure may be taken into account by the Court or the Commission, as the case may be, in determining whether there has been a contravention of this Act, any financial services legislation or the Regulatory Code.

(5) Without limiting subsection (1) the regulations may prescribe matters that shall be, or may be, provided for in Guidelines.

Approved forms. **41B.** (1) The Commission may, by publication in such manner as may be specified in the regulations, approve forms for the purposes of the regulatory legislation.

(2) Where, pursuant to subsection (1), the Commission has published an approved form with respect to a document, the document shall

- (a) be in the form of, and contain the information specified in, the approved form; and
- (b) have attached to it such documents as may be specified in the approved form.”.

35. The principal Act is amended by inserting after section 48 the following sections:

Insertion of sections 48A and 48B.

“Privileged information and documents.

48A. (1) A person may not be required under this Act to produce, disclose or permit the inspection of any information or document which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege.

(2) For the purposes of subsection (1), information or a document comes to a legal practitioner in

privileged circumstances if it is communicated or given to him

- (a) by, or by a representative of, a client of his in connection with the giving by the legal practitioner of legal advice to the client;
- (b) by, or by a representative of, a person seeking legal advice from the legal practitioner; or
- (c) by any person
 - (i) in contemplation of, or in connection with, legal proceedings, and
 - (ii) for the purposes of those proceedings.

(3) Information or a document shall not be treated as coming to a legal practitioner in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

(4) Notwithstanding the provisions of this section, a legal practitioner may be required to provide the name and address of his client.

Admissibility of statements.

48B. (1) Subject to subsection (2), a statement made by a person in compliance with a request made by the Board under section 30, by the Commission under section 32 or to an examiner appointed under section 36 or section 33C in compliance with a request made by the examiner is admissible in evidence in any proceedings, provided that it also complies with any requirements governing the admissibility of evidence in the circumstances in question.

(2) A statement made by a person in compliance with a requirement imposed by virtue of this Act may only be used in evidence against him in criminal proceedings if

- (a) that person has himself introduced the statement in evidence; or

- (b) the prosecution of that person relates to
 - (i) a failure or refusal by that person to produce documents or give assistance in accordance with this Act;
 - (ii) an omission by that person to disclose material which should have been disclosed or the provision by that person of false or misleading information; or
 - (iii) an untruthful statement by that person.

Protection for disclosure.

48C. A person who discloses information or produces documents as permitted or required by this Act is deemed not to be in contravention of any enactment, rule of law, agreement or professional code of conduct to which that person is subject and no civil, criminal or disciplinary proceedings shall lie against him in respect thereof. ”.

36. Section 49 of the principal Act is repealed and the following sections substituted:

Section 49 repealed and replaced.

“Restrictions on disclosure of information.

49. (1) Subject to section 49A, for the purposes of this section, “protected information” means information which

- (a) relates to the affairs of the Commission;
- (b) relates to the business or other affairs of any person; and
- (c) is acquired by a person falling within subsection (2), for the purposes of, or in the discharge of, its or his functions under this Act or any financial services legislation, and includes any information that is obtained from a foreign regulatory authority or a law enforcement authority.

(2) Subsection (1)(c) applies to the following persons:

- (a) the Commission;
- (b) a Board Member, including the Managing Director;
- (c) an employee of the Commission;
- (d) a person appointed as an examiner under section 36 or 33C;
- (e) a person appointed as a qualified person under section 36A;
- (f) any other person acting under the authority of the Commission; and
- (g) an employee of a person specified in paragraphs (d) to (f).

(3) Information is not protected information

- (a) if the information is or has been available to the public from any other source; or
- (b) where the information is disclosed in a summary or in statistics expressed in a manner that does not enable the identity of particular persons to whom the information relates to be determined.

(4) Subject to section 49A, protected information shall not be disclosed by a recipient of that information, without the consent of

- (a) the person from whom he obtained the information; and
- (b) if different, the person to whom it relates.

Gateways for the disclosure of information.

49A. (1) Section 49 does not apply to a disclosure

- (a) required or permitted by a Court of competent jurisdiction in the Virgin Islands;

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- (b) required or permitted by this or any other Act;
- (c) to a law enforcement agency in or outside the Virgin Islands;
- (d) to the Financial Investigation Agency established under the Financial Investigation Agency Act ;
- (e) to any person for the purpose of discharging any function or exercising any power under this Act or any financial services legislation, in either case whether the function or power is of the person disclosing the information or of the Commission or the Board;
- (f) to a foreign regulatory authority in accordance with section 33C;
- (h) to the Council;
- (i) lawfully made to a person with a view to the institution, or for the purpose, of
 - (i) criminal proceedings;
 - (ii) disciplinary proceedings, whether within or outside the Territory, relating to the discharge by a legal practitioner, auditor, accountant, valuer or actuary of his professional duties;
 - (iii) disciplinary proceedings relating to the discharge by a public officer, a member or employee of a statutory board or a Commissioner or employee of the Commission of his duties; or
- (j) for the purpose of legal proceedings in connection with

- (i) the winding up or dissolution of a licensee, a former licensee or a person who has carried on unauthorized financial services business; or
- (ii) the appointment or duties of a receiver of a licensee, a former licensee or a person who has carried on unauthorized financial services business.

(2) The Commission may issue Guidelines concerning the disclosure of information under this section and concerning the disclosure of information in a summary or in statistics as provided for in section 49(3)(b).”.

Section 50 amended.

37. Section 50(b) of the principal Act is amended by deleting the words “section 29(2) or 49(2)” and substituting the words “section 49A”.

Sections 50A and 50B amended.

38. The principal Act is amended in sections 50A(6) and 50B(2), by deleting the words “regulated person” and substituting the word “licensee”.

Sections 50F and 50G amended.

39. The principal Act is amended by inserting immediately after section 50E, the followings:

“Enforceability of agreements made by persons carrying on unauthorised financial services business.

50F. (1) An agreement to which this section applies that is made by a person in the course of carrying on unauthorised financial services business is unenforceable against the other party to the agreement.

(2) The other party to an agreement referred to in subsection (1) is entitled to recover

- (a) any money or other property paid or transferred by him under the agreement; and
 - (b) compensation for any loss sustained by him as a result of having parted with it.
- (3) This section applies to an agreement
- (a) made after this section comes into force; and

- (b) the making or performance of which constitutes, or is part of, the unauthorised financial services business being carried on.

Unenforceable agreements.

50G. (1) Where an agreement is unenforceable by reason of section 50F, the amount of compensation recoverable as a result of that section is

- (a) such amount as may be agreed by the parties; or
- (b) on the application of either party, the amount determined by the Court.

(2) Notwithstanding section 50F, if the Court is satisfied that it is just and equitable in the circumstances of the case, it may allow

- (a) the agreement to be enforced, or
- (b) money and property paid or transferred under the agreement to be retained,

by the person carrying on unauthorised financial services business.

(3) In considering whether to allow the agreement to be enforced or the money or property paid or transferred under the agreement to be retained, the Court shall have regard to whether the person carrying on unauthorised financial services business reasonably believed that he was not carrying on unauthorised financial services business by making the agreement.

(4) If the person against whom the agreement is unenforceable

- (a) elects not to perform the agreement, or
- (b) as a result of this section, recovers money paid or other property transferred by him under the agreement,

he must repay any money and return any other property received by him under the agreement.

(5) If property transferred under the agreement has passed to a third party, a reference in section 50F or this section to that property is to be read as a reference to its value at the time of its transfer under the agreement.

(6) The commission of an offence under this Act or any regulatory legislation does not make the agreement concerned illegal or invalid to any greater extent than is provided by section 50F.”.

Section 54
amended.

40. Section 54 of the principal Act is amended

- (a) by repealing paragraph (a);
- (b) by inserting after paragraph (b) the following paragraphs:
 - (ba) in purported compliance with a request under section 30(1) or a notice issued by the Commission under section 32(1), he
 - (i) provides information which he knows to be false or misleading in a material respect, or
 - (ii) recklessly provides information which is false or misleading in a material respect;
 - (bb) for the purpose of obstructing or frustrating compliance with a request under section 30(1) or a notice issued by the Commission under section 32(1), he destroys, mutilates, defaces, hides or removes a document;”;
- (c) in paragraph (e), by deleting “section 49(1)” and substituting “section 49A(1)”.

Section 62
amended.

41. Section 62 of the principal Act is amended by inserting after subsection (1), the following subsections:

“(1A) Without limiting subsection (1), regulations made under subsection (1) may provide for the imposition by the Commission of administrative penalties on licensees that contravene a provision of this Act, any regulatory legislation, the Regulatory Code or any directive issued by the Commission.

(1B) An administrative penalty paid to the Commission under regulations made in accordance with subsection (1) shall be paid into the Commission’s bank account for use by the Commission.”.

- | | |
|--|---|
| <p>42. The Insolvency Act, 2003 is amended</p> <p>(a) in section 162(5), by inserting after the words “regulated person”, the words “or the company is carrying on, or at any time has carried on, unlicensed financial services business”; and</p> <p>(b) in section 163(3B), by inserting after the words “regulated person”, the words “or the company is carrying on, or at any time has carried on, unlicensed financial services business”.</p> | <p>Amendment of the Insolvency Act, 2003.</p> |
| <p>43. The Financial Services (International Co-operation) Act, 2000 is repealed.</p> | <p>Repeal. No. 18 of 2000</p> |
| <p>44. The principal Act is amended by repealing Schedule 2 and substituting the following Schedule:</p> | <p>Schedule 2 repealed and replaced.</p> |

“SCHEDULE 2

[Section 2(1)]

FINANCIAL SERVICES LEGISLATION

PART 1 – REGULATORY LEGISLATION

1. Banks and Trust Companies Act, 1990
2. Company Management Act, 1990
3. Insurance Act, 1994
4. Mutual Funds Act, 1996
5. Proceeds of Criminal Conduct Act, 1997
6. Insolvency Act, 2003

PART 2 – REGISTRY LEGISLATION

1. Merchandise Marks Act (Cap. 154)
2. Patents Act (Cap. 155)
3. Registration of United Kingdom Patents (Cap. 156)
4. Registration of United Kingdom Trade Marks (Cap. 157)
5. Trade Marks Act (Cap. 158)
6. United Kingdom Designs (Protection) Act (Cap. 159)
7. Partnership Act, 1996

8. BVI Business Companies Act, No. 16 of 2004
9. Companies Act (Cap. 285)
10. International Business Companies Act (Cap. 291)”

Passed by the Legislative Council this 14th day of November, 2006.

(Sgd.) V. INEZ ARCHIBALD,
Speaker.

(Sgd.)ALVA MC CALL,
Acting Clerk of the Legislative Council.