



VIRGIN ISLANDS

FINANCING AND MONEY SERVICES ACT

Revised Edition

showing the law as at 1 January 2020

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014.

This edition contains a consolidation of the following laws—

FINANCING AND MONEY SERVICES ACT

Act 9 of 2009 ... in force 31 March 2010

Amended by Act: 9 of 2018 .. in force 1 March 2019 (S.I. 12/2019)

SEE STATUTORY INSTRUMENTS BOOKLET

Page
3



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FINANCING AND MONEY SERVICES ACT

ARRANGEMENT OF SECTIONS

SECTION

PRELIMINARY

1. Short title
2. Interpretation
3. Exemption from application of this Act
4. Definition of “financing agreement”, “lease” and “financing lease”
5. Definition of “financing business”
6. Meaning of “money services business”

PART I

REGULATION AND SUPERVISION OF FINANCING AND MONEY SERVICES BUSINESS

7. Prohibition on unauthorised financing and money services business

Licensing

8. Classes of licence
9. Application for and issuance of licence

Obligations of, and Restrictions on, Licensees

10. Maintenance of financially sound condition
11. Modification of sections 12 to 14 with respect to foreign companies
12. Maintenance of capital resources and deposit
13. Appointment and termination of directors and senior officers
14. Disposing of, or acquiring significant interest in, licensee
15. Licensee to establish and maintain principal office
16. Authorisation to open branch or representative office

Corporate Governance

17. Directors of BVI licensee
18. Management systems and controls
19. Maintenance of records
- 19A. Duty to ensure compliance with the law
- 19B. Prudential guidelines
- 19C. Segregating customer accounts

Financial Statements and Audit

20. Meaning of “financial year”
21. Meaning of “financial statements”
22. Preparation of financial statements
23. Submission of financial statements to the Commission
24. Submission of periodic financial statements and report
25. Extension of time
26. Amendment of financial statements
27. BVI licensee to appoint auditor
28. Audit and audit report
29. Obligations of auditors
30. Powers of Commission concerning appointment of auditor
31. Group accounts

General Supervisory Provisions

32. Regulations may provide for approval of individuals for appointment by licensee
33. Professional indemnity and other insurance
34. Submission of returns and reporting of information to Commission
35. Advertisements
- 35A. Prohibition against solicitation or receipt of money
36. Market conduct
- 36A. Additional consumer protection measures
37. Change of name
38. Commission may require licensee to change name under which it carries on business
39. Bearer shares

PART II

MISCELLANEOUS PROVISIONS

40. Exemption from application of Cap. 200

Administration

41. Applications
42. Registers
43. Inspection of registers and information held by Commission
44. Electronic filing of documents
45. Fees, penalties and charges payable to Commission

Offences and Penalties

46. False or misleading representations, statements, reports or returns
47. Punishment of offences
48. Order to comply

49. Regulations

Final Provisions

50. Transitional provisions

51. (Omitted)

SCHEDULE 1: Disapplication and Modification of this Act and the
Financial Services Commission Act, 2001

SCHEDULE 2: Offences under this Act

FINANCING AND MONEY SERVICES ACT

(Acts 9 of 2009 and 9 of 2018)

AN ACT TO PROVIDE FOR THE LICENSING, REGISTRATION AND SUPERVISION OF PERSONS WHO CARRY ON FINANCING BUSINESS AND MONEY SERVICES BUSINESS AND FOR CONNECTED MATTERS.

Commencement

[31 March 2010]

PRELIMINARY

Short title

1. This Act may be cited as the Financing and Money Services Act.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“approved form” means a form approved by the Commission under the Financial Services Commission Act;

“auditor” means a person qualified under the Regulatory Code to act as an auditor under this Act;

“BVI business company” means a company that is on the Register of Companies maintained under the BVI Business Companies Act;

“BVI licensee” means a licensee that is a BVI business company;

“Cabinet” means the Cabinet established under the Virgin Islands Constitution Order 2007;

“capital resources”, with respect to a licensee, means its capital resources calculated in accordance with the Regulatory Code;

“Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act;

“controlling interest”, in relation to a licensee, means the ownership or interest in the licensee or in any holding company of the licensee by a person of—

(a) more than 50% of the voting rights of the licensee; or

(b) a significant interest in the licensee which, although not constituting more than 50% of the voting rights of the licensee (in aggregate or otherwise), gives the person a considerable advantage in the voting rights of the licensee if the remaining votes in the licensee are not voted on;

(Inserted by Act 9 of 2018)

“Court” means the High Court;

“credit” includes a cash loan, a deferred payment and any other form of financial arrangement;

“director” has the meaning specified in the BVI Business Companies Act;

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

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

and without limiting the generality of paragraphs (a) to (d), includes any application to, or order of, a court or tribunal, any other legal process and any notice;

“financial statements” has the meaning specified in section 21;

“financial year” in relation to financial statements, has the meaning specified in section 20;

“financing agreement” has the meaning specified in section 4(1)(a);

“financing business” has the meaning specified in section 5;

“financing lease” has the meaning specified in section 4(1)(c);

“foreign company” means a company incorporated, registered or formed outside the Virgin Islands, but excludes a BVI business company;

“lease” has the meaning specified in section 4(1)(b);

“licence” means a financing licence or a money services licence;

“licensee” means a BVI business company or foreign company holding a licence under this Act;

“money services business” has the meaning specified in section 6;

“post office” means a post office established under the Post Office Act;

“prescribed” means prescribed in the Regulatory Code;

“public interest” shall be construed in accordance with subsection (2);

“Regulations” means the Regulations made under section 49;

“Regulatory Code” means the Regulatory Code issued by the Commission under the Financial Services Commission Act;

“resident in the Virgin Islands” is to be construed in accordance with regulations made pursuant to subsection (3);

“senior officer” means a person appointed to perform supervisory or managerial functions with respect to a licensee as may be prescribed; and (*Amended by Act 9 of 2018*)

“significant interest” in respect of a company, means a holding or interest in the company, or in any holding company of the company held or owned by a person, either alone or with any other person and whether legally or equitably, that entitles or enables the person, directly or indirectly—

- (a) to control ten per cent or more of the voting rights of that company at a meeting of the company or of its members;
- (b) to a share of ten per cent or more in any distribution made by the company;
- (c) to a share of ten per cent or more in any distribution of the surplus assets of the company; or
- (d) to appoint or remove one or more directors of the company.

(2) Where the Commission is permitted or required by this Act to consider the “public interest”, the “public” includes—

- (a) the public inside and outside the Virgin Islands; and
- (b) any person who has a legitimate interest in the decision to be made by the Commission.

(3) Unless the context otherwise requires, any reference to this Act includes a reference to the Regulations made under this Act.

(4) The incorporation or continuation of a company in the Virgin Islands does not, of itself, result in the company being resident in the Virgin Islands for the purposes of this Act.

(5) Subject to subsection (4), the Regulations shall make provision for determining whether a person is resident in the Virgin Islands for the purposes of this Act.

(6) Where in this Act reference is made to the Commission’s fit and proper criteria it shall be construed as a reference to the fit and proper criteria set out in Schedule 1A of the Regulatory Code. *(Substituted by Act 9 of 2018)*

Exemption from application of this Act

3. (1) This Act does not apply to a person that holds a general banking licence issued under the Banks and Trust Companies Act.

(2) A post office is not required to obtain a money services licence in respect of any money services business that it carries on.

(3) Notwithstanding subsection (2)—

- (a) a post office, when carrying on money services business, is deemed to be a “licensee” for the purposes of this Act and the Financial Services Commission Act; and
- (b) this Act and the Financial Services Commission Act are modified with respect to a post office, when carrying on money services business, to the extent set out in Schedule 1.

(4) This Act does not apply to the Social Security Board established under the Social Security Act in relation to financing provided by the Social Security Board, provided that the financing is provided to the Government of the

Virgin Islands or a statutory body established under an enactment and owned by the Government of the Virgin Islands. *(Inserted by Act 9 of 2018)*

Definition of “financing agreement”, “lease” and “financing lease”

4. (1) For the purposes of this Act—

- (a) a “financing agreement” is an agreement whereby a person provides, or promises to provide, another person (“the borrower”) with credit;
- (b) a “lease” is an agreement whereby a person (“the lessor”) grants another person (“the lessee”) the right to possession and use of any moveable property for an agreed period in return for periodic payments; and
- (c) a “financing lease” is a lease whereby the property to be leased is acquired by the lessor from a third party (“the supplier”) for the purposes of leasing it to the lessee under the lease.

(2) For the purposes of subsection (1)(c), the supplier is a third party notwithstanding that the supplier may be a subsidiary or holding company of the lessor, in the same group of companies as the lessor or otherwise connected or associated with the lessor.

Definition of “financing business”

5. (1) Subject to subsection (2), a person carries on financing business if—

- (a) he or she carries on, in the Virgin Islands, the business of providing credit under financing agreements to borrowers resident in the Virgin Islands;
- (b) he or she provides, as a business, credit, including pay day advances, or consumer finance loan, under a financing agreement to a borrower in the Virgin Islands; *(Substituted by Act 9 of 2018)*
- (c) he or she carries on, in the Virgin Islands, the business of leasing property to a person resident in the Virgin Islands under a financing lease; *(Amended by Act 9 of 2018)*
- (d) he or she carries on such other business or activity as may be specified in regulations as financing business; or *(Substituted by Act 9 of 2018)*
- (e) he or she carries on business in international financing and lending in relation to a Class F licence. *(Inserted by Act 9 of 2018)*

(2) The Regulations may provide for the exemption of specified classes or descriptions of activity or business from the definition of “financing business”.

(3) For the purposes of subsection (1)(b), “consumer finance loan” means a loan of money, credit, goods or choses in action including, except as otherwise specifically prescribed, provision of a line of credit, in an amount or to a value of not less than \$5,000 and not more than \$35,000 for which the lender charges, contracts for, collects or receives interest at a rate prescribed unless the borrower has defaulted. *(Inserted by Act 9 of 2018)*

Meaning of “money services business”

6. A person carries on money services business if that person carries on the business of—

- (a) providing any of the following services—
 - (i) the dispensing of money, the facilitation of deposits, payments, transfer of money or the reporting of account information via automated teller machines;
 - (ii) transmission of money in any form, including electronic money, mobile money or payments of money;
 - (iii) cheque cashing services;
 - (iv) currency exchange services;
 - (v) the issuance, sale or redemption of money orders or traveller’s cheques; or
 - (vi) other services as may be specified in the Regulations; or
(Substituted by Act 9 of 2018)
- (b) operating as an agent or franchise holder of a person carrying on a business specified in paragraph (a).

PART I

REGULATION AND SUPERVISION OF FINANCING AND MONEY SERVICES BUSINESS

Prohibition on unauthorised financing and money services business.

7. (1) A person shall not carry on, or hold himself or herself out as carrying on, financing business unless the person is a BVI business company or foreign company licensed under section 9.

(2) A person shall not carry on, or hold himself or herself out as carrying on, money services business in or from within the Virgin Islands, unless the person is a BVI business company or foreign company licensed under section 9.

(3) For the purposes of subsection (2), a BVI business company that carries on, or holds itself out as carrying on, money services business outside the Virgin Islands is deemed to carry on, or hold itself out as carrying on, money services business from within the Virgin Islands.

(4) Subsections (1) and (2) do not apply to any person exempted from the relevant subsection by virtue of Regulations made under section 40C of the Financial Services Commission Act.

(5) A person who contravenes subsection (1) or (2) commits an offence.

Licensing

Classes of licence

8. (1) A licence issued under this Act shall be in one or more of the following Classes—

- (a) Class A, which permits the holder to carry on the business of transmitting money in any form, including electronic and mobile payments of money;
- (b) Class B, which permits the holder to carry on the business of issuing, selling or redeeming money orders or traveller's cheques, cheque cashing and currency exchange;
- (c) Class C, which permits the holder to engage in financing business;
- (d) Class D, which permits the holder to carry on the business of financing lease;
- (e) Class E, which permits the holder to carry on the business of operating Automatic Teller Machines (ATMs);
- (f) Class F, which permits the holder to carry on the business of international financing and lending in the peer-to-peer (P2P) FinTech market, including peer-to-business (P2B) and business-to-business (B2B) markets;
- (g) Class G, which permits the holder to carry on the business of such other service as may be specified in the Regulations.

(2) A licence issued under subsection (1)—

- (a) shall state the Class or Classes of licence issued to the holder and the business or businesses the holder is authorised to carry on; and
- (b) does not authorise the holder to carry on any Class of business that is not specified on the licence.

(3) The Commission shall not issue a Class F licence under subsection (1) unless Regulations are made to provide additional measures for the licensing and regulation of that Class of licence.

(4) Where the Commission issues a Class G licence under subsection (1), it may, subject to subsection (5), issue the licence in such different categories as the Commission may determine.

(5) The Minister, acting on the advice of the Commission, may, by an Order published in the *Gazette*, amend subsection (1) to remove, vary or add a Class of licence and shall, in the case of a variation or addition of a Class of licence, indicate the type of business the holder of the licence is authorised to carry on.

(Substituted by Act 9 of 2018)

Application for and issuance of licence

9. (1) Application for a licence may be made to the Commission by a BVI business company or a foreign company.

(2) Subject to subsections (3) and (4), the Commission may issue a licence to an applicant if it is satisfied that—

- (a) the applicant intends, if issued with the licence, to carry on the licensed business;

- (b) the applicant satisfies the requirements of this Act and the Regulatory Code with respect to the application;
- (c) the applicant will, on the issuance of the licence, be in compliance with this Act, the Regulatory Code and any other enactment or practice direction applicable to the applicant;
- (d) the applicant, the applicant's directors and senior officers and any persons having a significant interest in the applicant satisfy the Commission's fit and proper criteria;
- (e) the organisation, management and financial resources of the applicant are, or on the issuance of the licence will be, adequate for the carrying on of the licensed business; and
- (f) issuing the licence is not against the public interest.

(3) Without limiting the discretion given to the Commission under subsection (2), the Commission may refuse to issue a licence to an applicant if—

- (a) it is of the opinion that any person having a share or other interest in the applicant, whether legal or equitable, does not satisfy the Commission's fit and proper criteria; or
- (b) it is not satisfied with any of the matters outlined in subsection (2).

(4) A licence issued under subsection (2) shall—

- (a) be in writing and in the approved form; and
- (b) be prominently displayed on the premises where the licensed business is carried on.

Obligations of, and Restrictions on, Licensees

Maintenance of financially sound condition

10. (1) A licensee shall, at all times, maintain its business in a financially sound condition by—

- (a) having assets;
- (b) providing for its liabilities; and
- (c) generally conducting its business,

so as to be in a position to meet its liabilities at all times.

(2) If a licensee forms the opinion that it does not comply with subsection (1), it shall forthwith notify the Commission in writing.

(3) A licensee that contravenes subsection (2) commits an offence.

Modification of sections 12 to 14 with respect to foreign companies

11. The requirements of sections 12 to 14 are disapplied or modified with respect to a licensee that is a foreign company in such circumstances, and to such extent, as may be specified in the Regulatory Code.

Maintenance of capital resources and deposit

12. (1) A licensee shall ensure that at all times its capital resources are maintained in such amount as may be prescribed.

(2) If the capital resource of a licensee fall below such amount as it is required to maintain under subsection (1), it shall forthwith notify the Commission in writing.

(2A) Where a licensee provides to the Commission a notification under subsection (2), it shall at the same time as providing the notification prepare and submit to the Commission a plan indicating how the licensee intends to reconstitute its capital resource in the amount prescribed and within a specified period not exceeding 30 days. *(Inserted by Act 9 of 2018)*

(2B) The Commission may, in relation to a plan submitted by a licensee under subsection (2), extend, upon the application of the licensee or on the Commission's own initiative, the period within which the licensee's capital resource is to be reconstituted to such further period as the Commission considers fit. *(Inserted by Act 9 of 2018)*

(2C) Where the Commission is not satisfied with a plan submitted by a licensee under subsection (2A), it may require the licensee to resubmit another plan incorporating such matters as the Commission considers necessary. *(Inserted by Act 9 of 2018)*

(3) A licensee shall keep deposited or invested such sum as may be prescribed and in such manner as may be prescribed.

(3A) Where a licensee fails to—

- (a) submit a plan on reconstituting its capital resource satisfactory to the Commission; or
- (b) implement a plan on reconstituting its capital resource within a specified period or, if such period is extended, within the extended period,

the Commission may take such enforcement action as it deems appropriate, including revoking or cancelling the licensee's licence.

(Inserted by Act 9 of 2018)

(4) A licensee who contravenes subsection (2) or (3), or in the case of a licensee that is a foreign company, subsection (2) or (3) as modified by the Regulatory Code, commits an offence.

Appointment and termination of directors and senior officers

13. (1) A licensee shall not appoint a director or senior officer without the prior written approval of the Commission and the Commission shall not grant its approval unless it is satisfied that the person concerned satisfies the Commission's fit and proper criteria and any other criteria required pursuant to any guidelines issued by the Commission. *(Amended by Act 9 of 2018)*

(2) A licensee shall, within seven days after a director or senior officer ceases to hold office with, or to be employed by, the licensee, provide written notice to the Commission of that fact.

(3) The notice provided under subsection (2) shall include a statement of the reasons for the director or senior officer ceasing to hold office with, or to be employed by, the licensee, including any other matter required under the Regulatory Code or any guidelines issued by the Commission.

(4) A licensee that contravenes subsection (1) or (2), or in the case of a licensee that is a foreign company, subsection (1) or (2) as modified by the Regulatory Code, commits an offence.

Disposing of, or acquiring significant interest in, licensee

14. (1) A person owning or holding a significant interest or controlling interest in a licensee shall not sell, transfer, merge, charge or otherwise dispose of his or her interest in the licensee, or any part of his or her interest, unless the prior written approval of the Commission has been obtained. *(Substituted by Act 9 of 2018)*

(2) A person shall not, whether directly or indirectly, acquire a significant interest or controlling interest in a licensee unless the prior written approval of the Commission has been obtained. *(Amended by Act 9 of 2018)*

(3) A licensee shall not, unless the prior written approval of the Commission has been obtained—

(a) cause, permit or acquiesce in a sale, transfer, merge, charge or other disposition referred to in subsection (1); *(Amended by Act 9 of 2018)*

(b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation, including of its share structure, that results in—

(i) a person acquiring a significant interest in the licensee; or

(ii) a person who already owns or holds a significant interest or controlling interest in the licensee, increasing or decreasing the size of his or her interest. *(Amended by Act 9 of 2018)*

(4) An application to the Commission for approval under subsection (1), (2) or (3) shall be made by the licensee.

(5) The Commission shall not grant approval under subsection (1), (2) or (3) unless it is satisfied that, following the acquisition or disposal, any person who will acquire a significant interest or controlling interest in the licensee satisfies the Commission's fit and proper criteria. *(Amended by Act 9 of 2018)*

(6) Subject to section 11, a person who knowingly contravenes subsection (1) or (2) or a licensee that contravenes subsection (3), commits an offence.

(7) A licensed foreign company commits an offence if it contravenes this section, as modified by the Regulatory Code.

Licensee to establish and maintain principal office

15. (1) A licensee shall establish and maintain a place of business in the Virgin Islands, approved by the Commission, which shall be its principal office in the Virgin Islands for its licensed business.

(2) A licensee shall not, without the prior written approval of the Commission, change the location of its principal office in the Virgin Islands.

- (3) A licensee that contravenes subsection (1) or (2) commits an offence.

Authorisation to open branch or representative office

16. (1) A licensee shall not, without the prior written approval of the Commission, open, maintain or carry on business through a branch or a representative or contact office—

- (a) in the case of a BVI licensee, within or outside the Virgin Islands; and
- (b) in the case of a licensee that is a foreign company, within the Virgin Islands.

- (2) A licensee that contravenes subsection (1) commits an offence.

Corporate Governance

Directors of BVI licensee

17. (1) A BVI licensee shall at all times have at least two directors.

(2) A person shall not be appointed, or accept appointment, as the director of a BVI licensee unless that person is an individual.

(3) The Regulatory Code may provide for the duties and responsibilities of the directors of a licensee.

Management systems and controls

18. (1) A licensee shall take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors, senior officers and key functionaries so that—

- (a) it is clear who has which of those responsibilities; and
- (b) the business and affairs of the licensee can be adequately monitored and controlled by the directors and its relevant senior officers.

(2) A licensee shall establish and maintain such systems and controls as are appropriate to its business.

(3) The systems and controls established and maintained under subsection (2) shall take into account—

- (a) the nature, scale, complexity and diversity of the licensee's business; and
- (b) the degree of risk associated with each area of its business.

(4) Subsections (1), (2) and (3) apply to a licensee that is a foreign company with respect to its business in the Virgin Islands.

(5) Without limiting this section, the Regulatory Code may specify or provide for—

- (a) the systems and controls, including internal controls, to be maintained by a licensee;

- (b) policies and procedures to be maintained by licensees with respect to the assessment and management of risk; and
- (c) principles and rules of corporate governance to be adhered to by licensees.

(6) A licensee that contravenes subsection (1) or (2) commits an offence.

Maintenance of records

19. (1) Subject to subsection (2), a BVI licensee shall keep at its principal office in the Virgin Islands records that are sufficient—

- (a) to show and explain its transactions;
- (b) at any time, to enable its financial position to be determined with reasonable accuracy;
- (c) to enable it to prepare such financial statements and make such returns as it may be required to prepare and make under this Act; and
- (d) if applicable, to enable its financial statements to be audited in accordance with this Act.

(2) A licensee that is a foreign company shall—

- (a) keep at its principal office in the Virgin Islands, records that are sufficient—
 - (i) to show and explain all transactions in respect of the business it carries on in the Virgin Islands; and
 - (ii) to enable it to prepare such returns as it is required to prepare and make under this Act and the Regulatory Code; and
- (b) notify the Commission in writing of the place or places, whether in or outside the Virgin Islands, where its financial records, other than those specified in paragraph (a), are maintained.

(3) The Regulatory Code may prescribe—

- (a) the form and manner in which the records specified in subsections (1) and (2) are to be maintained; and
- (b) other records required to be maintained by a licensee under this Act and the form, manner and place in which such records are to be maintained.

(4) A licensee and, where the licence of a licensee is revoked, a former licensee, shall retain the records required to be maintained under this section for a period of at least five years after the completion of the transaction to which they relate.

(5) A licensee, or former licensee, that contravenes this section commits an offence.

Duty to ensure compliance with the law

19A. (1) Every director, senior officer and other person that is concerned in the management of a licensee shall take all reasonable steps to ensure that the

licensee complies with the requirements of this Act and any enactment relating to money laundering, terrorist financing and proliferation financing.

(2) A director, senior officer and other person that is concerned in the management of a licensee that fails to take reasonable steps as required under subsection (1) commits an offence.

(Inserted by Act 9 of 2018)

Prudential guidelines

19B. The Commission, acting in accordance with section 41A of the Financial Services Commission Act, may issue guidelines generally and, in particular, with respect to the following in relation to a licensee—

- (a) the policies, practice and procedures for evaluating the quality assets;
- (b) the policies, procedures and systems for identifying, monitoring and controlling transfer risk, liquidity risk, operational risk and such other risk as the Commission may specify;
- (c) corporate governance;
- (d) the retention of auditors to perform audits; and
- (e) procedures to be adopted in dealing with the Commission.

(Inserted by Act 9 of 2018)

Segregating customer accounts

19C. (1) Where a licensee receives money from a customer for transmission or delivery to a payee customer, the licensee shall segregate the money exclusively for the purpose of effecting payment of the money immediately or in due course to the payee customer and, for this purpose, shall establish a separate customer account which it shall segregate from the licensee's own account.

(2) A licensee shall be liable for the payment of any money it has received from a customer which the licensee fails to transmit or deliver to the payee customer.

(3) Any money that has not been transmitted or delivered to a payee customer shall be a first charge on the assets of a bankrupt or otherwise insolvent licensee that was supposed to transmit or deliver the money.

(4) For purposes of subsection (3), the money received pursuant to that subsection shall be repaid to the payee customer or paid to the payee customer either by the licensee or by the receiver, liquidator or administrator of the licensee.

(5) Notwithstanding anything to the contrary contained in the Insolvency Act or the BVI Business Companies Act, any money delivered to a licensee by or on behalf of a customer prior to the issue of an order of bankruptcy, winding-up or receivership against the licensee shall be utilised by the licensee, receiver or liquidator solely to discharge the licensee's contractual obligations to the customer.

(6) The liability of a licensee under subsection (2) is without prejudice to any other action that a customer may have against or in relation to the licensee.
(Inserted by Act 9 of 2018)

Financial Statements and Audit

Meaning of “financial year”

20. (1) A BVI licensee shall, no later than eleven months after the date that its licence is issued to it, provide the Commission with a notice of its financial year end in accordance with the requirements of the Regulatory Code.

(2) Subject to subsection (3), for the purposes of this Act, the financial year of a BVI licensee is—

- (a) in the case of its first financial year, the period from the date of its incorporation to the last day of the month specified in the notice provided to the Commission under subsection (1); and
- (b) in the case of subsequent financial years, the period of one year commencing on the day immediately after the end of its previous financial year.

(3) Subsection (1) applies whether or not financial statements have actually been prepared for the financial year in question.

(4) The Commission may, on the application of a BVI licensee, in respect of any financial year, direct that the financial year shall be a period, not less than three months and not exceeding fifteen months, that is different to that determined in accordance with subsection (1).

Meaning of “financial statements”

21. In this Act and in the Regulatory Code, “financial statements”, in relation to a BVI licensee and to a financial year, means—

- (a) a statement of the financial position of the licensee as at the last date of the financial year;
- (b) a statement of the financial performance of the licensee in relation to the financial year;
- (c) a statement of cash flows for the licensee in relation to the financial year;
- (d) such statement relating to the prospects for the licensee's business as may be prescribed or as may be required by the accounting standards in accordance with which the accounts are prepared; and
- (e) such other statements as may be prescribed,

together with any notes or other documents giving information relating to the matters specified in paragraphs (a), (b), (c), (d) or (e).

Preparation of financial statements

22. (1) A BVI licensee shall prepare financial statements for each financial year that comply with the Regulatory Code and with such accounting standards as may be prescribed.

(2) If, in complying with the accounting standards in accordance with which they are prepared, the financial statements do not give a true and fair view of the matters to which they relate, the notes to the financial statements shall contain such information and explanations as will give a true and fair view of those matters.

(3) The financial statements prepared under subsection (1) shall—

- (a) be approved by the directors of the BVI licensee; and
- (b) following approval under paragraph (a), signed by at least one director on behalf of all the directors.

(4) The director signing the financial statements shall state the date when the financial statements were approved by the directors and the date when he signs the financial statements.

Submission of financial statements to the Commission

23. (1) The financial statements of a BVI licensee signed by a director in accordance with section 22 shall be submitted to the Commission within six months of the end of the financial year to which they relate accompanied by—

- (a) a directors' certificate;
- (b) an auditor's report;
- (c) any report on the affairs of the licensee made to the members of the licensee in respect of the relevant financial year; and
- (d) such other documents as may be prescribed.

(2) Unless accompanied by the certificates, reports and documents specified in subsection (1), the financial statements referred to in subsection (1) are considered not to have been submitted to the Commission.

(3) A BVI licensee that contravenes this section commits an offence.

Submission of periodic financial statements and report

24. (1) A BVI licensee shall, in respect of such periods of less than one year as may be prescribed, submit to the Commission, within such time period as may be prescribed—

- (a) financial statements, that may be unaudited;
- (b) a return in the approved form; and
- (c) such other information and documentation as may be prescribed.

(2) In this section, "financial statements" has the meaning specified in section 21 with the substitution of the period for which the financial statements are prepared for "financial year".

(3) A BVI licensee that contravenes this section commits an offence.

Extension of time

25. (1) The Commission may, on the application of a BVI licensee, extend the time for compliance with section 23 or section 24 for a period of one month, or where it grants more than one extension for an aggregate period not exceeding, three months.

(2) An extension under subsection (1) may be granted subject to such conditions as the Commission considers appropriate.

Amendment of financial statements

26. (1) If the Commission considers that any document submitted by a BVI licensee under section 23 or section 24 is inaccurate or incomplete or is not prepared in accordance with this Act or the Regulatory Code, it may by written notice require the licensee to amend the document or to submit a replacement document within such period as the Commission may specify in the written notice.

(2) If a BVI licensee fails to comply with a notice under subsection (1), the Commission may reject the document.

BVI licensee to appoint auditor

27. (1) A BVI licensee shall appoint and at all times have an auditor for the purposes of auditing its financial statements.

(2) An auditor shall not be appointed under subsection (1) unless—

- (a) he or she is qualified under the Regulatory Code to act as the auditor of a BVI licensee for the purposes of this Act;
- (b) he or she has consented to act as auditor; and
- (c) the Commission has given its prior written approval to his or her appointment in accordance with such guidelines as the Commission may issue.

(3) The Commission shall not approve the appointment of an auditor under subsection (2) unless it is satisfied that he or she has sufficient experience and is competent to audit the financial statements of the licensee.

(4) The approval of the Commission is not required where the auditor appointed in respect of a financial year acted as the auditor of the licensee in the previous financial year.

(5) A BVI licensee shall, within fourteen days of the appointment of its auditor, submit a notice of appointment in the approved form to the Commission.

(6) A BVI licensee shall make such arrangements as are necessary to enable its auditor to audit its financial statements in accordance with this Act and the Regulatory Code, including—

- (a) giving the auditor a right of access at all reasonable times to its financial records and to all other documents and records; and
- (b) by providing the auditor with such information and explanations, as, in either case, the auditor reasonably requires for the purposes of the audit.

- (7) A BVI licensee commits an offence if—
- (a) subject to subsection (8), it does not have an auditor;
 - (b) it appoints an auditor contrary to subsection (2); or
 - (c) it contravenes subsection (5) or (6).

(8) Where, for whatever reason, a person ceases to be the auditor of a BVI licensee, the licensee does not commit an offence under subsection (7) if it appoints another auditor in accordance with this section within two months of the date that the person who was previously appointed auditor ceased to hold that appointment.

Audit and audit report

28. (1) The auditor of a BVI licensee shall carry out sufficient investigation to enable him or her to form an opinion on—

- (a) the financial statements of the licensee; and
- (b) the licensee's compliance with its obligations under the Anti-money Laundering Regulations, Anti-Money Laundering and Terrorist Financing Code of Practice, Regulatory Code and such other enactments, codes or guidelines relating to money laundering or the financing of terrorism as may be prescribed,

and prepare an audit report in compliance with the Regulatory Code.

(2) Upon completion of his or her audit under subsection (1), the auditor shall provide an audit report to the licensee complying with the Regulatory Code.

(3) The Commission may at any time, by notice in writing, direct a licensee to supply the Commission with a report, prepared by its auditor or such other person as may be nominated by the Commission, on such matters as the Commission may determine.

(4) A report prepared under subsection (3) shall be at the cost of the licensee.

(5) Subsections (3) and (4) apply to a BVI licensee and a licensee that is a foreign company.

Obligations of auditors

29. (1) Notwithstanding anything to the contrary in any other enactment, the auditor of a BVI licensee shall report immediately to the Commission any information relating to the affairs of the licensee that he or she has obtained in the course of acting as its auditor that, in his or her opinion, suggests that—

- (a) the licensee is insolvent or is likely to become insolvent or is likely to be unable to meet its obligations;
- (b) a criminal offence has been or is being committed by the licensee or in connection with its business;
- (c) the relevant licensee is in breach of section 10 or 12;
- (d) a serious breach of this Act or the Anti-money Laundering Regulations, Anti-money Laundering and Terrorist Financing

Code of Practice, Regulatory Code or such other enactments, codes or guidelines relating to money laundering or the financing of terrorism as may be applicable has occurred in respect of the licensee or its business.

(2) Where the appointment of an auditor of a BVI licensee is terminated, or the auditor resigns, the auditor whose appointment has been terminated, or who has resigned, shall—

(a) forthwith inform the Commission of the termination of his or her appointment, or his or her resignation, and disclose to the Commission the circumstances that gave rise to such termination or resignation; and

(b) if, but for the termination of his or her appointment, or his or her resignation, he or she would have reported information to the Commission under subsection (1), he or she shall report the information concerned to the Commission, as if his or her appointment had not been terminated or, he or she had not resigned.

(3) The Commission may require an auditor of a BVI licensee to—

(a) discuss any audit he or she has conducted or commenced with, or provide additional information regarding the audit to, the Commission; and

(b) submit a report on the financial and accounting system and risk management controls of the licensee.

(Substituted by Act 9 of 2018)

(4) Where, in good faith, an auditor or former auditor provides any information to the Commission under subsection (1), (2) or (3), he or she is deemed not to be in contravention of any enactment, rule of law, agreement or professional code of conduct to which he or she is subject and no civil, criminal or disciplinary proceedings shall lie against him or her in respect thereof.

(5) The failure, in good faith, of an auditor or former auditor to provide a report or any information to the Commission under subsection (1), (2) or (3) does not confer upon any other person a right of action against the auditor or former auditor which, but for that failure, he or she would not have had.

(6) An auditor or former auditor who contravenes subsection (1) or (2) commits an offence.

Powers of Commission concerning appointment of auditor

30. (1) Where the Commission is satisfied that the auditor of a BVI licensee has failed to fulfill his or her obligations under this Act or is otherwise not a fit and proper person to act as the auditor of a licensee, it may, by written notice to the licensee, revoke the approval of the appointment of the auditor and the licensee shall appoint a new auditor in accordance with section 27.

(2) A notice revoking the appointment of an auditor under subsection (1) shall be given to the auditor.

(3) If a BVI licensee fails to appoint an auditor, the Commission may appoint a qualified person to act as the auditor of the licensee.

(4) An auditor appointed under subsection (3) is deemed for the purposes of this Act to have been appointed by the licensee and the licensee shall be responsible for his or her costs and fees.

Group accounts

31. (1) Where a BVI licensee is a member of a group of companies, the Commission may require the licensee to submit group accounts.

(2) The Commission may require that the group accounts are audited by the auditor of the licensee or by another auditor approved by the Commission.

(3) The Regulatory Code may provide for the form and content of group accounts to be submitted under this section.

General Supervisory Provisions

Regulations may provide for approval of individuals for appointment by licensee

32. Without prejudice to the provisions of this Act, the Regulations may provide for circumstances in which an individual is required to be approved by the Commission for appointment by a licensee, whether as an employee, as an agent or in such other capacity as may be specified in the Regulations.

Professional indemnity and other insurance

33. (1) A licensee shall at all times maintain such professional indemnity and other insurance as may be prescribed.

(2) A licensee that contravenes subsection (1) commits an offence.

Submission of returns and reporting of information to Commission

34. (1) A licensee shall report to the Commission such information, or submit to the Commission such returns or documents, as may be prescribed within such time and verified in such form and manner as may be prescribed.

(2) If the Commission considers that any document submitted by a licensee under subsection (1) is inaccurate or incomplete or is not prepared in accordance with this Act or the Regulatory Code, it may by written notice require the licensee to amend the document or to submit a replacement document within such period as may be prescribed in the notice.

(3) A licensee who contravenes subsection (1) or who fails to comply with a notice issued under subsection (2) commits an offence.

Advertisements

35. (1) A licensee shall not issue, or cause or permit to be issued, any advertisement, statement, brochure or other similar document which is misleading or which contains an incorrect statement of fact.

(2) If the Commission is of the opinion that any advertisement, statement, brochure or other similar document issued, or to be issued, by or on behalf of a

licensee is misleading, contains an incorrect statement of fact or is contrary to the public interest, it may—

- (a) direct the licensee in writing not to issue the document or to withdraw it; or
- (b) authorise the licensee in writing to issue the document with such changes as the Commission may specify.

(3) A licensee that issues or causes or permits to be issued an advertisement, statement, brochure or other similar document intending it to mislead or knowing that it contains an incorrect statement of fact, commits an offence.

(4) A licensee that issues or causes or permits to be issued an advertisement, statement, brochure or other similar document—

- (a) contrary to a direction or authorisation of the Commission under subsection (2); or
- (b) contrary to any provision of the Regulatory Code that is stated in the Regulatory Code as a provision to which this subsection applies,

commits an offence.

Prohibition against solicitation or receipt of money

35A. (1) No person, other than a licensee or a person exempted under or in relation to this Act, shall in any way solicit or receive money from another person for the purpose of carrying on money services business or financing business in or from within the Virgin Islands.

(2) A person who contravenes the provisions of subsection (1) commits an offence.

(Inserted by Act 9 of 2018)

Market conduct

36. (1) A licensee shall take all reasonable steps to protect its customers and to ensure that its customers are treated fairly at all times.

(2) Without limiting subsection (1), the Regulatory Code may specify market conduct rules to be followed by licensees or particular classes or descriptions of licensee, including rules providing for the disclosure of information to customers and prospective customers. *(Amended by Act 9 of 2018)*

(3) A licensee that fails to comply with subsection (1) commits an offence.

Additional consumer protection measures.

36A. In implementing consumer protection measures pursuant to section 4A(2) of the Financial Services Commission Act, the Commission may, in relation to money services business and financing business, provide measures—

- (a) placing restrictions on interest rates that may be charged;

- (b) placing a cap on the rate of interest chargeable upon default in meeting an obligation;
- (c) requiring public disclosure of specified information;
- (d) permitting or requiring instalment payments;
- (e) placing restrictions on unreasonable debt collection practices;
- (f) prohibiting or limiting excessive charges; and
- (g) requiring the provision of loan statements and receipts to customers.

(Inserted by Act 9 of 2018)

Change of name

37. (1) Notwithstanding anything contained in any other enactment, a licensee shall not, without the prior written approval of the Commission—

- (a) in the case of a BVI licensee, change its corporate name or the name under which it carries on business; or
- (b) in the case of a licensee that is a foreign company, change the name under which it carries on business in the Virgin Islands.

(2) A licensee that is a foreign company shall forthwith notify the Commission in writing if it changes its corporate name or the name under which it carries on business.

(3) A licensee that contravenes subsection (1) or (2) commits an offence.

Commission may require licensee to change name under which it carries on business

38. (1) The Commission may, by written notice, direct a BVI licensee to change the name under which it is incorporated or under which it carries on business and a licensee that is a foreign company to change the name under which it carries on business in the Virgin Islands, if the Commission is of the opinion that the name is—

- (a) identical to that of any other person, whether within or outside the Virgin Islands, or which so nearly resembles that name as to be likely to deceive; or
- (b) otherwise misleading or undesirable.

(2) A licensee who fails to comply with a direction of the Commission made under subsection (1) commits an offence.

Bearer shares

39. (1) A BVI licensee shall not issue any bearer shares, and for this purpose, “bearer share” has the meaning specified in the BVI Business Companies Act.

(2) A licensee that contravenes subsection (1) commits an offence.

PART II

MISCELLANEOUS PROVISIONS

Exemption from application of Cap. 200

40. For purposes of this Act, the Business, Professions and Trade Licenses Act shall not apply to a BVI business company or foreign company licensed under this Act.

Administration

Applications

41. (1) Every application made under this Act shall—

- (a) be in writing and, where a form has been approved under the Financial Services Commission Act, shall be in the approved form; and
- (b) have included with it such documents or information as may be specified by this Act or the Regulatory Code.

(2) The Commission may require an applicant to—

- (a) provide it with such documents and information, in addition to those specified in subsection (1)(b), as it reasonably requires to determine the application and any information required shall be in such form as the Commission may specify; and
- (b) verify any document and information provided in support of an application in such manner as the Commission may specify.

(3) If, before the determination of an application by the Commission—

- (a) there is a material change in any information or documentation provided by or on behalf of the applicant to the Commission in connection with the application; or
- (b) the applicant discovers that any such information or documentation is incomplete, inaccurate or misleading,

the applicant shall forthwith give the Commission written particulars of the change or of the incomplete, inaccurate or misleading information or documentation.

(4) An applicant that contravenes subsection (3) commits an offence.

Registers

42. (1) The Commission shall maintain—

- (a) a Register of Licensees; and
- (b) such other registers as may be specified in the Regulations,

containing such information as may be specified in the Regulations.

(2) The registers and the information contained in any document filed with the Commission may be kept in any form the Commission considers fit including, either wholly or partly, by means of a device or facility—

- (a) that records or stores information in magnetic or electronic form; and
- (b) that permits the information to be inspected and reproduced in legible and useable form.

Inspection of registers and information held by Commission

43. (1) Subject to subsection (2), a person may—

- (a) inspect the registers and any records kept by the Commission that are specified as public records in the Regulations; and
- (b) require the Commission to furnish him or her with a copy or certified copy of, or extract from, any document that he or she would be entitled to inspect under paragraph (a), subject to the payment of such fee as may be prescribed.

(2) In respect of documents filed or kept in electronic form, the rights granted under subsection (1) extend only to reproductions of those documents in useable written form produced in such manner as the Commission considers appropriate.

(3) A copy or reproduction of, or extract from, any document or record that is kept by the Commission and certified as such by it is admissible in evidence in all legal proceedings to the same extent as the original document.

Electronic filing of documents

44. (1) In this section, a document in electronic form is a document in a computer processable message format that is capable of being transmitted electronically.

(2) The Regulations may provide for a system enabling documents required or permitted to be filed with the Commission under this Act to be filed in electronic form.

(3) A system for the filing of documents in electronic form shall provide for—

- (a) the criteria for authorising persons to file documents in electronic form; and
- (b) the security and authentication of the documents filed.

Fees, penalties and charges payable to Commission

45. (1) The fees and penalties specified in Regulations made pursuant to the Financial Services Commission Act in relation to this Act are payable to the Commission.

(2) The Commission may refuse to take any action required of it with respect to a licensee under this Act for which a fee is payable until the fee and any other fees, penalties and charges payable by, or in respect of, the licensee have been paid.

(3) Any fee, charge or contribution which is owed to the Commission under this Act may be recovered in civil proceedings as a debt due to the Commission.

Offences and Penalties

False or misleading representations, statements, reports or returns

46. (1) A person who makes or assists in making a representation, statement, report or return, whether oral or written—

- (a) that is required or permitted by this Act to be made to or, in the case of a document, filed with the Commission; and
- (b) that—
 - (i) contains a false statement of a material fact; or
 - (ii) omits to state a material fact required to be provided to the Commission or necessary to avoid the statement or document being materially misleading,

commits an offence.

(2) A person does not commit an offence under subsection (1) if he or she did not know and, with the exercise of reasonable diligence, could not have known that the representation or statement contained a false statement or omitted a material fact.

Punishment of offences

47. (1) A person who commits an offence under the section set out in Column 1 of Schedule 2 is liable on summary conviction—

- (a) if an individual, to the penalty set out opposite the offence in column 4 of Schedule 2; or
- (b) if not an individual, to the penalty set out opposite the offence in column 3 of Schedule 2.

(2) Where an offence under a section set out in Column 1 of Schedule 2 is committed by a body corporate, a director of that body corporate who knowingly authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on conviction to the same penalty as the body corporate of which he or she is a director.

(3) The Cabinet may, by an Order published in the *Gazette*, amend Schedule 2. (*Inserted by Act 9 of 2018*)

Order to comply

48. Where a person is convicted of an offence under this Act, the court having jurisdiction to try the offence may, in addition to any punishment it may impose, order that person to comply with the provision of this Act for the contravention of which he or she has been convicted.

Regulations

49. (1) The Cabinet may, on the advice of the Commission, make Regulations—

- (a) generally for giving effect to this Act and for its administration by the Commission;
- (b) specifically in respect of anything required or permitted by this Act to be contained in the Regulations and, in particular, to make specific provision for the licensing and regulation of Class F licensees outlining the nature of peer-to-peer (P2P) FinTech markets, processes and procedures involved, restrictions and prohibitions to be applied, safeguarding against risk, providing relevant mitigating measures, and all other related matters; *(Substituted by Act 9 of 2018)*
- (c) applying different provisions in relation to different persons, circumstances or cases as permitted under this Act; and
- (d) providing, subject to subsection (2), for offences and penalties for any contravention of, or failure to comply with, specified requirements of the Regulations.

(2) A penalty provided for an offence under the Regulations shall not exceed—

- (a) in the case of a fine, the sum of twenty thousand dollars; and
- (b) in the case of a period of imprisonment, the term of two years.

(3) Regulation made under the section shall be subject to a negative resolution of the House of Assembly. *(Inserted by Act 9 of 2018)*

Final Provisions

Transitional provisions

50. (1) In this section—

- (a) “commencement date” means the date that this Act comes into force; and
- (b) “relevant period” means the period starting on the commencement date and ending on a date six months after the commencement date.

(2) A person who, immediately before the commencement date, was carrying on financing business or money services business does not commit an offence under section 7 and shall be deemed not to be carrying on unauthorised financial services business within the meaning of the Financial Services Commission Act by virtue of him or her carrying on that business—

- (a) during the relevant period; or
- (b) if the person applies for a licence during the relevant period, on or from the commencement date until the date that the application is determined, including as a result of any appeal to the Appeal Board of the Commission, or is withdrawn.

51. (Omitted).

SCHEDULE 1

(Section 3(3))

**DISAPPLICATION AND MODIFICATION OF THIS ACT
AND THE FINANCIAL SERVICES COMMISSION ACT**

Financing and Money Services Act

This Act is disappplied and modified with respect to a post office, when carrying on money services business, to the extent specified below:

1. Sections 10, 12, 13, 14, 15, 17, 21 to 31, 34(3), 35(3), 35(4), 37, 38, 45, 46, 47 and 48 do not apply to a post office.
2. Section 16 does not apply to a post office, but a post office shall provide the Commission with written notice—
 - (a) within two months of the commencement of this Act, of the address of every office in the Virgin Islands from which it carries on money services business; and
 - (b) as soon as reasonably practicable after ceasing or commencing to carry on money services business at an office, of the details thereof.
3. Sections 18, 19(1)(a) and (b), (3) and (4) apply with respect to the money services business of a post office.

Financial Services Commission Act

Sections 33, 33A, 33B, 33D(1)(b) to (d), 33D(3), 35(4) to (7), 36, 36A, 37, 37A, 38, 39, 40, 40B, 40D, 50A to 50D and 54 to 57A of the Financial Services Commission Act do not apply to a post office, when carrying on money services business.

SCHEDULE 2*(Section 47)***OFFENCES UNDER THIS ACT**

Column 1	Column 2	Column 3	Column 4
<i>Section of Act creating offence</i>	<i>General nature of offence</i>	<i>Penalty (corporate body)</i>	<i>Penalty (individual)</i>
7(5)	Person carrying on, or holding himself out as carrying on, financing business or money services business without a licence.	\$60,000	\$40,000 or imprisonment for three years, or both
10(3)	Licensee failing to notify the Commission in writing of non-compliance with section 10(1).	\$25,000	\$15,000
12(4)	Licensee failing to notify the Commission in writing its capital resources have fallen below required minimum.	\$20,000	\$20,000
12(4)	Licensee failing to keep prescribed sum deposited or invested in prescribed manner.	\$20,000	\$15,000
13(4)	Licensee appointing director or senior officer without approval of Commission.	\$15,000	\$10,000
13(4)	Licensee failing to provide notice to Commission that director or senior officer has ceased to hold office.	\$10,000	\$10,000
13(4)	Licensee that is foreign company failing to comply with section 13(1) or (2) as modified by Regulatory Code.	\$15,000	\$10,000

14(6)	Person selling, transferring, charging or otherwise disposing of significant interest in licensee without prior written approval of Commission contrary to section 14(1).	\$30,000	\$20,000
14(6)	Person acquiring significant interest in licensee without prior written approval of Commission contrary to section 14(2).	\$30,000	\$20,000
14(6)	Licensee contravening section 14(3).	\$30,000	\$20,000
16(7)	Licensee that is foreign company contravening section 14 as modified by Regulatory Code.	\$30,000	\$20,000
15(3)	Licensee failing to establish or maintain place of business approved by Commission.	\$20,000	\$15,000
15(3)	Licensee changing location of principal office without approval of Commission.	\$20,000	\$15,000
16(2)	Licensee opening, maintaining or carry on business through a branch or a representative or contact office contrary to section 16(1).	\$15,000	\$10,000
18(6)	Licensee failing to take reasonable care to maintain clear and appropriate apportionment of significant responsibilities among directors, senior officers and key functionaries.	\$10,000	\$10,000
18(6)	Licensee failing to establish and maintain systems and controls appropriate to business.	\$20,000	\$15,000
19(5)	Licensee or former licensee contravening section 19.	\$40,000	\$30,000
19A	Director, senior officer or other person concerned in management of licensee failing to take reasonable steps to ensure licensee complies with the Act and other enactment relating to money laundering, terrorist financing and proliferation financing.	\$0	\$30,000

(Inserted by Act 9 of 2018)

23(3)	BVI licensee failing to submit audited financial statements to Commission in accordance with section 23.		\$10,000
24(3)	BVI licensee failing to submit financial statements to Commission in accordance with section 24.	\$10,000	\$10,000
27(7)(a)	BVI licensee failing to have an auditor.	\$15,000	\$10,000
27(7)(b)	BVI licensee appointing an auditor contrary to section 27(2).	\$10,000	\$10,000
27(7)(c)	BVI licensee failing to make arrangements necessary to enable auditor to audit financial statements.	\$15,000	\$10,000
29(6)	Auditor or former auditor failing to report to Commission in accordance with section 29(1) or (2).	\$15,000	\$15,000
33(2)	Licensee failing to maintain professional indemnity and other insurance as prescribed.	\$40,000	\$25,000
34(3)	Licensee failing to report information or file documents or returns with Commission contrary to section 34(1).	\$10,000	\$10,000
34(3)	Licensee who fails to comply with notice issued by Commission under section 34(2).	\$10,000	\$10,000
35(3)	Licensee issuing or causing or permitting to be issued, advertisement, statement, brochure or other similar document intending it to mislead or knowing that it contains an incorrect statement of fact.	\$60,000	\$25,000 or imprisonment for one year, or both
35(4)	Licensee issuing or causing or permitting to be issued advertisement, statement, brochure or document contrary to direction or authorisation of Commission or Regulatory Code.	\$60,000	\$25,000 or imprisonment for one year, or both

35A	Person, not being licensed or exempted, soliciting or receiving money from another for purposes of carrying on money services business or financing business in or from within the Virgin Islands.	\$75,000	\$50,000
	<i>(Inserted by Act 9 of 2018)</i>		
36(3)	Failure to take reasonable steps to protect and ensure fair treatment of customers.	\$10,000	\$10,000
37(3)	Licensee changing corporate name or name under which carries on business contrary to section 37(1).	\$10,000	\$10,000
37(3)	Licensee that is a foreign company changing name under which it carries on business in the Virgin Islands contrary to section 37(1).	\$10,000	\$10,000
38(2)	Licensee failing to comply with direction of Commission to change name.	\$10,000	\$7,000
41(4)	Applicant failing to give Commission written particulars of change of, or incomplete, inaccurate or misleading information or documentation in, application.	\$60,000	\$25,000 or imprisonment for one year, or both
46	Person making or assisting in making representation, statement, report or return, containing false statement or omitting to state a material fact.	\$60,000	\$40,000 or imprisonment for two years, or both