

VIRGIN ISLANDS

FINANCIAL SERVICES COMMISSION (AMENDMENT) ACT, 2011

ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. Section 5 amended.
3. Section 9 amended.
4. Section 10 amended.
5. Section 17 amended.
6. Section 32 amended.
7. Section 33B amended.
8. Section 33C amended.
9. Section 33D amended.
10. Section 37 amended.
11. Section 42 amended.
12. New section 42A inserted.
13. Section 44 amended.
14. Section 46 amended.
15. Section 48 amended.
16. Section 54 amended.

I Assent

(Sgd.) **BOYD McCLEARY, CMG, CVO,**
Governor.
13th July, 2011

VIRGIN ISLANDS

No. 10 of 2011

An Act to amend the Financial Services Commission Act, 2001 (No. 12 of 2001).

[Gazetted 14th July, 2011]

ENACTED by the Legislature of the Virgin Islands as follows:

- Short title. 1. This Act may be cited as the Financial Services Commission (Amendment) Act, 2011.
- Section 5 amended.
No. 12 of 2001 2. The Financial Services Commission Act, 2001 (hereinafter referred to as “the principal Act”) is amended in section 5 by deleting subsection (2) and replacing it with the following new subsection:
- “(2) The Board shall comprise the Managing Director as an *ex officio* Commissioner and not less than six or more than nine other Commissioners, two of whom shall be from outside the Territory with financial services background, in addition to the requirements specified in subsection (4).”.
- Section 9 amended. 3. The principal Act is amended in section 9 by deleting subsection (2A) and replacing it with the following new subsection:
- “(2A) Where the Cabinet removes a Commissioner from office pursuant to subsection (1), it shall
- (a) provide in writing its reason for the removal; and
 - (b) cause to be published in the Gazette the reason for the removal.”.

Section 10
amended.

4. The principal Act is amended in section 10 by deleting subsection (1A) and replacing it with the following new subsection:

“(1A) The Board may remove the Managing Director from office pursuant to the terms and conditions of his appointment, and the Board shall

- (a) provide in writing the reason for the removal; and
- (b) cause to be published in the Gazette the reason for the removal.”.

Section 17
amended.

5. Section 17 of the principal Act is amended by adding immediately after subsection (4) the following new subsection:

“(5) Every member of a committee shall, in the performance of his duties, conduct himself in a manner that conforms with the integrity of his office.”.

Section 32
amended.

6. The principal Act is amended in section 32

(a) by deleting subsection (1) and replacing it with the following new subsection:

“(1) Without prejudice to the generality of section 30 (1), where it is required for the purpose of

- (a) discharging its functions,
- (b) ensuring compliance with any financial services legislation, or
- (c) ensuring compliance with a request from a competent authority acting pursuant to an enactment,

the Commission may, by notice in writing given to a person specified in subsection (2), require such person

- (i) to provide specified information or information of a specified nature or description; or
- (ii) to produce specified documents or documents of a specified nature or description.”; and

(b) by adding immediately after subsection (5), the following new subsection:

“(6) The reference in subsection (1) and section 33C to “competent authority” means a competent authority or central authority so designated or appointed under an enactment.”.

Section 33B
amended.

7. Section 33B of the principal Act is amended

(a) in subsection (1) by deleting the words “information that is reasonably required for the purposes of discharging its functions or ensuring compliance with any financial services legislation” and replacing them with the words “information that is required under section 32 (1)”; and

(b) by adding immediately after subsection (10), the following new subsection:

“(11) The operation of this section shall not be construed to be contingent on the Commission first complying with section 32 (1).”.

Section 33C
amended.

8. Section 33C of the principal Act is amended

(a) in subsection (1),

(i) by inserting immediately after paragraph (a), the following new paragraph:

“(b) a competent authority acting pursuant to an enactment;”;
and

(ii) by re-designating the existing paragraph (b) as paragraph (c);

(b) in subsection (2), by adding after the words “regulatory authorities” in paragraph (b), the words “or a competent authority acting pursuant to an enactment”; and

(c) in subsection (3), by adding at the end of the sentence the words “save as may be lawfully required by a competent authority acting pursuant to an enactment”.

Section 33D
amended.

9. Section 33D of the principal Act is amended

(a) by inserting immediately after subsection (2), the following new subsection:

“(2A) Where the Commission considers it appropriate in any case to do so, it may, notwithstanding anything to the contrary contained in this Act, provide a foreign regulatory authority with information in its control or possession, whether or not obtained pursuant to the exercise of any power under this Act, although the information has not been specifically requested by the foreign regulatory authority.”; and

(b) in subsection (5) by deleting the reference to “subsection (5) (a)” and replacing it with “subsection (4) (a)”.

Section 37 amended.

10. Section 37 of the principal Act is amended

(a) in subsection (2) by inserting after paragraph (ea), the following new paragraph:

“(eb) issue a warning letter against the licensee;”.

(b) by deleting in subsection (6) the word “may” where it first occurs and replacing it with the word “shall”; and

(c) by adding immediately after subsection (6), the following new subsection:

“(7) The publication of the enforcement action referred to in subsection (6) shall be made on the Commission’s website and in such other manner as the Commission considers fit.”.

Section 42 amended.

11. Section 42 of the principal Act is amended

(a) by deleting subsection (2) and replacing it with the following new subsection:

“(2) Subject to section 42A, the members of the Appeal Board shall comprise

(a) at least two legal practitioners of not less than ten years experience, one of whom shall be appointed as chairman of the Appeal Board; and

(b) five other persons with such qualifications and experience as may be determined by the Board.”;

(b) in subsection (3) by inserting after the word “may” in paragraph (a), the words “, subject to subsection (3A),”; and

(c) by inserting immediately after subsection (3), the following new subsection:

“(3A) In appointing members of the Appeal Board under subsection (3) (a), the Cabinet shall specify the periods of appointment in such a way that the periods of not more than one-third of the members shall expire every two years.”.

New section
42A inserted.

12. The principal Act is amended by inserting immediately after section 42, the following new sections:

“Empanelling
an Appeal
Board to
conduct a
hearing.

42A. (1) For the purpose of conducting a hearing pursuant to section 45, the chairman of the Appeal Board shall empanel a Board comprising not less than three members, one of whom shall be a legal practitioner.

(2) The members of the Appeal Board shall, in the performance of their duties, conduct themselves in a manner that conforms with the integrity of their office.

Duty to disclose
interest.

42B. (1) A member of the Appeal Board who has any direct or indirect personal, professional, business or pecuniary interest in any matter which is the subject of appeal before the Appeal Board shall, as soon as reasonably practicable,

(a) declare his interest to the Secretary in writing stating the nature of the interest; and

(b) recuse himself from participating in the hearing of, or discussing any matter relating to, the appeal concerned.

(2) A member of the Appeal Board who fails to declare an interest as required under subsection (1) shall, without prejudice to section 54 (1) (d), be liable to be removed from office as a member of the Appeal Board.

(3) The rules of procedure adopted pursuant to section 45 (2) (a) may provide guidance on matters concerning conflicts of interest.”.

Section 44
amended.

13. Section 44 of the principal Act is amended in subsection (1) by deleting the words “Mutual Funds Act, 1996” and replacing them with the words “Securities and Investment Business Act, 2010”.

Section 46
amended.

14. Section 46 of the principal Act is amended

(a) by deleting subsection (1) and replacing it with the following new subsection:

“(1) The Appeal Board shall, after hearing an appeal,

(a) affirm the decision appealed against;

(b) vary the decision appealed against; or

(c) set aside the decision appealed against and remit the matter concerned for reconsideration by the body that made the decision in accordance with such direction as the Appeal Board may consider fit.”; and

(b) by adding immediately after subsection (2), the following new subsection:

“(3) No costs shall be awarded by the Appeal Board to any party in respect of any matter heard by it.”.

Section 48
amended.

15. Section 48 of the principal Act is amended

(a) by inserting after subsection (1), the following new subsection:

“(1A) The requirement to subscribe to the Oath of Confidentiality referred to in subsection (1) applies to every agent and adviser of the Commission and the obligation to maintain the confidentiality remains in force notwithstanding the termination of any relationship between the agent or adviser and the Commission.”; and

(b) in subsection (3) by inserting before the word “Magistrate”, the words “commissioner for oaths, notary public,”.

Section 54
amended.

16. Section 54 of the principal Act is amended in subsection (1) by deleting paragraph (d) and replacing it with the following new paragraph:

“(d) he, being a member of the Appeal Board or a Commissioner, fails to disclose an interest as required under section 42B or 47, as the case may be, or makes a false or misleading statement in a declaration pursuant to that section;”.

Passed by the House of Assembly this 12th day of July, 2011.

(Sgd.) Roy Harrigan,
Speaker.

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