

No. 15 of 2022

VIRGIN ISLANDS

FINANCIAL SERVICES COMMISSION (AMENDMENT) ACT, 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Section 2 amended
3. Section 4 amended
4. Section 4A amended
5. New section 17A inserted
6. Part IV amended
7. Section 32 amended
8. Section 33C amended
9. Section 33D amended
10. New sections 33E and 33F inserted
11. Section 34 amended
12. Section 35 amended
13. New sections 35A and 35B inserted
14. Section 36A amended
15. New section 36B inserted
16. Section 37 amended
17. Section 38 amended
18. Section 40 amended
19. Section 40A amended
20. Section 40D amended
21. New sections 40E, 40F, 40G and 40H inserted
22. Section 41 amended
23. Section 41A amended
24. Section 41B amended
25. Redesignations and insertion of new section 48C
26. Section 49A amended
27. Part VIIA repealed
28. New section 50H inserted
29. Section 54 amended
30. New section 59A inserted
31. Section 62 amended
32. Schedule 1 amended
33. Schedule 2 amended

No. 15 of 2022

**Financial Services Commission
(Amendment) Act, 2022**

**Islands
Virgin**

I ASSENT
(Sgd.) John Rankin CMG,
Governor.
23rd December, 2022

VIRGIN ISLANDS

No. 15 of 2022

AN ACT TO AMEND THE FINANCIAL SERVICES COMMISSION ACT, 2001, REVISED EDITION 2020, AND FOR OTHER MATTERS CONNECTED THEREWITH.

[Gazetted 29th December, 2022]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement

1. (1) This Act may be cited as the Financial Services Commission (Amendment) Act, 2022.

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

Section 2 amended

2. Section 2 of the Financial Services Commission Act, Revised Edition 2020 (hereinafter referred to as the “principal Act”) is amended

(a) in subsection (1)

(i) by inserting in their appropriate alphabetical order, the following new definitions

“competent authority” means an authority designated or performing functions as such under an enactment, and includes the Attorney General, Governor, Financial Investigation Agency, Financial Services Commission, International Tax Authority and such other authority the Governor may, by an Order published in the *Gazette*, designate as a competent authority;

“rehabilitator” means an individual appointed by the Commission as a pre-requisite to

- (a) initiating and undertaking resolution proceedings against a licensee in accordance with the provisions of this Act; or
- (b) any action being taken under a financial services legislation for the liquidation of a licensee;

“resolution proceedings” means the taking of action by the Commission or other body so authorised under an enactment to

- (a) establish a process for the restructuring of a non-viable licensee through a disposition plan, and includes liquidation and depositor reimbursement, transfer and sale of assets and liabilities, establishment of a bridge bank under the Banks and Trust Companies Act, Revised Edition 2020, write down of debt or conversion of debt to equity or the application of procedures under the Insolvency Act, Revised Edition 2020, to the whole or parts of a licensee in resolution in conjunction with the exercise of resolution powers under that Act; and
- (b) otherwise safeguard financial stability and the public interest, and protect tax payers and consumers of financial services business;

“VIDIC” means the Virgin Islands Deposit Insurance Corporation established under section 3(1) of the Virgin Islands Deposit Insurance Act, No. 7 of 2016;” and

- (ii) in the definition of “financial services legislation”, by inserting after the word “means”, the words “this Act or”; and
- (b) by inserting after subsection (2), the following new subsections

“(3) A licensee is considered to be in a financial distress if

- (a) in the opinion of the Commission, the licensee is failing or is likely to fail in meeting its obligations and liabilities as they fall due; or
- (b) the licensee has stopped or intends to stop payments to its customers, whether by refusing to make direct payments to them, refusing them access to their deposits, or otherwise.

(4) Where in this Act or any other financial services legislation, the power is created to prescribe or provide for any matter in, under or by, the Regulatory Code, Revised Edition 2020, or generally reference is made to the Regulatory Code, this shall be interpreted to mean a single Regulatory Code or multiple Regulatory Codes issued by the Commission, as the context of the matter requires.”.

Section 4 amended

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

- (a) in paragraph (ca), by inserting after the words “the financing of proliferation of weapons of mass destruction”, the words “(hereinafter referred to simply as “financing of proliferation”)”; and
- (b) by deleting paragraphs (o) and (p) and substituting the following paragraphs:
 - “(o) to foster a safe and sound financial services environment in the Territory and promote financial stability;
 - (p) to take such steps as are necessary to grow the Territory as an internationally competitive financial service centre;
 - (q) to develop or facilitate the development and operation of a payment system in relation to any sector of the financial services industry;
 - (r) to form or participate in the formation of a company or in any joint venture as a shareholder or partner or in other capacity for purposes that are necessary or expedient in discharging its functions or achieving its objects under this Act or any other financial services legislation;
 - (s) to issue disqualification orders against, and exercise the power of suspension, withdrawal of approval and directing the removal from office, of persons as provided under this Act and any other financial services legislation;
 - (t) to take appropriate steps geared towards preventing abuses by licensees providing financial services business, and to promote practices for the protection of customers using products and services provided by licensees, through the oversight of the conduct of business by licensees; and
 - (u) to perform such other functions as may be assigned to it under any financial services legislation or any other enactment.”.

Section 4A amended

4. Section 4A of the principal Act is amended

- (a) by deleting the head note and substituting the following:
 - “Crisis management, resolution proceedings and consumer protection powers of the Commission.”;
- (b) in subsection (1)
 - (i) by deleting the opening paragraph and substituting the following opening paragraph
 - “The Commission may implement crisis management measures and resolution proceedings that are geared towards”;
 - (ii) by deleting paragraph (d) and substituting the following paragraph

- “(d) undertaking resolution proceedings in relation to a licensee that the Commission considers is failing or is likely to fail or is otherwise in a financial distress;”
- (iii) by deleting the full stop at the end of paragraph (e) and substituting a semi-colon;
- (iv) by inserting after paragraph (e), the following new paragraphs
 - “(f) conducting integrated supervision of the financial services sector and financial stability surveillance;
 - (g) promoting and otherwise contributing to the stability of the Territory’s financial system and promoting public confidence in that regard;
 - (h) receiving and dealing with, in a manner it considers fit, recommendations, reports and other information from the VIDIC or other authority in relation to a licensee that is, or is likely to be, in a financial distress;
 - (i) sharing such information, reports and documents as it considers relevant, with the VIDIC and any other authority it considers appropriate, in relation to the safety and financial condition of a licensee that is in a financial distress;
 - (j) determining, for purposes of assisting the VIDIC or other authority it considers appropriate, licensees that are systemically important to maintain financial stability and safeguard the public interest;
 - (k) performing any obligation imposed on it under any other enactment in relation to a licensee; and
 - (l) doing such other things as are necessary or expedient to contribute to an orderly resolution of a licensee and, if necessary, in coordination with the VIDIC and any other authority, including any obligation imposed on the Commission under any financial services legislation.”;
- (c) in subsection (2) (d), by inserting the words “and the public interest” directly after the word “generally”; and
- (d) in subsection (3), by deleting the words “The Regulatory Code” and substituting the words “Subject to the provisions of this Act, the Regulatory Code, Revised Edition 2020,”.

New section 17A inserted

5. The principal Act is amended by inserting after section 17, the following new section:

“Register of directors and senior officers

17A. (1) The Commission shall establish and maintain a register to be known as the Register of Directors and Senior Officers in which it shall record

- (a) the names of all persons approved by the Commission as directors and senior officers of licensees;
- (b) the names of the licensees in respect of which such directors and senior officers are approved;
- (c) the dates when such directors and senior officers were approved and when they ceased to serve as such in licensees; and
- (d) such other information as the Commission considers necessary.

(2) The register established and maintained under subsection (1) may be published by the Commission on the Internet site in such manner as the Commission considers fit.

(3) If the register is not published in accordance with subsection (2), it shall be accessible to any person who wishes to conduct a search in relation to it upon the payment of such fee as may be prescribed pursuant to the regulations.

(4) Every licensee shall immediately notify the Commission if any director or senior officer in the licensee ceases to hold such office, including the reason for ceasing to hold office.”.

Part IV amended

6. Part IV of the principal Act is amended by deleting the heading and substituting the following heading:

“INFORMATION GATHERING AND COOPERATION”.

Section 32 amended

7. Section 32 of the principal Act is amended

- (a) in subsection (1)(c), by deleting the words “acting pursuant to an enactment”; and
- (b) by repealing subsection (6).

Section 33C amended

8. Section 33C of the principal Act is amended

- (a) in subsection (1)
 - (i) paragraph (b) by deleting the words “acting pursuant to an enactment”; and
 - (ii) paragraph (c) by deleting the words “of weapons of mass destruction”;
- (b) in subsection (2)(b), by deleting the words “acting pursuant to an enactment”; and
- (c) in subsection (3), by deleting the words “acting pursuant to an enactment”.

Section 33D amended

9. Section 33D of the principal Act is amended in subsection (2A)

- (a) by deleting the words “to do so”; and
- (b) by inserting after the word “information” in the two places it appears in the subsection, the words “or documentation”.

New sections 33E and 33F inserted

10. The principal Act is amended by inserting after section 33D, the following new sections:

“Cooperation with domestic competent authorities

33E. (1) Subject to subsections (2) and (6), the Commission may, on the written request of a competent authority and subject to such conditions as the Commission considers appropriate, including sharing of costs

- (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 competent authority, whether such information or documentation is already in the Commission’s possession or 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

- (a) the competent authority making the request does not, under any enactment governing its affairs, have the corresponding powers to obtain the information or documentation without the assistance of the Commission;
- (b) the competent authority, by its nature, does not have any inherent power or authority to compel the information or documentation it is requesting of the Commission; and
- (c) the information or documentation to which the request relates, or the investigation is sought, is reasonably required by the competent authority for the purposes of performing its functions.

(3) Where the Commission considers it appropriate in any case, it may, notwithstanding subsection (2) or any other provision contained in this Act, provide a competent authority with information or documentation under its control or possession

- (a) pursuant to any agreement or other arrangement between the Commission and the competent authority; or
- (b) whether or not the information or documentation has been obtained pursuant to the exercise of any power under this Act, although the information or documentation has not been specifically requested by the competent authority.

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

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

- (a) where it is relying on subsection (3)(a), whether the agreement or other arrangement has any restrictions which may affect the Commission's ability to provide any information or documentation;
- (b) the nature and seriousness of the matter to which the competent authority's request relates and the importance of the assistance to be provided;
- (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.

(6) The Commission may, in relation to a request from a competent authority, decide not to exercise its powers under this section unless

- (a) the competent authority undertakes to make such contribution towards the cost of exercising its powers as the Commission considers appropriate; and
- (b) it is satisfied that the competent authority is subject to adequate legal restrictions on further disclosure, or has made a written undertaking not to make 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 competent authority performing functions of the competent authority; or
 - (ii) take any action on information or documents provided to it.

(7) The Commission may, with the approval of the Board, enter into such agreements or other arrangements for purposes of cooperating with, and providing assistance to, other competent authorities to obtain or provide information and documentation consistent with the performance of functions of the Commission or the competent authority.

(8) For the purposes of this section, the reference to “competent authority” shall be construed to include the VIDIC and any law enforcement agency in the Virgin Islands, in the performance of its functions.

Resolution proceedings

33F. (1) Subject to any limitations provided under the Virgin Islands Deposit Insurance Act, No. 7 of 2016, in relation to a licensee that is a bank, the Commission may, where it considers it necessary and to be in the public interest, initiate and undertake resolution proceedings against any licensee.

(2) Where a licensee knows or forms the opinion that there are early indicators which may place the licensee in a financial distress, it shall forthwith

- (a) notify the Commission of that fact, including information on all matters relating to the events surrounding the financial distress;
- (b) in relation to a licensee that is a bank, notify the VIDIC that it is or suspects it might be in a financial distress, and comply with any directions the VIDIC may give, including complying with any necessary requirements under the Virgin Islands Deposit Insurance Act, No. 7 of 2016; and
- (c) initiate recovery plans to address any concerns associated with the early warning indicators.

(3) In initiating and undertaking resolution proceedings against a licensee, the Commission shall, to the extent necessary

- (a) exercise such powers and perform such functions as are consistent with resolution proceedings, including taking into account best international practice on resolution matters; and
- (b) in relation to a licensee that is a bank and having regard to the requirements of, and powers of the VIDIC cooperate to the extent required under the Virgin Islands Deposit Insurance Act, No. 7 of 2016, and this Act and any other financial services legislation, with the VIDIC and other authority in relation to the licensee.

(4) Without prejudice to subsection (3)(a), the Commission shall, in determining whether to initiate and undertake resolution proceedings against a licensee under subsection (1), take into account

- (a) whether the licensee is able to pay its liabilities as they fall due;
- (b) whether the licensee has ceased or intends to cease payment to its customers;
- (c) the compliance history of the licensee;

- (d) the qualitative and quantitative indicators regarding the licensee's likelihood to fail (that is to say, whether it is likely to be viable or otherwise);
- (e) in the case of a licensee that is a bank, whether recovery measures taken by the licensee, including use of its available assets and default resources and application of any loss allocation rules, have failed to return the licensee to viability or have not been implemented in a timely manner;
- (f) whether any recovery measures put in place by the licensee is not, or will not be, sufficient to return the licensee to a viable status or would otherwise compromise financial stability;
- (g) whether the licensee presents systemic risks and is not, on its own, likely to resolve those risks;
- (h) measures it considers to be appropriate to ensure decisive action, maintain financial stability and prevent or minimise contagion risk or a run on the licensee;
- (i) whether the business of the licensee is of such a nature that some aspects thereof may be divorced from others to ensure the continued viability of the licensee;
- (j) whether initiating resolution proceedings would have a significant adverse impact on financial stability and the overall economy of the Virgin Islands;
- (k) whether there is a need for cross-border enforcement of resolution measures and any related cooperation and what such measures may be;
- (l) the need for an orderly resolution of the licensee, to minimise costs to tax payers and maintain financial stability by ensuring economic functions considered critical to the overall economy of the Virgin Islands;
- (m) whether depositors and the general public have lost confidence in the licensee;
- (n) in the case of a licensee that is a bank
 - (i) whether there is or will be a need for establishing a bridge bank under the Banks and Trust Companies Act, Revised Edition 2020, having due regard to section 19 of the Virgin Islands Deposit Insurance Act, No. 7 of 2016; and
 - (ii) whether the VIDIC has cancelled the insurance policy of the licensee; or
- (o) whether there are other factors essential to ensuring a smooth operation of the resolution proceedings.

(5) Without prejudice to the provisions of the Banks and Trust Companies Act, Revised Edition 2020, with respect to a bank, the

Commission shall, for the purposes of ensuring financial stability and confidence in the financial system of the Virgin Islands, determine which licensees are systemically important and provide for compliance by such licensees with such measures as may be prescribed in the Regulatory Code.

(6) A licensee that is determined by the Commission to be systemically important shall, in such manner and to such extent as the Commission may direct

- (a) develop and maintain a resolution plan to deal with any potential financial distress;
- (b) provide periodic reports on the testing of the resolution plan; and
- (c) update the resolution plan in line with any significant changes in the licensee.

(7) Where the Commission determines a licensee to be a high risk licensee in accordance with any risk framework the Commission may establish, the Commission may, notwithstanding that the licensee is not determined to be systemically important under subsection (5), require the licensee to comply with the requirements of subsection (6) and the licensee shall, for that purpose, be treated as if it were determined to be systemically important.

(8) Subject to the VIDIC exercise of resolution powers in respect of a bank under the Virgin Islands Deposit Insurance Act, the Commission shall, as soon as it initiates and undertakes resolution proceedings against a licensee it has determined to be systemically important in accordance with this section (but excluding a licensee under subsection (7)), notify the Minister and the VIDIC of that fact.

(9) The Regulatory Code may make provision for standardising the form and manner in which information relating to depositors should be recorded and maintained.

(10) In relation to initiating and undertaking resolution proceedings in accordance with the provisions of this Act, the reference to a licensee

- (a) in the case of a bank, includes a holding company and a subsidiary of the bank; and
- (b) in the case of any other licensee, includes a subsidiary of the licensee.

(11) The reference to a “holding company” and “subsidiary” under subsection (10) shall be construed in accordance with the meanings ascribed to those terms under section 2(2) to (6) of the Banks and Trust Companies Act, Revised Edition 2020.”.

Section 34 amended

11. Section 34 of the principal Act is amended in subsection (1)(b) by deleting the words “or any Guidance”, and substituting the words “or any guideline, code or other instrument”.

Section 35 amended

12. Section 35 of the principal Act is amended

- (a) in subsection (1) in the opening paragraph, by inserting after the words “this section”, the words “sections 35A and 35B”;
- (b) in subsection (2A)
 - (i) in paragraph (a)(ii), by deleting the words “or any Guideline” and substituting the words “or any guideline, code or other instrument”;
 - (ii) in paragraph (b), by deleting the words “of weapons of mass destruction”; and
 - (iii) in paragraph (c), by inserting after the words “Commission’s execution of its”, the words “domestic and”; and
- (c) by deleting subsection (4) and substituting the following subsection

“(4) Subject to subsection (5), the Commission may, upon the written request of a foreign regulatory authority, the VIDIC, a competent authority or any other authority the Commission considers appropriate for information exchange purposes, permit the foreign regulatory authority, VIDIC, competent authority or other authority to take part in a compliance inspection undertaken by the Commission under this section and in accordance with the Regulatory Code, Revised Edition 2020, and any guideline or code issued by the Commission.”;
- (d) by deleting subsection (5) and substituting the following subsection

“(5) The Commission shall not permit participation in a compliance inspection under subsection (4) unless it is of the opinion that such participation is reasonably required

 - (a) for the effective supervision or investigation of a licensee;
 - (b) in the case of a request by the VIDIC, to ascertain the financial soundness of a licensee, including whether a licensee should be placed under receivership or liquidated in accordance with the provisions of the Virgin Islands Deposit Insurance Act, No. 7 of 2016, or any other enactment;
 - (c) in the case of a competent authority, for the purposes of the due execution of functions of the competent authority; or
 - (d) in the case of a foreign regulatory authority, for the purposes of the regulatory functions of the foreign regulatory authority.”;
- (e) by deleting subsection (6) and substituting the following subsection

“(6) In deciding whether to permit participation in a compliance inspection under subsection (4), the Commission may

take into account whether the authority making the request is subject to adequate legal restrictions on further disclosure and, in particular, whether it is likely without the written consent of the Commission to

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

(f) by deleting subsection (7) and substituting the following subsection:

“(7) The Commission may, in any particular case and having regard to

- (a) the nature, size and complexity of a relevant person,
- (b) the location of the jurisdiction in which compliance inspection is to be conducted in relation to a relevant person,
- (c) the need for the Commission to engage specialist expertise to conduct or be part of a compliance inspection, or
- (d) the cost associated with conducting a compliance inspection,

require a relevant person to contribute up to 100% of the total cost of a compliance inspection.”; and

(g) by inserting after subsection (7), the following new subsection:

“(7A) For the avoidance of doubt, the Commission may conduct a compliance inspection of a relevant person in respect of any function outsourced by the relevant person.”.

New sections 35A and 35B inserted

13. The principal Act is amended by inserting after section 35, the following new sections:

“Confidentiality of compliance inspection reports

35A. (1) Where a compliance inspection report (“the report”) has been produced in respect of a relevant person pursuant to a compliance inspection under section 35

- (a) a copy of the report shall be transmitted by the Commission to the relevant person with such directions as the Commission may provide; and
- (b) the report shall be maintained confidentially, and shall not be disclosed to any person

- (i) by the Commission, save to the relevant person and in respect of the performance of its functions under this Act and in the discharge of any obligations under any other enactment; and
- (ii) by the relevant person, save as provided under subsection (2).

(2) The report may be disclosed

- (a) by a relevant person to its members, directors, senior officers, auditor and such other employees of the relevant person as the relevant person may authorise, in relation to the performance of their duties in connection with the relevant person;
- (b) where any of the provisions of section 49A applies; and
- (c) to such other person as the Commission may approve in writing.

(3) For the purposes of subsection (2)(c), the Commission may, either on its own volition or upon receipt of a request in writing from any person who, in the opinion of the Commission, has a legitimate need for it, provide the report, or approve the report to be made available, to any person.

(4) In exercising its power under subsection (3), the Commission shall consider whether providing the report, or approving the report to be made available, in any particular case accords with the objects of this Act and is in the public interest.

Frequency of compliance inspection

35B. (1) The Commission shall, for the purposes of conducting a compliance inspection of a relevant person under section 35, determine the frequency at which such inspection should be conducted, and the frequency may relate to the relevant person, a class of relevant persons or the risk posed by the relevant person or class of relevant persons.

(2) Without prejudice to subsection (1), the Commission may determine the frequency of compliance inspection of a relevant person or a class of relevant persons on the basis of, though not limited to

- (a) the money laundering, financing of terrorism and financing of proliferation risks and policies and the internal controls, processes and procedures associated with the relevant person or class of relevant persons, as assessed by the Commission;
- (b) the money laundering, financing of terrorism and financing of proliferation risks present in the Territory or elsewhere;
- (c) the characteristics of the relevant person or class of relevant persons and the degree of discretion allowed to the relevant person or class of relevant persons under the

risk-based approach and risk assessment framework implemented by the Commission; and

- (d) a request by the VIDIC or other authority the Commission considers appropriate for information exchange purposes, for a special inspection.

(3) The Commission may, at any time it considers there are developments in the management and operations, or with respect to any aspect, of a licensee it is concerned about, conduct a compliance inspection of the licensee, including a review of –

- (a) the assessment of the money laundering, financing of terrorism and financing of proliferation risks of the licensee; and
- (b) the licensee’s overall compliance culture.”.

Section 36A amended

14. Section 36A of the principal Act is amended

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

“(1) Where it appears to the Commission that there are or may be grounds for taking enforcement action against a licensee, or where the Commission considers it reasonable for purposes of ensuring the proper and effective regulation and supervision of a licensee, it may

- (a) on its own volition, appoint a qualified person; or
- (b) by notice in writing, require the licensee to appoint a qualified person,

to advise the licensee on the proper conduct of the licensee’s business and affairs and provide a report on, or on any aspect of, the licensee’s business and affairs.”;

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

“(1A) The appointment of the qualified person under subsection (1), whether by the Commission or by the licensee on the requirement of the Commission, shall be at the cost of the licensee.

(1B) The qualified person appointed under subsection (1) shall prepare and submit to the Commission a report on, or on any aspect of, the licensee’s business and affairs.”; and

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

“(2) The Commission may require the report prepared and submitted under subsection (1B) to

- (a) be in such form as may be specified
 - (i) in the case of an appointment by the Commission, in the letter or other instrument appointing the qualified person; and

- (ii) in the case of a notice by the Commission requiring a licensee to appoint a qualified person, in the notice; and
- (b) be provided on such periodic basis as the Commission may determine.”.

New section 36B inserted

15. The principal Act is amended by inserting after section 36A, the following new section:

“Appointment of rehabilitator

36B. (1) Where the Commission is of the opinion that a licensee is in, or is likely to fall into, a financial distress, it may appoint a rehabilitator to take over and direct the affairs of the licensee with a view to

- (a) assessing the issues confronting the licensee and what might have given rise to such issues;
- (b) identifying appropriate measures that can be properly and effectively employed to prevent the licensee from failing;
- (c) making such structural adjustments in the manner in which the licensee is administered to achieve efficiency and guard against financial instability; and
- (d) implementing the appropriate measures identified under paragraph (b) to protect and rehabilitate the licensee to the extent possible.

(2) A person appointed as a rehabilitator under subsection (1) shall have and exercise all the powers of a chief executive officer (whether as executive director or other equivalent position) of the licensee as if he or she were appointed by the board of directors or members of the licensee, but shall be answerable only to the Commission in respect of matters relating to the performance of his or her functions.

(3) Without limiting any other power a rehabilitator may exercise, whether as chief executive officer or otherwise, a rehabilitator may exercise any of the following powers

- (a) suspend dividend payments for such period as he or she considers necessary;
- (b) effect changes in the management of the licensee to create efficiency and effectiveness;
- (c) introduce such governance rules as he or she considers necessary to improve the licensee’s overall administration and accountability;
- (d) convene board meetings at such times as he or she considers feasible, but without being bound by decisions of the board that he or she considers unhelpful to rehabilitating the licensee;
- (e) enter into such agreements or arrangements as may be necessary to the rehabilitation and viability of the licensee; and

(f) take any other decisions designed to increase the licensee's productivity and reduce its liabilities.

(4) The rehabilitator shall, within 3 months of his or her appointment, or such shorter or longer period as the Commission may approve, prepare and submit a report to the Commission advising on

- (a) his or her findings of the reasons for the licensee's financial distress or likely fall into financial distress;
- (b) any failures of management in the operations of the licensee;
- (c) whether the licensee can be rescued from failing and, if so, within what period and the steps needed to achieve a rescue;
- (d) whether the status of the licensee is such that resolution proceedings should be instituted against the licensee and the appropriate steps to be taken to ensure the least disruption to the licensee's business; and
- (e) such other matters as the Commission may specify in writing.

(5) The Commission may, notwithstanding subsection (4), require the rehabilitator to provide the Commission with such periodic, including shorter, reports as the Commission may require.

(6) The appointment of a rehabilitator under subsection (1) in respect of a licensee shall be for a period not exceeding 2 years.

(7) Where the Commission is of the opinion that a rehabilitator should continue to serve as such in respect of a licensee to which he or she has been appointed for a period exceeding 2 years, it shall submit an application to the Court for the rehabilitator to be appointed as, and assume the role of, a receiver in accordance with the provisions of the BVI Business Companies Act, Revised Edition 2020.

(8) Where a rehabilitator is appointed as a receiver, the provisions of this section shall cease to apply in his or her case.

(9) Where the rehabilitator forms the view that the licensee to which he or she is appointed cannot be rescued or rehabilitated as envisaged under this section, he or she shall immediately advise the Commission which may institute and undertake resolution proceedings against the licensee.

(10) The Commission shall, as soon as it appoints a rehabilitator under subsection (1) in respect of a licensee that is a bank, notify the VIDIC in writing of that fact and cooperate with the VIDIC in the discharge of its functions as it relates to the licensee, including acting in accordance with such directions as the VIDIC may give.”.

Section 37 amended

16. Section 37 of the principal Act is amended

- (a) in subsection (1)
 - (i) in the opening paragraph, by deleting the words “, including a subsidiary or holding company listed in or included on the licence of the licensee,”;

- (ii) in paragraph (a)
 - (aa) by inserting after the words “Regulatory Code” in sub-paragraph (i), the words “or other code”;
 - (bb) by deleting the word “or” at the end of sub-paragraph (vii);
 - (cc) by inserting the word “or” at the end of sub-paragraph (viii); and
 - (dd) by inserting after sub-paragraph (viii), the following new sub-paragraph
 - “(ix) has breached, or engaged in conduct contrary to, market conduct or consumer protection rules or practices applicable to the licensee;”;
- (iii) by inserting after paragraph (c), the following new paragraph
 - “(ca) a rehabilitator has been appointed in respect of the licensee in accordance with section 36B;”;
- (b) in subsection (2), by inserting after paragraph (b), the following new paragraph:
 - “(ba) appoint a rehabilitator under section 36B;”;
- (c) in subsection (2A)
 - (i) by deleting paragraph (g) and substituting the following paragraph:
 - “(g) take action pursuant to section 40D by requiring the removal of a person or suspending, or withdrawing the approval of, the person’s appointment; and”;
 - (ii) by inserting after paragraph (g), the following new paragraph
 - “(h) take action pursuant to section 40F by issuing a disqualification order.”.
- (d) in subsection (7), by deleting the words “Commission’s website” and substituting the words “Internet site”; and
- (e) by inserting after subsection (7), the following new subsections:
 - “(8) Where the Commission publishes an enforcement action on the Internet site or through other means pursuant to subsection (7), it may
 - (a) determine the period within which the publication may remain published;
 - (b) determine that the publication shall remain for an indefinite period;
 - (c) specify the condition or conditions that must be satisfied before the publication is terminated or removed; or
 - (d) take such other action in relation to the publication as it may consider fit.

(9) For the purposes of taking enforcement action under this section, the reference to “licensee” shall be construed to include a subsidiary or holding company, of the licensee, that holds a separate licence.”.

Section 38 amended

17. Section 38 of the principal Act is amended

(a) in subsection (1)

(i) by deleting paragraph (b) and substituting the following paragraph

“(b) the licensee has

(i) within 6 months after receiving its licence, failed to commence the financial services business for which it was licensed unless it has applied for and received an extension from the Commission; or

(ii) at any time, ceased to carry on the financial services business for which it was licensed; or”; and

(ii) by inserting in paragraph (c) after the word “licensee”, the words “, subject to subsection (7),”;

(b) in subsection (4), by deleting the word “Before” in the opening paragraph and substituting the words “Subject to subsection (5), before”; and

(c) by inserting after subsection (4), the following new subsections:

“(5) An application under subsection (1) (b) (i) by a licensee for an extension shall be made at least 21 days before the end of the 6 months period referred to in that subsection to constitute a valid application.

(6) Where the Commission, upon receipt of an application for extension under subsection (1) (b) (i), is satisfied that there are good reasons to grant an extension, it may grant a licensee an extension for a period within which it may commence the financial services business for which it was licensed.

(7) Unless otherwise exempted in writing by the Commission, a licensee shall, before submitting an application for the cancellation of its licence under subsection (1) (c)

(a) publish its intention to make such an application to the Commission, giving its reason for the intention; and

(b) include, together with the application

(i) a certification by a director of the licensee that the publication referred to in paragraph (a) has been made and the licensee has notified all its customers and creditors, if any, including the manner of notification; and

- (ii) an indication of whether any customer, creditor or other person has raised any objection or other issue of concern relating to the intended cancellation of licence and what such objection is.

(8) A publication under subsection (7) (a) shall

- (a) be for a period of not less than 21 days; and
- (b) be considered to be properly made if it is published on the licensee's website and in at least two issues of a newspaper circulating in the Virgin Islands;

(9) An exemption under subsection (7) may relate to a particular licensee or a class of licensees as the Commission considers appropriate.

(10) Where a licensee wishes to cancel its licence before it has commenced financial services business, it need not comply with subsections (7) and (8)."

Section 40 amended

18. Section 40 of the principal Act is amended in subsection (1) by inserting after paragraph (a), the following new paragraph

- “(aa) requiring the licensee to take such measures as the Commission may specify to address any compliance deficiencies discovered in a compliance inspection or an ongoing supervision of the licensee; or”.

Section 40A amended

19. Section 40A of the principal Act is amended in subsection (3)(a), by deleting the word “Commission’s”.

Section 40D amended

20. Section 40D of the principal Act is amended

- (a) in the head note by deleting the word “directors” and substituting the words “senior officers”;
- (b) by deleting subsection (1D);
- (c) by deleting subsection (2) and substituting the following subsection

“(2) Where the Commission requires a licensee to remove a person or, on its own volition, suspends or withdraws an approval in respect of a person pursuant to subsection (1), it shall

- (a) enter the name of the person in a register to be known as the Register of Restricted and Prohibited Persons;
- (b) in the case of a removal or withdrawal of approval, publish, for such period as the Commission determines, the full name and address of the person on the Internet site indicating the fact and date of

removal or withdrawal of approval, of the person, including such other information in relation to the person as the Commission considers necessary; and

- (c) require the licensee to issue a public notice that the person has been removed or has had his or her approval by the Commission withdrawn and the person is no longer employed by the licensee.”; and

(d) by inserting after subsection (2), the following new subsections:

“(3) Where a person whose approval by the Commission is suspended under subsection (1) and, before or after the end of the period of suspension, the person is subsequently removed or has his or her approval withdrawn, subsection (2) shall apply accordingly.

(4) The notice required under subsection (2)(c) shall be published

- (a) on the licensee’s internet site for a period of not less than 60 days; and
- (b) in at least 2 issues of any two newspapers circulating in the Virgin Islands.

(5) Subject to subsection (6), the Commission may, where a person is removed or has his or her approval withdrawn in accordance with this section, issue an order published on the Internet site prohibiting the person

- (a) permanently from holding office in the licensee in which he or she was employed;
- (b) permanently from holding office generally in any licensee within the financial services sector of the Virgin Islands; or
- (c) from holding office in the licensee in which he or she was employed, or generally in any licensee within the financial services sector of the Virgin Islands
 - (i) for such specified period as the Commission may determine; or
 - (ii) for an indefinite period.

(6) The Commission may, on the written application of a person who has been removed or has had his or her approval withdrawn in accordance with this section and upon being satisfied that the application justifies a variation of the prohibition made pursuant to subsection (5), vary the prohibition in such manner as it considers fit, including but not limited to

- (a) reducing the period for which the prohibition shall remain in force;
- (b) lifting the permanent prohibition imposed; or

(c) substituting or imposing such lesser conditions as the Commission considers appropriate.

(7) An application under subsection (6) shall not, in relation to a prohibition

(a) under subsection (5)(a) or (b), be made earlier than 5 years from the date of publication of the order of prohibition; and

(b) under subsection (5)(c), be made earlier than 12 months from the date of publication of the order of prohibition or such shorter period as the Commission may approve.

(8) A person who acts contrary to any requirement under this section is liable to the imposition by the Commission of such administrative penalty as may be prescribed under the regulations.

(9) This section applies to

(a) a senior officer of a licensee;

(b) an auditor approved by the Commission or appointed by a licensee;

(c) an authorised agent, authorised representative or registered agent of a licensee; and

(d) any other person

(i) who is an employee of a licensee; or

(ii) who undertakes any function that may be specified by the regulations for the purposes of this section.”.

New sections 40E, 40F, 40G and 40H inserted

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

“Duty to notify customers of fraud committed against them

40E. (1) Where an employee of a licensee, including a person to whom section 40D or 40F applies, commits a fraud against a customer of the licensee, whether in relation to the customer’s account or otherwise, the licensee shall, in addition to notifying the Commission of the fraud

(a) notify the customer affected in writing, outlining the nature and circumstances of the fraud;

(b) explain to the customer the steps the licensee is taking or has taken to address the fraud;

(c) advise the customer in writing when the fraud has been satisfactorily resolved to restore the customer’s status; and

(d) advise the customer of the measures the licensee has put or is putting in place to prevent any future fraud from being

committed against the customer by an employee of the licensee.

(2) Notwithstanding anything to the contrary contained in any other enactment, a licensee shall not maintain in its employment an employee that the licensee establishes has committed a fraud against a customer, whether in relation to the customer's account or otherwise.

(3) Where a licensee terminates the employment of an employee on account of the employee's commission of a fraud on a customer –

- (a) the licensee shall issue a public notice that the employee's employment with the licensee has been terminated; and
- (b) the Commission shall, upon receipt of a notice of termination of the employee, enter in the register mentioned in section 40D(2)(a) the full name and address of the employee and the fact and date of his or her termination, including such other information in relation to the employee as the Commission considers necessary.

(4) For the purposes of

- (a) subsection (3)(a), the notice shall be published
 - (i) on the licensee's internet site for a period of not less than 60 days; and
 - (ii) in at least 2 issues of any two newspapers circulating in the Virgin Islands; and
- (b) subsection (3)(b), the Commission shall divide the register mentioned in section 40D(2)(a) in a way that will distinguish entries made in relation to that section and those made in relation to subsection (3)(b), and section 40D(2)(a) shall be construed as if the references therein were also references to subsection (3) (b).

Disqualification of directors and limited partners

40F. (1) For the purposes of this section, a disqualification order is an order issued by the Commission. under subsection (2) that a person who

- (a) is approved as a director of a licensee;
- (b) acts as a director of a company incorporated or registered under the BVI Business Companies Act, Revised Edition 2020; or
- (c) is a general or limited partner of a limited partnership under the Limited Partnership Act,

shall cease to serve as such as may be specified in the order, notwithstanding anything to the contrary that may be contained in the financial services legislation mentioned in paragraph (b) or (c) or in any other financial services legislation, save the Insolvency Act, Revised Edition 2020.

(2) Subject to subsection (8), the Commission may, on its own volition, relying on a report made by or to it or on the application of any other

person who has an interest in the matter, issue a disqualification order against a person on any of the grounds specified in subsections (5) and (7).

(3) Where the Commission issues a disqualification order under subsection (2), it shall, as against the person to whom the disqualification order relates, specify whether the order

- (a) is permanent and the person cannot serve as such in or in relation to the licensee, company or limited partnership that he or she was employed by or with which he or she was in any way affiliated;
- (b) is permanent and the person cannot generally serve as such in or in relation to any office of any licensee, company or limited partnership within the financial services sector of the Virgin Islands;
- (c) is for a period specified by the Commission;
- (d) is for an indefinite period; or
- (e) shall remain in force until such measures or actions as determined by the Commission are accomplished to the satisfaction of the Commission.

(4) The specification referred to in subsection (3) shall be specified in the disqualification order.

(5) The grounds referred to in subsection (2) are that

- (a) the person has been convicted of an offence, whether in the Virgin Islands or elsewhere
 - (i) in connection with the formation, promotion, management or dissolution of, or other development relating to, a licensee, company or limited partnership, that is or becomes insolvent; or
 - (ii) in relation to any other conduct that is prohibited under any law, including money laundering, financing of terrorism and financing of proliferation;
- (b) the person has been acting in his or her capacity within a licensee, company or limited partnership that is or becomes insolvent, whether while he or she was acting in that capacity or subsequently and
 - (i) has been found by a court of competent jurisdiction to have committed fraud in relation to the licensee, company or limited partnership; or
 - (ii) where the Commission is of the opinion that the conduct of the person is of such a nature that it makes him or her unfit to continue serving in the formation, promotion, management of, or other development relating to, the licensee, company or limited partnership;
- (c) the person, in exercising his or her powers or in performing his or her duties, acted dishonestly or in bad faith to the detriment

- of the licensee, company or limited partnership, as the case may be;
- (d) the person acted in a manner that contravened this Act or any financial services legislation by failing to exercise the care, diligence and skill that a reasonable person in his or her position would exercise taking into account, but not limited to
 - (i) the nature of the licensee, company or limited partnership, as the case may be;
 - (ii) the nature of the decision taken; and
 - (iii) the position of the person and the nature of the responsibilities undertaken by him or her;
 - (e) subject to subsection (6), the person has entered into a transaction in which he or she has a conflict of interest without disclosing that interest to his or her board or partners;
 - (f) the person is otherwise found by the Commission not to be fit and proper;
 - (g) in the case of a licensee, enforcement action is taken under section 37 against the licensee and the person is found to have contributed to the conduct or failure that gave rise to the enforcement action;
 - (h) the Commission receives a report in writing from a competent authority or law enforcement agency that the persistent failure of a licensee, company or limited partnership to
 - (i) comply with a request to produce documents or information under an enactment administered by the competent authority or law enforcement agency;
 - (ii) comply with any other legal obligation under an enactment, including taking appropriate measures to minimise risks associated with money laundering, financing of terrorism and financing of proliferation; or
 - (iii) cooperate with an inquiry or investigation, is, directly or indirectly, attributable to the person; or
 - (i) in the opinion of the Commission, it is in the public interest to issue the disqualification order.
- (6) Subsection (5)(e) does not apply if the transaction entered into
- (a) is, in the case of a licensee or company, between the person and the licensee or company, as the case may be; or
 - (b) is, in the case of a limited partnership, between the person and the partnership.
- (7) The Commission may, in addition to the grounds specified in subsection (5) as a basis for issuing a disqualification order, also consider and rely on whether the person has

- (a) engaged in any misfeasance or breach of a fiduciary or other duty in relation to the licensee, company or limited partnership;
- (b) misapplied, converted or retained, or engaged in any conduct giving rise to an obligation to account for, any money or other assets of the licensee, company or limited partnership; or
- (c) engaged in conduct that is responsible for the persistent failure of the licensee, company or limited partnership to comply with its obligations under any financial services legislation.

(8) The Commission shall not issue a disqualification order against a person under subsection (2) on account of any of the grounds specified in subsection (5) or (7), unless it has given a written notice to the person informing him or her of the Commission's intention to issue the disqualification order and inviting the person to make such representations as the person may consider fit.

(9) A person who receives a notice under subsection (8) has 21 days within which to submit his or her representations, if any, to the Commission.

(10) The Commission may, after the lapse of the period stipulated in subsection (9) and after considering representations, if any, provided pursuant to that subsection

- (a) issue such disqualification order as it considers appropriate; or
- (b) rescind its intention to issue a disqualification order.

(11) The Commission may, on the written application of a person against whom a disqualification order subsists and upon being satisfied that the application justifies a variation of the disqualification order, vary the disqualification order in such manner as it considers fit, including but not limited to

- (a) reducing the period for which the disqualification order shall remain in force;
- (b) limiting the measures or actions that are to be accomplished by the person to whom the disqualification order relates;
- (c) lifting the permanent disqualification imposed under the disqualification order; or
- (d) substituting or imposing such conditions as the Commission considers appropriate.

(12) An application under subsection (11) shall not, in relation to a disqualification order

- (a) under subsection (3)(a) or (b), be made earlier than 5 years from the date of publication of the disqualification order;
- (b) under subsection (3)(c) or (d), be made earlier than 12 months from the date of publication of the disqualification order; and
- (c) under subsection (3)(e), be made until the measures and actions required of the person have been accomplished to the satisfaction of the Commission.

(13) Where the Commission issues a disqualification order under subsection (2), it

- (a) shall publish the order on the Internet site; and
- (b) may, where it considers it appropriate in addition to paragraph (a), publish the order in such other manner as it considers fit,

for such period, definite or indefinite, as it may determine.

(14) Notwithstanding anything to the contrary contained in any enactment, a person who is subject to a disqualification order shall not

- (a) be appointed, or in any way act, as a director of a licensee or company or a partner of a limited partnership;
- (b) be appointed or in any way act as a receiver of any property of a licensee, company or limited partnership; or
- (c) directly or indirectly, be concerned or in any way involved in the formation, promotion or management of a licensee, company or limited partnership.

(15) For the purposes of

- (a) subsection (2), a person has an interest in the issuing of a disqualification order by the Commission if the person
 - (i) is a competent authority;
 - (ii) is a law enforcement agency;
 - (iii) is a director of a licensee or company in relation to which the director's disqualification order is being sought;
 - (iv) is a general partner or limited partner of a limited partnership in relation to which the limited partner disqualification order is being sought; or
 - (v) is a member or creditor of a licensee or company in relation to which the director disqualification order is being sought, in circumstances other than where liquidation or insolvency proceedings have been commenced under the BVI Business Companies Act, Revised Edition 2020, or Insolvency Act, Revised Edition 2020, with respect to the licensee or company; and
- (b) subsection (5)(f), the Commission shall, in determining whether a person is fit and proper, rely on Schedule 1A of the Regulatory Code, Revised Edition 2020, and the provisions of that Schedule shall be construed to apply to companies and limited partnerships with such modifications as the Commission considers fit.

Liability of a disqualified person

40G. (1) A person against whom a disqualification order has been issued shall be personally liable for any debt or other liability of a licensee, company or limited partnership if he or she, while the disqualification order subsists,

is involved in the management or affairs of the licensee, company or limited partnership.

(2) Where a person (“the first person”) involved in the management or affairs of a licensee, company or limited partnership acts on the instructions of another person (“the second person”) the first person knows to be a disqualified person under a disqualification order, the first person shall, notwithstanding the liability of the second person under subsection (1), be personally liable for any loss incurred by the licensee, company or limited partnership arising from acting on such instructions.

(3) For the purposes of subsections (1) and (2), a person is involved in the management or affairs of a licensee, company or limited partnership if he or she is concerned, whether directly or indirectly, or takes part, in the decision-making processes of the licensee, company or limited partnership, whether on a regular or occasional basis.

(4) A person is presumed to know that a disqualified person has a disqualification order in relation to him or her if the disqualification order is published in accordance with section 40F (11).

Register of disqualified persons

40H. (1) The Commission shall establish and maintain a register of persons against whom the Commission has issued disqualification orders under section 40F (2).

(2) The register established and maintained under subsection (1) shall

- (a) contain information on the full names, nationalities, addresses, period of disqualification, a summary of the reasons for issuing disqualification orders in relation to the disqualified persons, and such other information as the Commission considers fit;
- (b) be kept and maintained in such manner as the Commission considers fit; and
- (c) be made available to be inspected by any person without charge if the information contained in the register is not published on the Internet site in accordance with section 40F(13)(a).”.

Section 41 amended

22. Section 41(3) of the principal Act is amended by deleting paragraph (c) and substituting the following paragraph:

- “(c) may provide for licensees and other persons to take such measures as may be necessary to
- (i) prevent the commission of offences relating to financial services business; and
 - (ii) regulate and monitor the detection and incidence of offences relating to financial services business.”.

Section 41A amended

23. Section 41A(3) of the principal Act is amended by deleting the word “Commission’s”.

Section 41B amended

24. Section 41B(1) of the principal Act is amended by deleting the word “Commission’s”.

Redesignation and insertion of new section 48C

25. The principal Act is amended

- (a) by redesignating the existing section 48C as section 48D;
- (b) by inserting after section 48B, the following new section:

“Disclosure obligation to Financial Services Complaints Tribunal

48C. Subject to section 48A, a licensee shall, whenever required to do so in writing by the Financial Services Complaints Tribunal established under section 13 of the Financial Services (Exceptional Circumstances) Act, Revised Edition 2020, furnish to the Tribunal such information and documents as relate to the licensee or other person or in relation to any transaction or other business as the Tribunal may determine in order to assist the Tribunal in discharging its functions.”; and

- (c) by amending section 48D as redesignated
 - (i) by converting the section as subsection (1) and
 - (aa) inserting therein after the word “who”, the words “, whether or not required to do so, reports or”; and
 - (bb) deleting the words “this Act” and substituting the words “any financial services legislation”; and
 - (ii) by inserting after subsection (1) as redesignated, the following new subsection:

“(2) The Commission, a Board member or any staff, employee or agent of the Commission shall not, without the consent of the person making a report or disclosure under or in relation to a financial services legislation, disclose the identity of that person, except where such disclosure

 - (a) is necessary to fulfil a function of the Commission; or
 - (b) is compelled by an order of a court in relation to proceedings before the court.”.

Section 49A amended

26. Section 49A of the principal Act is amended in subsection (1)

- (a) by deleting paragraph (d) and substituting the following paragraph:
“(d) to a competent authority;”;
- (b) by inserting after paragraph (h), the following new paragraphs:
“(ha) to the House of Assembly;
(hb) to the VIDIC;”.

Part VIIA repealed

27. The principal Act is amended by repealing Part VIIA, subject to section 59A of the principal Act.

New section 50H inserted

28. The principal Act is amended by inserting after section 50G, , the following new section:

“Record keeping measures

50H. (1) The Commission shall keep and maintain records of its business and activities, which shall

- (a) be recorded in the English language and, where any particular record is in a language other than the English language, a certified translation of the record shall be kept and maintained;
- (b) be in writing and stored or otherwise provided in a tangible medium, or stored in an electronic medium that is retrievable in a legible form; and
- (c) be retained for a period of at least 5 years from the date each record was generated.

(2) Every licensee and former licensee shall keep and maintain records of its business and activities, including records required under laws relating to money laundering, financing of terrorism and financing of proliferation, which shall, unless otherwise required under any other enactment

- (a) be recorded in the English language and, where any particular record is in a language other than the English language, a certified translation of the record shall be kept and maintained;
- (b) be in writing and stored or otherwise provided in a tangible medium, or stored in an electronic medium that is retrievable in a legible form; and
- (c) be retained for a period of at least 5 years from the date each record was generated or
 - (i) in the case of a surrender, cancellation or revocation of a licence, from the date of surrender, cancellation or revocation of the licence;

- (ii) in relation to money laundering, terrorist financing and proliferation financing, from the date of termination of a business relationship; or
- (iii) in the case of a one-off transaction, from the date of conclusion of the transaction to which the record relates.

(3) For the purposes of subsection (2)(c)(ii) and (iii), the terms “business relationship”, “termination of business relationship” and “one-off transaction” shall be construed in accordance with the provisions of the Anti-money Laundering Regulations, , Revised Edition 2013, and Anti-money Laundering and Terrorist Financing Code of Practice, Revised Edition 2013.

(4) The Regulatory Code, Revised Edition 2020, may make further provision in relation to record keeping measures to be maintained by the Commission, and licensees and former licensees.”.

Section 54 amended

29. Section 54 of the principal Act is amended

(a) in subsection (1)

(i) by inserting at the end of paragraph (b) before the semi-colon, the words “or to give a notification under section 54B (2)”;

(ii) by deleting paragraph (bb) and substituting the following paragraph:

“(bb) for the purpose of obstructing or frustrating compliance with a request under section 30 (1), a notice issued by the Commission under section 32 (1), a requirement under section 48C or in relation to any other matter required under or pursuant to this Act, destroys, mutilates, defaces, conceals, removes or in any other way disposes, or causes the destruction, mutilation, defacing, concealment, removal or disposal, of any document, or information stored on a computer or other device or thing;”;

(iii) by deleting the word “or” at the end of paragraph (e);

(iv) by deleting the full stop at the end of paragraph (f) and substituting a semi-colon; and

(v) by inserting after paragraph (f), the following new paragraphs:

“(g) he or she commits an act of victimisation or retaliation against another person who has made a report or disclosure under or in relation to a financial services legislation;

(h) he or she knowingly makes a false, malicious or vexatious report or disclosure under or in relation to a financial services legislation against a licensee or any other person;
or

- (i) he or she otherwise contravenes a provision, or fails to comply with a requirement, of this Act which is not specified in paragraphs (a) to (h).”;
- (b) in subsection (2)(b), by deleting the figure “5,000” and substituting the words “5 years”; and
- (c) by inserting after subsection (2), the following new subsection:
 - “(3) For the purposes of subsection (1)(g), a person commits an act of victimisation if he or she engages in conduct
 - (a) that causes injury, damage or loss;
 - (b) to intimidate or harass;
 - (c) that discriminates or disadvantages;
 - (d) that amounts to or can be reasonably assumed to amount to a threat or reprisal; or
 - (e) that deliberately treats another adversely in relation to that other’s employment.”.

New section 59A inserted

30. The principal Act is amended by inserting after section 59, the following new section:

“Transitional provisions: custodians

59A. (1) Where, prior to the coming into force of this Act (Financial Services Commission (Amendment) Act, 2022), a person was approved as an authorised custodian, or recognised as a custodian, of bearer shares and, upon the coming into force of this Act, holds bearer shares on behalf of another person, he or she shall, within 6 months of the coming into force of this Act

- (a) deliver custody of the bearer shares to the person on whose behalf the bearer shares are held; or
- (b) where the person on whose behalf the bearer shares are held cannot be located or fails to take delivery of the bearer shares, deliver the bearer shares to the company that issued them to be dealt with in accordance with the provisions of the BVI Business Companies Act, Revised Edition 2020.

(2) A person approved as an authorised custodian, or recognised as a custodian, of bearer shares shall, 6 months after the coming into force of this Act, cease to be approved as an authorised custodian, or recognised as a custodian, of bearer shares.”.

Section 62 amended

31. Section 62 of the principal Act is amended by deleting subsection (1A) and substituting with the following:

“(1A) Without limiting subsection (1), regulations made under subsection (1) may provide for

- (a) 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 or other code issued by the Commission;
- (b) the functions and powers of a rehabilitation; or
- (c) the disqualification of directors of licencees, companies and partners of limited partnerships.”

Schedule 1 amended

32. Schedule 1 of the principal Act is amended

- (a) by deleting paragraph 2 and substituting the following paragraph:

“2. The Regulatory Code, Revised Edition 2020, and any directive, code or other instrument issued by the Commission, including any amendment to such Code, directive, code or other instrument, shall bear the Commission’s seal and, notwithstanding paragraph 1, the application of the seal shall be authenticated by the signature of the Chairman of the Board.”; and

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

“5. Paragraph 4 does not apply to the issue of the Regulatory Code, Revised Edition 2020, or any directive, code or other instrument issued by the Commission, including any amendment to such Code, directive, code or other instrument.”;

Schedule 2 amended

33. Schedule 2 of the principal Act is amended in Part I by adding to the list of Regulatory Legislation, the following:

“**8.** Financial Services Commission Act, Revised Edition 2020,”.

Passed by the House of Assembly this 24th day of November, 2022.

Corine N. George-Massicote,
Speaker.

Phyllis Evans,
Clerk of the House of Assembly.