

VIRGIN ISLANDS

FINANCIAL SERVICES COMMISSION (AMENDMENT) ACT, 2016

ARRANGEMENT OF SECTIONS

Section

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- 2... Section 2 amended.
- 3... Section 4 amended.
- 4... Section 4A inserted.
- 5... Section 5 amended.
- 6... Section 7 amended.
- 7... Section 9 amended
- 8... Section 25 amended.
- 9... Section 26 repealed and substituted.
- 10.. Section 30 amended.
- 11.. Section 31 repealed and substituted.
- 12.. Section 32 amended.
- 13.. Section 33 amended.
- 14.. Section 33C amended.
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- 17.. Section 36 amended.
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- 20.. Section 38 amended.
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- 40.. Section 57A inserted.
- 41.. Schedule 2 amended.

**No. 8 of 2016 Financial Services Commission
(Amendment) Act, 2016**

**Virgin
Islands**

I Assent

**(Sgd.) John S. Duncan, OBE
Governor
3rd May, 2016**

VIRGIN ISLANDS

No. 8 of 2016

An Act to amend the Financial Services Commission Act (No. 12 of 2001) and provide for other matters connected therewith.

[Gazetted 19th May, 2016]

ENACTED by the Legislature of the Virgin Islands as follows:

1. (1) This Act may be cited as the Financial Services Commission (Amendment) Act, 2016. Short title and commencement.

(2) This Act shall come into force on such date as the Minister may, by Notice published in the *Gazette*, appoint.

2. Section 2 of the Financial Services Commission Act (hereinafter referred to as “the principal Act”) is amended in subsection (1) Section 2 amended.

(a) by repealing the definition of “Appeal Board”;

(b) by inserting in its appropriate alphabetical order, the following new definition:

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

Section 4
amended.

(c) by repealing the definition of “licence” and substituting the following:

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

3. Section 4 of the principal Act is amended in subsection (1)

(a) by deleting paragraph (ca) and substituting the following paragraph:

“(ca) to supervise and monitor compliance by licensees, and by such other persons who are subject to them, with the Proceeds of Criminal Conduct Act, Anti-Money Laundering Regulations and Anti-money Laundering and Terrorist Financing Code of Practice and with such other enactments and guidelines relating to money laundering, the financing of terrorism and the financing of proliferation of weapons of mass destruction as may be prescribed;”;

(b) by inserting after the words “in or from within” in paragraph (h), the words “, or outside,”; and

(c) by deleting paragraph (j) and substituting the following paragraph:

“(j) acting alone or in cooperation with such persons as the Commission may determine for purposes of maintaining integrity and professionalism in the Territory’s financial services industry

(i) to develop a system of continuing education for practitioners in financial services business;

(ii) to develop a curriculum to further or facilitate the education of students and practitioners in financial services business;

(iii) to develop and publish such literature, including textbooks and journals, in relation

to financial services matters as the Commission considers fit; and

- (iv) to undertake such other activity as the Commission considers appropriate to promote knowledge of financial services business at all levels within the Territory;”.

4. The principal Act is amended by inserting after section 4, the following new section:

Section 4A inserted.

“Crisis management, resolution and consumer protection powers of the Commission.

4A. (1) The Commission may implement crisis management measures and exercise resolution powers that are geared towards

- (a) ensuring financial stability and the continuity of systemically important financial services, including payment, clearing and settlement functions as may be considered necessary in any particular circumstance or circumstances;
- (b) assisting the Government, in relation to any insurance deposit scheme and arrangement, in protecting depositors, insurance policy holders and investors that may be covered by such scheme and arrangement;
- (c) ensuring the continuity of essential functions and services in relation to regulated persons and non-regulated persons by adopting such measures as may be prescribed in the regulations or the Regulatory Code;
- (d) effecting the closure and orderly winding-down of the whole or part of a regulated person or non-regulated person so as to minimise or prevent loss to investors; and
- (e) imposing a moratorium on such payments and activities as may be

prescribed in the regulations or the Regulatory Code.

(2) The Commission may implement consumer protection measures and exercise powers in relation to

- (a) protection against discrimination;
- (b) consumers' right to be informed;
- (c) consumers' right to a defined or definable contractual obligation; and
- (d) protection of rights and interests of consumers of financial services generally.

(3) The Regulatory Code may prescribe additional crisis management measures to be undertaken, resolution powers to be exercised, and consumer protection measures to be implemented, by the Commission.”.

Section 5 amended.

5. Section 5 of the principal Act is amended

(a) in subsection (2), by deleting the words “9 other commissioners” and substituting the words “8 other commissioners”; and

(b) in subsection (3), by deleting the word “Governor” and substituting the word “Minister”.

Section 7 amended.

6. Section 7 of the principal Act is amended by repealing subsection (1) and substituting the following subsection:

“(1) The Board shall meet at such place and time as the Chairman may designate but shall, in any case, meet at least ten times in each year.”.

Section 9 amended.

7. Section 9 of the principal Act is amended in subsection (1) by deleting the word “Council” and substituting the word “Cabinet”.

Section 25 amended.

8. Section 25 of the principal Act is amended in subsection (3) (c) by deleting the word “Council” and substituting the word “Cabinet”.

Section 30 amended.

9. Section 30 of the principal Act is amended in subsection (1) by deleting the words “request any person engaged in or related to any financial

services business” and substituting the words “request any person, whether engaged in or related to any financial services business or otherwise,”.

Section 31
repealed and
substituted.

10. Section 31 of the principal Act is repealed and substituted by the following:

“Recovery of
cost of litigation.

“31. (1) Where assistance to a foreign regulatory authority in accordance with the provisions of this Act or pursuant to the provisions of any financial services legislation or other enactment involves litigation before the Court or any other court which results or is likely to result in substantial cost to the Commission, the resulting cost shall be borne by the foreign regulatory authority requesting the assistance, unless the Commission decides to waive such requirement.

(2) Except where the Commission has decided to waive the requirement of subsection (1), it shall, prior to or at the time of commencement of proceedings before the Court or any other court, notify the foreign regulatory authority and provide it with the estimated cost of the litigation and undertake to provide the final cost on the termination of the proceedings for payment.

(3) Where the foreign regulatory authority refuses to bear the cost of the litigation or withdraws its request for assistance, the Commission shall cease assistance and any cost already incurred in relation to the request shall be borne by the Commission.

(4) The question of whether the cost of litigation as mentioned in subsection (1) is substantial or is likely to be substantial shall be determined by the Commission.”.

11. Section 32 of the principal Act is amended

Section 32
amended.

(a) in subsection (1) by deleting the words “Without prejudice to the generality of section 30 (1), where it is required for the purpose of –” and substituting the words “Where the Commission requires for the purpose of”; and

(b) in subsection (2) by inserting in paragraph (a) (v) after the words “a person”, the words “(other than a person referred to in sub-paragraphs (i) to (iv))”.

12. Section 33 of the principal Act is amended

Section 33
amended.

(a) in subsection (3) by inserting in paragraph (b) after the words “criminal offence”, the words “or an enforcement action by the Enforcement Committee”; and

(b) by repealing subsection (4) and substituting the following subsection:

“(4) The reference

(a) in subsection (1) (c) to “offence” includes a breach; and

(b) in subsections (1) (c) (ii) and (2) to “premises” includes a building, a vehicle, a vessel or an aircraft.”.

Section 33C amended.

13. Section 33C of the principal Act is amended

(a) in subsection (1) by inserting in paragraph (c) after the words “financing of terrorism,”, the words “financing of proliferation of weapons of mass destruction,”; and

(b) in subsection (2)

(i) by deleting the word “and” at the end of paragraph (b);

(ii) by inserting a new paragraph (c) as follows:

“(c) providing assistance to foreign regulatory authorities; and”; and

(iii) by renumbering the existing paragraph (c) as paragraph (d).

Section 34 amended.

14. Section 34 of the principal Act is amended

(a) in subsection (7) by deleting in paragraphs (b), (c) and (d), the words “subsection (2)” and substituting the words “subsection (3)”;

(b) by repealing subsection (8) and substituting the following subsection:

“(8) A person appointed by a licensee as its anti-money laundering reporting officer for the purposes of the Anti-money Laundering Regulations and Anti-money Laundering and

Terrorist Financing Code of Practice may, with the approval of the Commission, be approved as the licensee’s compliance officer under subsection (3).”; and

(c) by adding after subsection (8), the following new subsection

“(9) For the purposes of approval by the Commission or appointment by a licensee of a compliance officer under this section, the compliance officer shall not be treated as a licensee or as holding a licence.”.

16. Section 35 of the principal Act is amended

Section 35 amended.

(a) in subsection (1)

- (i) by deleting the word “and” at the end of paragraph (b);
- (ii) by deleting the full-stop at the end of paragraph (c) and substituting “; and”; and
- (iii) by adding after paragraph (c), the following new paragraph –

“(d) a non-licensee incorporated or registered under the BVI Business Companies Act which is not supervised for compliance by the Financial Investigation Agency or other agency and which the Commission considers should be inspected for the purposes of subsection (2A) (b) and (c).”.

(b) in subsection (2A)

- (i) by deleting the word “and” at the end of paragraph (a) (iii); and
- (ii) by deleting paragraph (b) and substituting the following paragraphs:

“(b) monitoring and assessing a relevant person’s compliance with the requirements of, and its obligations under, the Proceeds of Criminal Conduct Act, Anti-Money Laundering Regulations and Anti-money Laundering and Terrorist Financing Code of Practice and with such other enactments and guidelines relating to money laundering, the financing of terrorism and the

financing of proliferation of weapons of mass destruction as may be prescribed; and

- (c) to establish a relevant person's compliance with matters relating to the Commission's execution of its international cooperation obligations under this Act and other enactments that apply in relation to the relevant person."

17. Section 36 of the principal Act is amended

Section 36 amended.

- (a) in paragraph (c) of subsection (2B) by deleting the words "him or her" and substituting the words "the Commission"; and
- (b) in subsection (4) by deleting the words "between him and her" and substituting the words "between him or her".

Section 37 amended.

18. Section 37 of the principal Act is amended

- (a) in subsection (1)
 - (i) by deleting the opening paragraph and substituting the following opening paragraph:

"The Commission may take enforcement action against a licensee, including a subsidiary or holding company listed in or included on the licence of the licensee, if";

- (ii) by deleting sub-paragraph (ii) of paragraph (a) and substituting the following sub-paragraph:

“(ii) has contravened or is in contravention of the Anti-Money Laundering Regulations and Anti-money Laundering and Terrorist Financing Code of Practice or such other enactments or guidelines relating to money laundering, the financing of terrorism and the financing of proliferation of weapons of mass destruction as may be prescribed;”;
and

- (iii) by deleting paragraph (e) and substituting the following paragraph:

- “(e) the licensee fails to pay on or before the due date an administrative penalty imposed –
 - (i) under the Anti-money Laundering and Terrorist Financing Code of Practice;
 - (ii) pursuant to the regulations; or
 - (iii) pursuant to any other enactment under which the Commission has power to impose an administrative penalty.”;

(b) in subsection (1A) by deleting paragraph (c) and substituting the following paragraph:

- “(c) fails to pay on or before the due date an administrative penalty imposed
 - (i) under the Anti-money Laundering and Terrorist Financing Code of Practice;
 - (ii) pursuant to the regulations; or
 - (iii) pursuant to any other enactment under which the Commission has power to impose an administrative penalty.”;

(c) in subsection (2)

- (i) by deleting the words “and (2)” in paragraph (d) and substituting “and (3)”;
 - (ii) by deleting the word “or” in paragraph (e) and substituting a comma, and adding after the words “Regulatory Code”, the words “, the Anti-money Laundering Regulations, the Anti-money Laundering and Terrorist Financing Code of Practice and any other enactment relating to money laundering, financing of terrorism and financing of weapons of mass destruction”;
- and

- (iii) by deleting the words “in regulations made under section 62” in paragraph (f) and substituting the words “the regulations or pursuant to the Anti-money Laundering and Terrorist Financing Code of Practice or any other enactment under which the Commission has power to impose an administrative penalty”;
- (d) in subsection (2A)
- (i) by deleting the words “in regulations made under section 62” in paragraph (e) and substituting the words “the regulations or pursuant to the Anti-money Laundering and Terrorist Financing Code of Practice or any other enactment under which the Commission has power to impose an administrative penalty”; and
 - (ii) by deleting the full-stop at the end of paragraph (f) and substituting a semi-colon; and
 - (iii) by adding after paragraph (f) the following new paragraph:
 - “(g) issue an order prohibiting the person from taking up employment within the financial services industry for such period as the Commission may specify in the order or for an indefinite period.”;
- (e) in subsection (4) by deleting the words “subsection (2) (g) and (2A) (e)” and substituting the words “subsections (2) (g) and (2A) (f)”;
- (f) by adding after subsection (7), the following new subsection:
 - “(8) Where an enforcement action is published in accordance with subsection (7), it shall remain published for such period as the Commission may determine.”.

Section 37A amended.

19. Section 37A of the principal Act is amended

- (a) in subsection (1)
 - (i) by deleting the words “a licensee, or former licensee,” and substituting the words “a licensee, former licensee or any other person,”; and

- (ii) by deleting the words “the licensee or former licensee” and substituting the words “the licensee, former licensee or other person”; and
- (b) in subsection (3) by deleting the words “a licensee or former licensee,” and substituting the words “a licensee, former licensee or any other person,”; and
- (c) in subsection (4)
 - (i) by deleting the words “a licensee or former licensee,” and substituting the words “a licensee, former licensee or any other person,”; and
 - (ii) by deleting the words “the licensee or former licensee,” and substituting the words “the licensee, former licensee or other person,”.

20. Section 38 of the principal Act is amended in subsection (4) Section 38 amended.

- (a) by deleting the words “suspending or revoking” in the opening paragraph and substituting the words “suspending, cancelling or revoking”;
- (b) by deleting the words “suspend or revoke” in paragraph (a) and substituting the words “suspend, cancel or revoke”; and
- (c) by deleting the words “suspended or revoked” in paragraph (b) and substituting the words “suspended, cancelled or revoked”.

21. Section 39 of the principal Act is amended Section 39 amended.

- (a) in subsection (1) by inserting before the word “revoked” in paragraph (a), the words “cancelled or”;
- (b) in subsection (2) by deleting the words “revocation or suspension” in paragraph (b) and substituting the words “suspension, cancellation or revocation”; and
- (c) in subsection (6) by deleting paragraph (b) and substituting the following paragraph:

“(b) before or after the Commission has given notice of intention to suspend, cancel or revoke a licence under section 38 (4).”

Section 40
amended.

22. Section 40 of the principal Act is amended:

(a) in subsection (1) by deleting paragraph (b) and substituting the following paragraph:

“(b) requiring the licensee to take such other action as the Commission considers

(i) 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; or

(ii) is appropriate, having regard to the circumstances of the licensee or of the licensee’s customers or creditors or potential customers or creditors in relation to the licensee.”; and

(b) in subsection (3) by deleting paragraph (b) and substituting the following paragraph:

“(b) requiring him or her to take such other action as the Commission considers

(i) may be necessary to protect his or her property, or property in his or her custody, possession or control, or to protect his or her customers or creditors or potential customers or creditors; or

(ii) is appropriate, having regard to his or her circumstances or his or her customers or creditors or potential customers or creditors in relation to him or her.”.

Section 40A
amended.

23. Section 40A of the principal Act is amended by repealing subsection (3) and substituting the following subsection:

“(3) A practice direction issued by the Commission pursuant to subsection (1) shall be published

(a) on the Commission’s Internet site; and

(b) in such other manner as the regulations may provide.”.

Section 40B
amended.

24. Section 40B of the principal Act is amended

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

“(1) In this section, “condition” means a condition attached to a licence issued or granted under a financial services legislation and includes a condition as varied in accordance with this section.”;

(b) in subsection (2)

(i) by deleting the words “an approval”; and

(ii) by deleting the words “regulatory legislation” and substituting the words “financial services legislation”;

(c) in subsection (3)

(i) by deleting the words “, or an approval granted” in the opening paragraph and substituting the words “or granted”;

(ii) by deleting the words “or approval” in paragraph (a); and

(iii) by deleting the words “or approval” in paragraph (b); and

(d) in subsection (4) by deleting the words “or approval” in paragraph (b).

25. Section 40C of the principal Act is amended in subsection (2)

Section 40C amended.

(a) by inserting after the words “a licensee,” in the opening paragraph, the words “or on its own motion in relation to specified licensees or a specified class of licensees,”;

(b) by adding after the words “the licensee” in paragraph (a), the words “or the specified licensees or specified class of licensees”; and

(c) by inserting after the words “the licensee” in paragraph (b), the words “or specified licensees or specified class of licensees”.

26. Section 40D of the principal act is amended in subsection (1D) by deleting the words “Regulations made under section 62” and substituting the words “the regulations”.

Section 40D amended.

- Section 41 amended. **27.** Section 41 of the principal Act is amended in subsection (1)
- (a) by deleting the word “and” at the end of paragraph (a);
- (b) by converting paragraph (b) into paragraph (c); and
- (c) by inserting after paragraph (a), the following new paragraph (b):
- “(b) matters relating to market conduct; and”.
- Section 41A amended. **28.** Section 41A of the principal Act is amended in subsection (3) by deleting the words “in such manner” and substituting the words “on the Commission’s Internet site and in such other manner”.
- Section 41B amended. **29.** Section 41B of the principal Act is amended in subsection (1) by deleting the words “in such manner” and substituting the words “on the Commission’s Internet site and in such other manner”.
- Part VI repealed. **30.** Part VI of the principal Act is repealed.
- Section 47 amended. **31.** Section 47 of the principal Act is amended in subsection (1) by deleting the words “which fails to be considered by” and substituting the word “before”.
- Section 49A amended. **32.** Section 49A of the principal Act is amended in subsection (1)
- (a) by inserting after the words “permitted by” in paragraph (a), the words “an order of”;
- (b) by deleting the word “Act” in paragraph (b) and substituting the word “enactment”; and
- (c) by deleting paragraph (d) and substituting the following paragraph
- “(d) to the Attorney General, Financial Investigation Agency, International Tax Authority and any other competent authority acting pursuant to an enactment;”.
- Section 50 amended. **33.** Section 50 of the principal Act is amended
- (a) by converting the existing section as subsection (1);

(b) in subsection (1) as renumbered

- (i) by deleting the opening paragraph and substituting the following opening paragraph:

“No liability shall arise in respect of, or attach to”;

- (ii) by deleting the word “Committee” in paragraph (a) and substituting the words “Enforcement Committee or Licensing and Supervisory Committee”; and

(c) by adding after subsection (1) as renumbered, the following new subsection:

“(2) Where a Commissioner, member of the Enforcement Committee or Licensing and Supervisory Committee, or any employee of the Commission incurs any cost in defending an action brought against him or her in relation to anything done or omitted as Commissioner, member of the Enforcement Committee or Licensing and Supervisory Committee, or an employee of the Commission, the Commission shall pay for or reimburse the cost of defending the action.”.

34. Section 50A of the principal Act is amended

Section 50A amended.

(a) in subsection (3) by deleting the words “in regulations made under section 62” and substituting the words “in the regulations”; and

(b) in subsection (5) by deleting paragraph (b) and substituting the following paragraph:

“(b) the obligations relating to the countering of money laundering, the financing of terrorism and the financing of weapons of mass destruction imposed on the body corporate outside the Virgin Islands.”.

35. Section 50B of the principal Act is amended in subsection (1) by deleting in paragraph (b) thereof the words “a member of FATF” and substituting the words “a recognised jurisdiction under Schedule 2 of the Anti-money Laundering and Terrorist Financing Code of Practice”.

Section 50B amended.

Section 50D amended.

36. Section 50D of the principal Act is amended by deleting the words “it expects authorised custodians to” and substituting the words “authorised custodians must”.

Section 54 amended.

37. Section 54 of the principal Act is amended in subsection (1) by deleting paragraph (d) and substituting the following paragraph:

“(d) he or she, being a Commissioner, fails to disclose an interest as required under section 47, or makes a false or misleading statement in a declaration pursuant to that section;”.

Section 54A amended.

38. Section 54A of the principal Act is amended

(a) in subsection (6) by deleting in paragraph (a) the word “with” and substituting the word “which”; and

(b) by inserting after subsection (8), the following new subsection

“(8A) Where the Commission is entitled to impose a fine under this section, it may, where it considers it appropriate having regard to the nature and circumstances of the breach or offence concerned, issue a warning letter instead of imposing a fine.”.

Section 57 amended.

39. Section 57 of the principal Act is amended

(a) in subsection (4) by adding at the end of the subsection before the full-stop, the words “or such other account as the Commission deems fit”; and

(b) in subsection (5) by deleting the words “in regulations made under section 62” and substituting the words “in the regulations”.

Section 57A inserted.

40. The principal Act is amended by inserting after section 57, the following new section:

“Appeal. 57A. Where any person is aggrieved by a decision of the Commission under this Act or any financial services legislation, he or she may appeal against the decision in accordance with the provisions of the Financial Services Appeal Board Act.”.

Schedule 2 amended.

41. Schedule 2 of the principal Act is amended

(a) in Part 1 by adding to the list of principal legislation, the following:

“7. Financing and Money Services Act”; and

(b) in Part 2

(i) by deleting the following from the list of principal legislation

“Registration of United Kingdom Trade Marks (Cap. 157)
Trade Marks Act (Cap. 158)

Companies Act (Cap. 285)

International Business Companies Act (Cap. 291) ”;
and

(ii) by adding to the list of principal legislation, the following:

“Trade Marks Act”.

Passed by the House of Assembly this 20th day of April, 2016.

(Sgd) Ingrid Moses-Scatliffe,
Speaker.

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