



VIRGIN ISLANDS

FINANCIAL SERVICES COMMISSION 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—

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Remainder - in force 30 April 2004

11 of 2004 .. in force 16 August 2004 (S.I. 57/2004)

19 of 2006 .. in force 15 January 2007

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10 of 2011 .. in force 14 July 2011

8 of 2016 .. in force 1 July 2016

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10 of 2018 .. in force 18 September 2018

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FINANCIAL SERVICES COMMISSION ACT

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FINANCIAL SERVICES COMMISSION ACT

*(Acts 12 of 2001, 6 of 2004, 11 of 2004, 19 of 2006, 1 of 2008,
13 of 2009, 2 of 2010, 10 of 2011, 8 of 2016, 2 of 2017 and 10 of 2018)*

AN ACT TO ESTABLISH A FINANCIAL SERVICES COMMISSION TO LICENSE, REGULATE AND DEVELOP THE FINANCIAL SERVICES INDUSTRY IN THE VIRGIN ISLANDS, TO TRANSFER CERTAIN STATUTORY POWERS AND FUNCTIONS TO THE COMMISSION AND TO PROVIDE FOR OTHER MATTERS CONNECTED THEREWITH.

PRELIMINARY

Commencement

[1 January 2002]

Short title

1. This Act may be cited as the Financial Services Commission Act.

Interpretation

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

“Appeal Board” *(Repealed by Act 8 of 2016)*

“Board” means the Board of the Commission established under section 5;

“Cabinet” means the Cabinet of the Virgin Islands established under section 47 of The Virgin Islands Constitution Order; *(Inserted by Act 13 of 2009)*

“Chairman” means the Chairman of the Board appointed by the Cabinet under section 5 and, where the Chairman is absent from the Territory or unable for any reason to perform the functions of Chairman, includes the Deputy Chairman; *(Amended by Act 19 of 2006)*

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

“Commissioner” means the Managing Director or other person appointed to be a member of the Board under section 5;

“Committee” *(Repealed by Act 19 of 2006)*

“Court” means the High Court;

“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 drawing; and

(d) a photograph, film, tape, negative or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced,

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

(Inserted by Act 19 of 2006)

“Enforcement Committee” means the Enforcement Committee established under section 14; *(Inserted by Act 19 of 2006)*

“FATF” means the Financial Action Task Force on money laundering; *(Inserted by Act 6 of 2004)*

“financial services business” means—

(a) a business or activity for which a licence is required; or

(b) a business or activity that is specified by the regulations as financial services business;

(Substituted by Act 19 of 2006)

“financial services legislation” means any principal legislation listed in Schedule 2, and any subsidiary legislation made thereunder;

“foreign regulatory authority” means an authority in a jurisdiction outside the Territory which exercises—

(a) a function corresponding or similar to a function exercised by the Commission; or

(b) a regulatory function that, in the opinion of the Commission, relates to companies or financial services business;

“Internet site”, in relation to the Commission, means the principal public access Internet site for the time being maintained by, or on behalf of, the Commission; *(Inserted by Act 8 of 2016)*

“licence” means an authorisation, approval, registration, recognition, or a licence, certificate, or other form of document which the Commission is empowered to provide, issue or grant under a financial services legislation; *(Substituted by Act 8 of 2016)*

“licensee” means a person holding a licence; *(Substituted by Act 19 of 2006)*

“Licensing and Supervisory Committee” means the Licensing and Supervisory Committee established under section 14; *(Inserted by Act 19 of 2006)*

“Managing Director” means the Managing Director of the Commission appointed under section 10;

“Minister” means the Minister to whom responsibility for financial services is assigned; *(Inserted by Act 6 of 2004)*

“registry legislation” means any financial services legislation listed in Part II of Schedule 2; *(Inserted by Act 19 of 2006)*

“regulated person” means a person authorised, licensed, registered or recognised or required to be so authorised, licensed, registered or recognised under a financial services legislation;

“regulations” means regulations made under section 62; *(Inserted by Act 19 of 2006)*

“Regulatory Code” means the Regulatory Code issued by the Commission under section 41; *(Amended by Act 19 of 2006)*

“regulatory legislation” means any financial services legislation listed in Part I of Schedule 2; *(Inserted by Act 19 of 2006)*

“unauthorised financial services business” has the meaning specified in subsection (2). *(Inserted by Act 19 of 2006)*

(2) A person carries on unauthorised financial services business if he or she carries on financial services business without having the appropriate licence. *(Inserted by Act 19 of 2006)*

PART I

THE FINANCIAL SERVICES COMMISSION

Establishment of the Financial Services Commission

3. (1) There is hereby established a commission to be known as the Financial Services Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name and may hold or dispose of property, enter into contracts and perform such acts as a body corporate may legally perform.

(3) Schedule 1 has effect with respect to the administration of the Commission.

Functions of the Commission

4. (1) The functions of the Commission are—

(a) to supervise and regulate licensees in accordance with this Act, the financial services legislation and the Regulatory Code; *(Amended by Act 19 of 2006)*

(b) to monitor and regulate, in accordance with relevant financial services legislation, financial services business carried on in or from within the Territory;

(ba) to take action against persons carrying on unauthorised financial services business in or from within the Territory; *(Inserted by Act 19 of 2006)*

(c) to receive, review and determine applications for licences; *(Substituted by Act 19 of 2006)*

(ca) to supervise and monitor compliance by licensees, and by such other persons who are subject to them, with the Proceeds of Criminal Conduct Act, Anti-Money Laundering Regulations and Anti-money Laundering and Terrorist Financing Code of Practice and with such other enactments and guidelines relating to money laundering, the financing of terrorism and the financing of

- proliferation of weapons of mass destruction as may be prescribed; *(Substituted by Act 8 of 2016)*
- (cb) to administer the registry legislation; *(Substituted by Act 19 of 2006)*
- (d) to monitor the effectiveness of the financial services legislation in providing for the supervision and regulation of financial services business in the Territory to internationally accepted standards;
- (e) subject to the provisions of this Act, to provide the Cabinet with periodic reports, advice, assistance and information in relation to any matters relating to financial services business as may be necessary;
- (f) to make recommendations to the Cabinet on such amendments or revisions to the financial services legislation or such new legislation as the Commission considers necessary or appropriate in developing the financial services industry in the Territory; *(Amended by Act 19 of 2006)*
- (g) to develop appropriate legal, regulatory and supervisory mechanisms for the efficient and effective administration of the Commission and the financial services legislation;
- (h) to maintain contact and develop relations with persons engaged in financial services business in or from within, or outside, the Territory with a view to—
- (i) encouraging the development of high professional standards within the financial services industry; and
- (ii) initiating and promoting codes of conduct for licensees; *(Amended by Acts 19 of 2006 and 8 of 2016)*
- (i) to maintain contact and develop relations with foreign regulatory authorities, international associations of regulatory authorities and other international associations or groups relevant to its functions and to provide legal and regulatory assistance to foreign regulatory authorities in accordance with this Act or as may be provided in any other financial services legislation; *(Amended by Act 19 of 2006)*
- (j) acting alone or in cooperation with such persons as the Commission may determine for purposes of maintaining integrity and professionalism in the Territory's financial services industry—
- (i) to develop a system of continuing education for practitioners in financial services business;
- (ii) to develop a curriculum to further or facilitate the education of students and practitioners in financial services business;
- (iii) to develop and publish such literature, including textbooks and journals, in relation to financial services matters as the Commission considers fit; and

- (iv) to undertake such other activity as the Commission considers appropriate to promote knowledge of financial services business at all levels within the Territory;
(Substituted by Act 8 of 2016)
 - (k) to adopt such measures as may be necessary to appropriately inform the general public on its functions and on matters relating to or affecting any financial services business or the registry legislation; *(Amended by Act 19 of 2006)*
 - (l) to issue such advisories to investors, licensees and the general public as it considers appropriate;
 - (m) to monitor, in the public interest, promotional advertisements relating to any financial services business or to services provided under, or with respect to, any financial services legislation and give such advice relating to accuracy, fairness and compliance with established laws and policies; *(Amended by Act 19 of 2006)*
 - (n) to enter into memoranda of understanding with regulatory and law enforcement agencies within and outside the Territory;
 - (o) to promote a safe and sound financial services environment in the Territory; and *(Amended by Act 19 of 2006)*
 - (p) to perform such other functions as may be assigned to it under this Act or under any other enactment.
- (2) In performing its functions the Commission may take into account any matter which it considers appropriate including international initiatives, geared towards establishing legal, business and regulatory standards relating to financial services business or to other businesses or activities subject to the financial services legislation but shall, in particular, have regard to—
- (a) the protection of the public, whether within or outside the Territory, against financial loss arising out of the dishonesty, incompetence, malpractice or insolvency of persons engaged in financial services business in the Territory;
 - (b) the protection and enhancement of the reputation of the Territory as a financial services centre; and
 - (c) the reduction of crime and other unlawful activities relating to financial services business.
(Amended by Act 19 of 2006)
- (2A) For the purposes of subsection (2)(a), “the public” includes investors and customers and potential customers of persons engaged in financial services business in or from within the Territory. *(Inserted by Act 19 of 2006)*
- (3) The Commission shall not be liable for any loss or injury arising from the performance of its functions pursuant to subsection (1) or (2). *(Amended by Act 19 of 2006)*

Crisis management, resolution and consumer protection powers of the Commission

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

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

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

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

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

(Inserted by Act 8 of 2016)

Establishment and members of the Board

5. (1) There shall be a Board of the Commission whose members shall be known as Commissioners and shall be appointed by the Cabinet.

(2) The Board shall comprise the Managing Director as an *ex officio* Commissioner and not less than 6 or more than 8 other Commissioners, 2 of whom shall be from outside the Territory with financial services background, in addition to the requirements specified in subsection (4). *(Substituted by Act 10 of 2011 and amended by Act 8 of 2016)*

(3) The Minister shall, after consultation with the Leader of the Opposition, recommend to the Cabinet the appointment of one of the

Commissioners as Chairman and another as Deputy Chairman and the instruments of appointment of all Commissioners shall be executed by the Minister. *(Amended by Acts 6 of 2004 and 8 of 2016)*

(4) In making appointments to the Board, the Cabinet shall ensure that the persons to be appointed are fit and proper and have relevant knowledge, experience and expertise which could aid the Commission in the performance of its functions.

(5) A person is disqualified from appointment as a Commissioner if he or she—

- (a) is a member of the House of Assembly;
- (b) is an undischarged bankrupt or has compounded with his or her creditors;
- (c) has been convicted of an indictable offence or any offence involving dishonesty;
- (d) has, after being previously appointed as a Commissioner, been removed in accordance with section 9(2);
- (e) is a public officer; or
- (f) has been certified by a medical practitioner to be of unsound mind.

(Amended by Act 19 of 2006)

(6) A previous appointment as a Commissioner does not affect a person's eligibility for further appointment under this section.

(7) The Board may appoint a member of staff of the Commission, other than a Commissioner, to act as Secretary to the Board with such duties as the Board may determine.

Functions of the Board

6. (1) The Board is the governing body of the Commission and shall be responsible for—

- (a) identifying and classifying senior management positions in the Commission to which it shall appoint suitably qualified persons;
- (b) establishing the policy of the Commission and monitoring and overseeing its implementation; *(Amended by Act 19 of 2006)*
- (c) monitoring and overseeing the management of the Commission by the Managing Director with the objective of ensuring that—
 - (i) the resources of the Commission are utilised economically and efficiently;
 - (ii) the internal financial and management controls of the Commission are adequate; *(Amended by Act 19 of 2006)*
 - (iii) the Commission is operated in accordance with principles of good governance; and *(Amended by Act 19 of 2006)*
 - (iv) the Commission fulfils its statutory obligations and properly discharges its functions; *(Inserted by Act 19 of 2006)*

- (d) acting as trustee of the deposit accounts transferred to the Commission under section 21;
- (e) approving the estimates and work programme referred to in section 24; and
- (f) approving the Commission's accounts under section 25.

(2) In establishing the policy of the Commission, the Board shall take into account such general directions as may be given to the Commission by the Cabinet.

(3) In the performance of its functions, the Board may—

- (a) establish such committees as it considers appropriate on such terms and conditions as it may determine; and
- (b) delegate such duties as it considers necessary to the Managing Director.

Meetings of the Board

7. (1) The Board shall meet at such place and time as the Chairman may designate but shall, in any case, meet at least 10 times in each year. (*Substituted by Act 8 of 2016*)

(2) At every meeting of the Board, the Chairman shall preside and in his or her absence the Deputy Chairman shall preside.

(3) The quorum of the Board shall be 4.

(4) At any meeting for the conduct of its business, the Board shall take its decision by a majority vote of the Commissioners present and in the event of a tie the Chairman or Deputy Chairman, as the case may be, shall have a casting vote.

(5) The Chairman, or in his or her absence, the Deputy Chairman, shall at any time convene a special meeting of the Board upon receipt of a requisition signed by at least 3 Commissioners calling upon him or her to do so, and such meeting shall be held not later than 14 days after receipt of the requisition.

(6) No act or proceeding of the Board shall be invalid by reason only of the existence of a vacancy among its members or of any defect in the appointment of a Commissioner.

(7) Notwithstanding anything contained in this section, the Chairman may, in any matter he or she considers exceptional, make arrangements for a decision of the Board to be taken on such matter through a process of consultation without the need for an actual meeting.

(8) In the conduct of its meetings, the Board shall establish its own rules of procedure, subject to the provisions of this section.

Tenure of office

8. (1) Subject to this section, the appointment of a Commissioner shall be on such terms as may be determined by the Cabinet.

(2) The appointment of a Commissioner shall be for a term not exceeding 3 years.

(3) In appointing Commissioners under section 5, the Cabinet shall specify the periods of appointment in such a way that the periods of appointment of not more than $\frac{1}{3}$ of the Commissioners shall expire every 2 years.

(4) The Commissioners shall be paid such remuneration as may be determined by the Cabinet and the payments shall be made out of the revenues of the Commission.

(5) A Commissioner shall not act as a delegate of any Government, commercial, financial or other interest with whom he or she may be connected and shall not accept directions from any person or authority in respect of his or her duties as a Commissioner or in relation to, or on behalf or in the name of, the Commission.

(6) Where a Commissioner acts contrary to subsection (5), he or she shall be personally responsible for his or her actions.

Resignation and removal of Commissioner

9. (1) A Commissioner may at any time resign his or her office by giving written notice to the Cabinet and such resignation becomes effective upon receipt by the Cabinet. (*Amended by Act 8 of 2016*)

(2) The Cabinet may, by written notice, remove a Commissioner from office if satisfied that the Commissioner—

- (a) has, without the consent of the Board, been absent from 3 consecutive meetings of the Board or for periods exceeding $\frac{1}{3}$ of the total meetings held in a year;
- (b) has become bankrupt, that his or her estate has been sequestrated or that he or she has made an arrangement with, or granted a trust deed in favour of, his or her creditors;
- (c) has been convicted of an indictable offence or any offence involving dishonesty;
- (d) is or becomes disqualified from being appointed as a Commissioner under section 5;
- (e) has an interest that is likely to prejudicially affect the exercise and performance by him or her of his or her functions as a Commissioner or is liable to be removed from office under section 47(3);
- (f) is unable or unfit to discharge his or her functions as a Commissioner; or
- (g) is in breach of any condition imposed upon his or her appointment.

(2A) Where the Cabinet removes a Commissioner from office pursuant to subsection (1), it shall—

- (a) provide in writing its reason for the removal; and
 - (b) cause to be published in the *Gazette* the reason for the removal.
- (Substituted by Act 10 of 2011)*

(3) If a Commissioner dies, resigns, is removed from or otherwise vacates his or her office prior to the expiry of the term for which he or she has been appointed, the Cabinet shall appoint a new Commissioner to replace him or her.

(4) An appointment of a Board member under subsection (3) may be for the unexpired period of the term of office of the member in whose place he or she is appointed or for a new term not exceeding 3 years.

(5) This section does not apply to the Managing Director whose resignation and removal from office shall be governed by the terms and conditions of his or her employment with the Commission. *(Inserted by Act 19 of 2006)*

Appointment and functions of Managing Director

10. (1) The Board shall, after consultation with the Minister, appoint a fit and proper person to be the Managing Director of the Commission on such terms and conditions as it considers appropriate. *(Amended by Act 19 of 2006)*

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

- (a) provide in writing the reason for the removal; and
- (b) cause to be published in the *Gazette* the reason for the removal.
(Substituted by Act 10 of 2011)

(2) The Managing Director is an employee of the Commission and its chief executive officer and shall—

- (a) be responsible for the administration and operation of the Commission and supervision of staff of the Commission;
- (b) subject to any general or special direction of the Board, execute the functions of the Commission outlined in section 4;
- (c) be responsible for identifying and classifying staff positions in the Commission, which are not designated senior management positions under section 6(1)(a) to which he or she shall, subject to the approval of the Board, appoint suitably qualified persons;
- (d) coordinate and execute as required by any financial services legislation all requests for legal and regulatory assistance from foreign regulatory authorities; and
- (e) perform such other duties as may be assigned or delegated to him or her by the Board.

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

- (a) the resources of the Commission are utilised economically and efficiently;
- (b) the internal financial and management controls of the Commission are adequate;
- (c) the Commission is operated in accordance with principles of good governance; and

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

(Inserted by Act 19 of 2006)

Appointment of other staff

11. (1) Without prejudice to the powers granted under sections 6(1)(a) and 10(2)(c), the Commission may appoint such officers, employees and agents as it considers necessary and proper for the administration, management and performance by the Commission of its functions under this Act.

(2) Appointments under this Act shall be on such terms as to remuneration, expenses, pensions and other conditions of service as the Commission thinks fit.

(3) The Commission may establish and maintain such schemes or make such other arrangements as it thinks fit for the payment of pensions and other benefits in respect of its officers and employees.

Transfer of statutory functions, powers and duties to the Commission

12. The functions, powers and duties that, prior to the coming into force of this Act, vested in the Governor in Council, Minister, Director of Financial Services or other officer by virtue of any financial services legislation shall, upon the coming into force of this Act, vest in the Commission.

General powers of the Commission

13. (1) Subject to this Act and any other enactment, the Commission may do all things necessary for, or reasonably ancillary or incidental to, the pursuance of the carrying out of its duties, functions or powers under this Act or any financial services legislation, including—

- (a) the employment of advisers and consultants as the Commission considers necessary on such terms and conditions as it deems fit;
- (b) the opening and maintaining of accounts with banks for the purposes of the Commission, within or outside the Territory; and
- (c) investing its funds, that are not immediately required for the discharge of its functions, in such manner as it considers prudent.

(Amended by Act 13 of 2009)

(2) Notwithstanding anything contained in this Act or any other enactment to the contrary, the Commission shall, in the exercise of its powers under this Act or any financial services legislation in making any decision, provide in writing the reasons for the decision. *(Inserted by Act 13 of 2009)*

PART II

COMMITTEES OF THE COMMISSION

Establishment of committees

14. (1) The following committees of the Commission are established—

- (a) the Licensing and Supervisory Committee;
- (b) the Enforcement Committee.

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

(Substituted by Act 19 of 2006)

Membership of the committees

15. (1) The Licensing and Supervisory Committee shall comprise—

- (a) the Managing Director as Chairman;
- (b) the Deputy Managing Director;
- (c) the heads of the regulatory and supervisory divisions within the Commission; and
- (d) such other senior officer of the Commission as the Managing Director may, with the approval of the Board, designate.

(Amended by Act 19 of 2006)

(2) The Enforcement Committee shall comprise—

- (a) the Managing Director;
- (b) the head of the division of the Commission having responsibility for enforcement; and
- (c) such other senior officers of the Commission as the Board may appoint.

(Substituted by Act 19 of 2006)

(3) The Managing Director shall appoint a secretary for each committee.
(Substituted by Act 19 of 2006)

(4) The secretary of each committee—

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

(Substituted by Act 19 of 2006)

(5) The Managing Director may co-opt onto a committee such officers of the Commission as he or she may determine to assist the committee in the performance of its functions. *(Substituted by Act 19 of 2006)*

Functions of the Licensing and Supervisory Committee

16. (1) The Licensing and Supervisory Committee shall exercise the following functions on behalf of the Commission—

- (a) to receive, review and determine applications for licences;
- (b) to supervise licensees to ensure that they continue to satisfy the fit and proper criteria for the conduct of financial services business; and

(c) to publish the names of persons who have been granted licences.
(Amended by Act 19 of 2006)

(2) The Board has no power to determine, or direct the Committee with respect to, any particular application for a licence, and the Board shall not make any such determination or give any such direction to the Committee. *(Substituted by Act 19 of 2006)*

(2A) Subsection (2) does not limit or affect the Board's power to establish the policy of the Commission with respect to licensing. *(Substituted by Act 19 of 2006)*

(3) Where the Committee does not approve an application for a licence, the Commission shall so notify the applicant and transmit a copy of the decision, together with a copy of the application, to the Board for its record. *(Amended by Act 19 of 2006)*

(4) *(Repealed by Act 19 of 2006)*

Functions of the Enforcement Committee

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

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

(Inserted by Act 19 of 2006)

Provisions relating to each committee

17. (1) A committee shall—

- (a) meet at such time and place as the Managing Director may determine or as may be provided for or specified in the committee's rules of procedure;
- (b) devise its own rules of procedure relating to the conduct of its business, subject to the approval of the Board; and
- (c) report to the Board in writing on the performance of its functions not less than once each quarter. *(Substituted by Act 19 of 2006)*
(Amended by Act 19 of 2006)

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

- (a) in its rules of procedure; or
- (b) by the Board.

(Inserted by Act 19 of 2006)

(3) In the performance of a function, or the exercise of a power delegated by a committee under this section, the delegate must act in accordance with any directions of the committee. *(Inserted by Act 19 of 2006)*

(4) The performance of a function or the exercise of a power by a delegate is as effective as if performed or exercised by the committee. *(Inserted by Act 19 of 2006)*

(5) Every member of a committee shall, in the performance of his or her duties, conduct himself or herself in a manner that conforms with the integrity of his or her office. *(Inserted by Act 10 of 2011)*

PART III

FINANCIAL AND REPORTING PROVISIONS APPLICABLE TO THE COMMISSION

Funds and resources of the Commission

18. (1) The funds and resources of the Commission shall comprise—

- (a) fees, charges and penalties (excluding penalties imposed by a court) payable under this Act and the financial services legislation;
- (b) such monies as may be appropriated by the House of Assembly for the purposes of the Commission;
- (c) monies paid and property provided to the Commission by way of grants, fees, charges, rent, interest and other income derived from the investment of the Commission's funds;
- (d) monies derived from the disposal of or dealing with real or personal property held by the Commission;
- (e) monies borrowed by the Commission in accordance with this Act; and
- (f) any property lawfully received or made available to the Commission payable under this Act and the financial services legislation.

(2) The Commission may charge a fee in respect of costs reasonably incurred in the performance of its duties under this Act or the financial services legislation.

Government Trust Account

19. (1) The Commission shall open and maintain an account called “the Government Trust Account” with a reputable bank licensed and operating in the Territory and approved by the Cabinet.

(2) The Commission shall ensure that all monies it receives on behalf of the Government are paid into the Government Trust Account as soon as practicable after receipt.

(3) Monies receivable by the Commission under subsection (2) for payment into the Government Trust Account shall comprise annual licence fees and registration and recognition fees payable under a financial services legislation and such other fees as may be agreed upon between the Cabinet and the Commission.

(4) All monies paid into the Government Trust Account shall be held by the Commission on behalf of the Government.

(5) Within 5 working days of the last day of each quarter or such other period as may be agreed between the Cabinet and the Commission, all monies standing to the credit of the Government Trust Account on the day before the last day of that quarter are to be paid into the Consolidated Fund, less the sum payable to the Commission's bank account in accordance with the provisions of section 20. *(Amended by Act 19 of 2006)*

(6) Monies paid to the Commission otherwise than on behalf of the Government shall be paid into the Commission's bank account for use by the Commission. *(Amended by Act 19 of 2006)*

(7) The Government represented by the Financial Secretary and the Accountant General and the Commission represented by the Chairman, or in his or her absence the Deputy Chairman, and the Managing Director shall be the signatories to the Government Trust Account. *(Amended by Act 19 of 2006)*

Payments out of the Government Trust Account

20. (1) From the monies paid into the Government Trust Account, a percentage of not less than 7½ and not more than 15 shall be paid into the Commission's bank account for use by the Commission.

(2) The actual percentage of monies payable under subsection (1) shall, prior to the commencement of the Commission's financial year, be discussed and determined by the Cabinet and the Commission and this may be done through the process of the estimates referred to in section 24.

(3) In determining the percentage of monies payable to the Commission for any financial year, the following considerations shall be taken into account—

- (a) the need to maintain the independence and financial viability of the Commission;
- (b) any shortfall or anticipated shortfall in revenue paid or to be paid into the Government Trust Account for any financial year;
- (c) any increase in requests for assistance from foreign regulatory authorities and the costs associated therewith;
- (d) the need to service loans and credits obtained on goods and services and to accommodate unforeseen liabilities and obligations;
- (e) the scope of the functions of the Commission and the need for the efficient and effective implementation of such functions.

(4) The percentage of the monies payable to the Commission under this section shall be calculated as a percentage of the total monies paid into the Government Trust Account and shall be paid within 5 working days of the last day of each quarter or such other period as may be agreed between the Cabinet and the Commission as if the monies in respect thereof were standing to the credit of the Commission on the day before the last day of that quarter. (*Amended by Act 19 of 2006*)

(5) Where, prior to the commencement of the Commission's financial year, the percentage of monies payable under subsection (1) could not be agreed upon as provided in subsection (2), the percentage of monies agreed upon for the preceding financial year shall apply and be payable until such time as a determination is made.

(6) Notwithstanding anything contained in this section, the Cabinet and the Commission may for any financial year agree on a percentage payment to the Commission greater than 15.

Transfer of deposit accounts to Commission

21. Upon the coming into force of this Act, all monies held by the Government in a deposit account in respect of a regulated person pursuant to a financial services legislation shall be transferred to and vest in the Commission to be administered by it as required by such financial services legislation.

Borrowing powers

22. (1) The Commission may, subject to subsection (2) and to the extent it considers it necessary to discharge its functions—

- (a) borrow monies by way of loan, advance or overdraft; and
- (b) obtain goods and services on credit.

(2) Where the total value of monies to be borrowed or goods and services to be obtained on credit by the Commission—

- (a) is \$250,000 and above but not more than \$1,000,000, the approval of the Cabinet shall be sought and the House of Assembly informed by a statement issued by the Minister; and
- (b) exceeds \$1,000,000, the approval of the House of Assembly shall be sought.

(3) A resolution seeking the approval of the House of Assembly under subsection (2)(b) shall be brought only by the Minister.

(4) The Commission may, with the approval of the Cabinet, give security over the whole or any part of its assets for the repayment of monies borrowed or credit obtained under this section and the Government may act as guarantor to any such transaction.

Financial year of the Commission

23. The financial year of the Commission shall be for the period 1st January to 31st December in each year.

Budget and annual work plan

24. (1) The Commission shall, not later than 3 months before the commencement of each financial year, prepare in respect of the financial year, and submit to the Cabinet—

- (a) estimates of—
 - (i) expected expenditure; and
 - (ii) its expected income, if any, arising from any source; and
- (b) a work programme containing a general description of the work and activities that it plans to undertake in the year.

(2) The Cabinet shall, as soon as practicable, consider the estimates and work programme submitted by the Commission with a view to—

- (a) approving them, or either of them, with or without modification; or
- (b) remitting them, or either of them, back to the Commission without approval.

(3) The Cabinet shall not approve the estimates or work plan in a modified form unless the Commission has agreed in writing to the modifications.

(4) Where the Cabinet remits the estimates or the work plan back to the Commission, it shall provide the Commission with the reasons for its non-approval of the estimates or work plan, including any specific recommendations for modification.

(5) Subject to subsection (3), where the estimates and work plan are approved, the Cabinet shall, within 3 months of the approval, cause them to be laid before the House of Assembly.

(6) Where the estimates and work plan are laid before the House of Assembly and they are subsequently referred to a Select Committee of the House of Assembly, the Managing Director and other senior staff of the Commission may be required in writing by the Speaker to appear before the Select Committee of the House of Assembly to assist with and respond to any matter concerning the estimates and work plan. *(Inserted by Act 13 of 2009)*

(7) Where, following the approval of the estimates and work plan, the estimates and work plan are not laid in the House of Assembly within the time frame provided in subsection (5), the Commission may publish the estimates and work plan in a manner it considers fit. *(Inserted by Act 13 of 2009)*

Accounts and audit

25. (1) The Commission shall—

- (a) keep proper books of account of its income and other receipts and expenditure; and
- (b) ensure that—
 - (i) all monies received are properly brought to account;
 - (ii) all payments out of its monies are correctly made and properly authorised; and

(iii) adequate control is maintained over its property and over the incurring of liabilities by the Commission.

(2) The books of account kept under subsection (1) shall be maintained in such form and manner that they—

- (a) are sufficient to record and explain the Commission's transactions;
- (b) enable the Commission's financial position to be determined with reasonable accuracy at any time; and
- (c) are sufficient to enable the Commission's financial statements to be prepared and audited in accordance with this section.

(3) Within 3 months after the end of each financial year, the Commission shall prepare and approve accounts containing—

- (a) a statement of the assets and liabilities of the Commission at the end of the financial year;
- (b) a statement of the revenue and expenditure of the Commission during the financial year;
- (c) such other financial statement for the financial year as may be specified by the Cabinet; and (*Amended by Act 8 of 2016*)
- (d) proper and adequate explanatory notes to the financial statements.

(4) The accounts of the Commission shall within 6 months after the end of each financial year, be audited by such person as may be appointed in respect of each financial year by the Board, but until such appointment is made the Auditor General shall be responsible for auditing the accounts of the Commission.

Surplus, how dealt with

26. Where there is a surplus on the budget approved for the Commission's expenditure for any financial year, such surplus shall be paid into a reserve account to be established by the Commission, unless otherwise agreed upon with the Cabinet.

Annual report

27. (1) Within 3 months of the completion of the audit of the Commission's accounts in respect of any financial year, the Commission shall submit to the Cabinet—

- (a) a copy of its audited accounts;
- (b) a written report of its operations and activities for that financial year together with a copy of the audited financial statements.

(2) Within 3 months of receiving the Commission's audited accounts, report and audited financial statements, the Cabinet shall cause them to be laid in the House of Assembly.

(3) Where the Commission's audited accounts, report and audited financial statements are laid in the House of Assembly and they are subsequently referred to a Select Committee of the House of Assembly, the Managing

Director and other senior staff of the Commission may be required in writing by the Speaker to appear before the Select Committee of the House of Assembly to assist with and respond to any matter concerning the audited accounts, report and audited financial statements. *(Inserted by Act 13 of 2009)*

(4) Where the Commission's audited accounts, report and audited financial statements are not laid in the House of Assembly within the time frame provided in subsection (2), the Commission may publish the audited accounts, report and audited financial statements in a manner it considers fit. *(Inserted by Act 13 of 2009)*

Exemption from taxation, etc.

28. The Commission is exempt from the payment of all taxes, levies and licence fees on its income and operations and from the payment of all taxes, duties and rates on its property and documents.

PART IV

INFORMATION GATHERING AND COOPERATION WITH FOREIGN REGULATORY AUTHORITIES

29. *(Repealed by Act 19 of 2006)*

General powers of disclosure and related restrictions

30. (1) The Board may, for the purpose of ensuring the discharging of its functions, request any person, whether engaged in or related to any financial services business or otherwise, to furnish the Commission with such information as the Board may specify. *(Amended by Act 8 of 2016)*

(2) *(Repealed by Act 19 of 2006)*

(3) *(Repealed by Act 19 of 2006)*

(4) *(Repealed by Act 19 of 2006)*

(5) *(Repealed by Act 19 of 2006)*

Recovery of cost of litigation

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

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

(3) Where the foreign regulatory authority refuses to bear the cost of the litigation or withdraws its request for assistance, the Commission shall cease

assistance and any cost already incurred in relation to the request shall be borne by the Commission.

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

(Substituted by Act 8 of 2016)

Power of Commission to request information and documents

32. (1) Where the Commission requires for the purpose of—

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

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

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

(Substituted by Act 10 of 2011 and amended by Act 8 of 2016)

(2) A notice under subsection (1)—

- (a) may be issued to—
 - (i) a licensee;
 - (ii) a former licensee;
 - (iii) a person whom the Commission reasonably believes to be carrying on, or to have at any time carried on, unauthorised financial services business;
 - (iv) a person connected with a person specified in sub-paragraph (i), (ii) or (iii);
 - (v) a person (other than a person referred to in sub-paragraphs (i) to (iv)) reasonably believed to have the information or documents to which the notice relates; *(Amended by Act 8 of 2016)*

(Substituted by Act 19 of 2006)

(b) shall specify the place where and the period within which the information or document is to be provided or produced; and *(Amended by Act 19 of 2006)*

(c) may require that the information is to be provided to, or the documents are to be produced to, such person as may be specified in the notice. *(Inserted by Act 19 of 2006)*

(3) The Commission may require any information provided pursuant to this section—

- (a) to be provided in such form as the Commission may require; and
- (b) to be verified or authenticated in such manner as it may reasonably require.

(4) The Commission may take copies or extracts of any document produced pursuant to this section.

(5) Where a person claims a lien on a document, the production of the document pursuant to this section is without prejudice to his or her lien.

(6) The reference in subsection (1) and section 33C to “competent authority” means a competent authority or central authority so designated or appointed under an enactment. *(Repealed by Act 19 of 2006 and replaced by Act 10 of 2011)*

(7) *(Repealed by Act 19 of 2006)*

Commission may apply for a search warrant

33. (1) Where—

- (a) a person who is issued a notice under section 32, fails to comply or only partly complies with such notice;
- (b) the Commission is of the opinion that if a notice is issued to a person under section 32 it would not be complied with or the documents or information to which the notice relates may be removed, tampered with or destroyed; or
- (c) the Commission is of the opinion that—
 - (i) an offence under a financial services legislation has been or is being committed, or may be committed unless swift action is taken to prevent the commission of the offence;
 - (ii) there are documents, or there is information, on the premises of a person referred to in section 32(2) which may reveal the commission of an offence; and
 - (iii) if a notice under section 32 is issued it would not be complied with or the documents or information to which the notice relates may be removed, tampered with or destroyed,

the Commission may, on oath sworn to on its behalf by an officer of the Commission, apply to a Magistrate for a search warrant. *(Amended by Act 19 of 2006)*

(2) On receipt of an application under subsection (1), the Magistrate may authorise a named representative of the Commission, together with a police officer and any other person named in the warrant—

- (a) to enter the premises specified in the warrant at any time within one month from the date of the warrant;
- (b) to search the premises and take possession of any documents or information appearing to be documents or information of a type in respect of which the warrant was issued or to take, in relation to such documents or information, any other steps which appear

to be necessary for preserving or preventing interference with them;

- (c) to take copies of, or extracts from, any documents or information appearing to be documents or information of a type in respect of which the warrant was issued;
- (d) to require any person on the premises to provide an explanation of any document or information appearing to be documents or information of a type of which the warrant was issued or to state where such documents or information may be found; and
- (e) to use such force as may be reasonably necessary to execute the warrant.

(3) Unless the court, on the application of the Commission, otherwise orders, any document of which possession is taken under this section may be retained—

- (a) for a period of 3 months; or
 - (b) if within that period proceedings for a criminal offence or an enforcement action by the Enforcement Committee, to which the document is relevant, are commenced against any person, until the conclusion of those proceedings. *(Amended by Act 8 of 2016)*
- (4) The reference—
- (a) in subsection (1)(c) to “offence” includes a breach; and
 - (b) in subsections (1)(c)(ii) and (2) to “premises” includes a building, a vehicle, a vessel or an aircraft.
(Substituted by Act 8 of 2016)

Examination under oath before a Magistrate

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

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

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

(4) An application to a Magistrate under subsection (1) shall be processed by the Magistrate within 7 days of the application and the results of the examination shall be transmitted to the Commission within a reasonable period, not exceeding 14 days, from the date of the examination.

(Inserted by Act 19 of 2006)

Examination under oath by the Commission

33B. (1) Where the Commission on reasonable grounds believes that a person (referred to in this section as “the examinee”) can provide information that is

required under section 32(1) the Commission may, by notice in writing, require the examinee to attend before a specified Commissioner or officer of the Commission (referred to in this section as “the examiner”) to be examined under oath. (*Amended by Act 10 of 2011*)

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

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

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

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

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

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

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

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

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

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

(9) A person commits an offence if—

- (a) having received a notice under subsection (1), he or she fails or refuses to submit to examination in accordance with the notice;
- (b) as an examinee, he or she fails to answer a question properly put to him or her by the examiner; or
- (c) having been issued with a record of an examination pursuant to subsection (8), he or she fails to comply with any condition imposed by an examiner.

(10) A person who commits an offence under subsection (9) is liable on summary conviction to a fine not exceeding \$5,000.

(Inserted by Act 19 of 2006)

(11) The operation of this section shall not be construed to be contingent on the Commission first complying with section 32(1). *(Inserted by Act 10 of 2011)*

Duty to cooperate

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

- (a) foreign regulatory authorities; or
- (b) a competent authority acting pursuant to an enactment; *(Inserted by Act 10 of 2011)*
- (c) persons, in or outside the Virgin Islands, who have functions in relation to the prevention or detection of financial crime, including money laundering, financing of terrorism, financing of proliferation of weapons of mass destruction, misconduct in, or misuse of information relating to, financial markets and offences involving fraud or dishonesty. *(Amended by Act 8 of 2016)*

(2) Co-operation may include—

- (a) the sharing of documents and information which the Commission is not prevented by this Act or any other enactment from disclosing;
- (b) making requests for assistance to foreign regulatory authorities or a competent authority acting pursuant to an enactment; *(Amended by Acts 10 of 2011 and 8 of 2016)*
- (c) providing assistance to foreign regulatory authorities; and *(Inserted by Act 8 of 2016)*
- (d) making application for the examination of a person by a Magistrate under section 33A or requiring a person to be examined under section 33B.

(3) Nothing contained in this section or section 33D shall be construed as compelling the Commission to provide any assistance relating to matters of taxation save as may be lawfully required by a competent authority acting pursuant to an enactment. *(Amended by Act 10 of 2011)*

(Inserted by Act 19 of 2006)

Provision of assistance to foreign regulatory authorities

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

- (a) exercise the power conferred on it by section 32;
- (b) appoint one or more competent persons as examiners to investigate any matter;

- (c) make an application for the examination of a person under section 33A or require a person to be examined under section 33B; or
- (d) disclose information, or provide documentation, to the foreign regulatory authority, whether such information or documentation is already in the Commission's possession or whether it is obtained pursuant to the exercise of a power under paragraph (a), (b) or (c).

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

(2A) Where the Commission considers it appropriate in any case to do so, it may, notwithstanding anything to the contrary contained in this Act, provide a foreign regulatory authority with information in its control or possession, whether or not obtained pursuant to the exercise of any power under this Act, although the information has not been specifically requested by the foreign regulatory authority. *(Inserted by Act 10 of 2011)*

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

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

- (a) whether corresponding assistance would be given to the Commission in the country or territory of the foreign regulatory authority concerned;
- (b) the nature and seriousness of the matter to which the request for assistance relates, the importance of the assistance to be provided in the Virgin Islands and whether the assistance can be obtained by other means;
- (c) the relevance of the information or documentation to the enquiries to which the request relates; and
- (d) whether it is otherwise appropriate in the public interest to provide the assistance sought.

(5) For the purposes of subsection (4)(a), the Commission may require the foreign overseas regulatory authority making the request to give a written undertaking, in such form as the Commission may require, to provide corresponding assistance to the Commission. *(Amended by Act 10 of 2011)*

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

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

- (a) the foreign regulatory authority undertakes to make such contribution towards the cost of exercising its powers as the Commission considers appropriate;

- (b) it is satisfied that the foreign regulatory authority is subject to adequate legal restrictions on further disclosure of the information and documents and that it will not, without the written permission of the Commission obtained at the time of the request or thereafter—
 - (i) disclose information or documents provided to it to any person other than an officer or employee of the foreign regulatory authority engaged in the exercise of its supervisory functions; or
 - (ii) take any action on information or documents provided to it; and
- (c) it has received satisfactory assurances from the foreign regulatory authority that any information provided to it will not be used in any criminal proceedings against the person furnishing it, other than proceedings for an offence of perjury or any equivalent offence.

(Inserted by Act 19 of 2006)

PART V

COMPLIANCE AND ENFORCEMENT

Compliance function

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

- (a) this Act and the financial services legislation;
- (b) the Regulatory Code, or any Guidance issued by the Commission, that applies to the licensee;
- (c) any directives issued by the Commission that apply to the licensee.

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

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

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

with respect to the licensee's compliance function.

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

(4A) Where the Commission approves an individual as a licensee's compliance officer, the individual shall, for the purposes of a relevant financial services legislation applicable to the licensee, be deemed to be a senior officer. *(Inserted by Act 13 of 2009)*

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

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

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

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

- (a) requirements for the systems and controls to be established and maintained by a licensee under subsection (1), including requirements for the establishment and maintenance of one or more compliance procedures manuals;
- (b) persons who may, or who may not, be appointed by a licensee to oversee its compliance function under subsection (3); *(Amended by Act 8 of 2016)*
- (c) the requirements for the person appointed under subsection (3) to report to the directors of the licensee, including the manner and frequency of such reporting; and *(Amended by Act 8 of 2016)*
- (d) the requirements for the person appointed under subsection (3) to report to the Commission, including the manner and frequency of such reporting. *(Amended by Act 8 of 2016)*

(8) A person appointed by a licensee as its anti-money laundering reporting officer for the purposes of the Anti-money Laundering Regulations and Anti-money Laundering and Terrorist Financing Code of Practice may, with the approval of the Commission, be approved as the licensee's compliance officer under subsection (3). *(Substituted by Act 8 of 2016)*

(9) For the purposes of approval by the Commission or appointment by a licensee of a compliance officer under this section, the compliance officer shall not be treated as a licensee or as holding a licence. *(Inserted by Act 8 of 2016)*

Corporate compliance

34A. (1) Subject to section 34 and this section, the Commission may, upon receipt of an application in writing, approve a body corporate (hereafter referred

to as “the applicant”) to undertake the duty of providing compliance function services for and on behalf of a licensee.

(2) No licensee shall engage the compliance function services of an applicant, unless—

- (a) the licensee has submitted an application in writing identifying a senior officer within the licensee who shall have responsibility for overseeing the compliance function of the licensee; and
- (b) the senior officer is approved by the Commission as the person responsible for overseeing the licensee’s compliance function.

(3) An application received under subsection (1) shall only be considered and approved by the Commission if the Commission is satisfied that the following requirements have been met or will be met after the applicant is granted approval—

- (a) the applicant is incorporated under the BVI Business Companies Act and has not been struck off or dissolved;
- (b) the applicant is physically resident in and carrying out its business within the Virgin Islands;
- (c) all of the applicant’s employees are physically resident in the Virgin Islands and the absence of an employee from the Virgin Islands in any particular year does not exceed 90 days in aggregate;
- (d) the applicant has provided a written undertaking indicating that it will not assign or deploy any of its employees to perform compliance functions for and on behalf of a licensee unless such employees have been—
 - (i) approved by the Commission for appointment as compliance officers in accordance with section 34(3); and
 - (ii) appointed formally by the licensee in relation to which the Commission gave its approval;
- (e) the applicant’s primary responsibility is to provide compliance function services to licensees that are based, and carrying on business, in or from within the Virgin Islands;
- (f) the applicant has, or will have within 180 days and before commencement of business, the relevant number of employees considered by the Commission to be qualified to perform compliance officer duties, having regard to the number, nature, size and complexity of licensees the applicant intends to provide compliance function services to;
- (g) the applicant understands the type, nature and complexity of the business of the licensees which the applicant intends to provide compliance function services to; and
- (h) the Commission does not consider it to be against the public interest to grant approval.

(4) Where the Commission is not satisfied that one or more of the requirements outlined in subsection (3) has been met or will, if granted approval,

be met, it may refuse to approve the application received pursuant to subsection (1).

(5) Where an applicant, after receiving approval under subsection (1), becomes aware that it no longer satisfies any of the requirements of subsection (3), it shall immediately notify the Commission of that fact, indicating whether it expects to satisfy the requirement concerned and, if so, within what time frame.

(6) Where the Commission receives a notification under subsection (5) or on its own motion discovers that an applicant no longer satisfies any requirement of subsection (3), it may—

- (a) direct the applicant to remedy the requirement that is no longer satisfied within such period as the Commission considers fit, in which case the applicant's employees performing compliance functions for and on behalf of a licensee shall cease performing such functions within the period specified by the Commission or, if granted an extension under subsection (7), within the period of extension; or
- (b) withdraw the approval given to the applicant under subsection (1) and direct—
 - (i) the applicant to cease providing compliance function services to licensees; and
 - (ii) the applicant's compliance officers to cease performing compliance functions for and on behalf of licensees.

(7) The Commission may, for the purposes of subsection (6)(a) grant an extension of not more than 30 days (whether in aggregate or otherwise) to an applicant to remedy a requirement that it no longer satisfies.

(8) Where an applicant fails to comply with a directive under subsection (6)(a) within the period specified or within the period of extension granted under subsection (7) (if applicable), the Commission shall withdraw its approval of the applicant pursuant to subsection (6)(b).

(9) Where the Commission withdraws an approval given to an applicant under subsection (1), every employee of the applicant that had been approved for appointment as a compliance officer under section 34(3) whose appointment is subsisting on the date of withdrawal of approval shall, subject to subsection (10), cease to function as a compliance officer.

(10) Subsection (9) is without prejudice to a compliance officer in the employment of the applicant applying to the Commission to be independently considered and approved to continue serving as the compliance officer of a licensee.

(11) An employee of an applicant that is approved for appointment as a compliance officer of a licensee shall not perform compliance functions for and on behalf of a licensee other than the licensee for which he or she has been approved and appointed, unless the Commission approves otherwise.

(12) Nothing contained in this section shall be construed as absolving an employee of an applicant appointed as a compliance officer of a licensee, from liability for any compliance failures or breaches attributable to a compliance

officer under this Act, the Regulatory Code or other enactment, or in relation to the licensee.

(13) The Regulatory Code may—

- (a) provide additional requirements in relation to the approval by the Commission of an application made under this section; and
- (b) require applicants under this section to provide such reports, including annual reports, to the Commission regarding the performance of their duties or other matters concerning the compliance officers in their employment as the Commission considers fit.

(14) For the purposes of subsections (1), (2), (3)(e), (f) and (g) and (6)(b)(i), “compliance function services” refers to the provision by an applicant of compliance officers approved by the Commission to a licensee to perform compliance functions for and on behalf of the licensee.

(Inserted by Act 10 of 2018)

Compliance inspections

35. (1) In this section, “relevant person” means—

- (a) a licensee; *(Amended by Act 19 of 2006)*
- (b) a former licensee; *(Amended by Acts 19 of 2006 and 8 of 2016)*
- (c) a subsidiary or holding company of a licensee or of a former licensee; and *(Amended by Act 19 of 2006)*
- (d) a non-licensee incorporated or registered under the BVI Business Companies Act which is not supervised for compliance by the Financial Investigation Agency or other agency and which the Commission considers should be inspected for the purposes of subsection (2A)(b) and (c). *(Inserted by Act 8 of 2016)*

(2) The Commission may, for a purpose or purposes specified in subsection (2A)—

- (a) inspect the premises and business, whether in or outside the Territory, including the procedures, systems and controls, of a relevant person;
- (b) inspect the assets, including cash, belonging to or in the possession or control of a relevant person;
- (c) examine and make copies of documents belonging to or in the possession or control of a relevant person that, in the opinion of the Commission, relate to the carrying on of financial services business by the relevant person; and
- (d) seek information and explanations from the officers, employees, agents and representatives of relevant person, whether verbally or in writing, and whether in preparation for, during or after a compliance inspection. *(Inserted by Act 19 of 2006)*

(Amended by Act 19 of 2006)

(2A) A compliance inspection may be undertaken for the following purposes—

- (a) the supervision of financial services business carried on in or from within the Virgin Islands, including monitoring and assessing a relevant person's compliance with—
 - (i) this Act and the financial services legislation;
 - (ii) the Regulatory Code, or any Guideline issued by the Commission, that applies to the licensee; and
 - (iii) any directives issued by the Commission that apply to the licensee; *(Amended by Act 8 of 2016)*
- (b) monitoring and assessing a relevant person's compliance with the requirements of, and its obligations under, the Proceeds of Criminal Conduct Act, Anti-Money Laundering Regulations and Anti-money Laundering and Terrorist Financing Code of Practice and with such other enactments and guidelines relating to money laundering, the financing of terrorism and the financing of proliferation of weapons of mass destruction as may be prescribed; and *(Substituted by Act 8 of 2016)*
- (c) to establish a relevant person's compliance with matters relating to the Commission's execution of its international cooperation obligations under this Act and other enactments that apply in relation to the relevant person. *(Inserted by Act 8 of 2016)*
(Inserted by Act 19 of 2006)

(3) Subject to subsection (3A), the Commission shall give reasonable notice to a relevant person of its intention to exercise its powers under subsection (2). *(Amended by Act 19 of 2006)*

(3A) Where it appears to the Commission that the circumstances so justify, the Commission may exercise its powers under subsection (2) without giving notice to the relevant person. *(Inserted by Act 19 of 2006)*

(4) Subject to subsection (5), the Commission may, upon the request of a foreign regulatory authority, permit the authority to take part in a compliance inspection undertaken by the Commission under this section.

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

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

(Substituted by Act 19 of 2006)

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

- (a) to disclose information obtained or documents examined or obtained during the compliance inspection to any person other

than an officer or employee of the authority engaged in prudential supervision; or

- (b) to take any action on information obtained or documents examined or obtained during the compliance inspection.

(Substituted by Act 19 of 2006)

(7) The Commission may, in the Regulatory Code, specify circumstances in which a relevant person may be required to contribute towards the costs of a compliance inspection, except that a relevant person shall not be required to contribute more than 75% of the total costs of any compliance inspection.
(Substituted by Act 19 of 2006)

(8) Nothing in this section shall be taken to limit the Commission's powers under this Part or Part IV. *(Substituted by Act 19 of 2006)*

Appointment of examiners

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

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

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

(Substituted by Act 19 of 2006)

(2) The matters investigated by an examiner appointed under subsection (1) may include one or more of the following—

- (a) the nature, conduct or state of the business of the person under investigation; *(Amended by Act 19 of 2006)*

- (b) a particular aspect of the business of the person under investigation; *(Amended by Act 19 of 2006)*

- (c) the ownership or control of the person under investigation; *(Amended by Act 19 of 2006)*

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

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

(2A) Subject to subsection (2B), an examiner appointed under this section shall have the powers of the Commission under sections 32, 33, 33A and 33B. *(Inserted by Act 19 of 2006)*

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

- (a) the scope of the investigation;

- (b) the period for the conduct of the investigation; and

(c) the manner in which the examiner shall report to the Commission.
(Inserted by Act 19 of 2006 and amended by Act 8 of 2016)

(3) An examiner appointed under subsection (1) may, if he or she considers it necessary for the purposes of his or her investigation, also investigate the business of any person who is, or at any relevant time has been—

(a) a member of the group of which the person under investigation is a part; or

(b) a partnership of which the person under investigation is a member.

(4) Where a person appointed as an examiner under this section is not a member or officer of the Commission he or she shall, unless otherwise agreed between him or her and the Commission be remunerated on such terms as the Commission may determine. *(Amended by Act 8 of 2016)*

(5) An examiner shall submit a report of his or her investigation to the Commission. *(Inserted by Act 19 of 2006)*

Appointment of qualified person

36A. (1) Where it appears to the Commission that there are or may be grounds for taking enforcement action against a licensee, or where it considers it reasonable for purposes of ensuring the proper and effective regulation and supervision of a licensee it may, by notice in writing, require the licensee to appoint a qualified person, at the cost of the licensee—

(a) to advise the licensee on the proper conduct of his or her business and affairs; and

(b) to provide the Commission with a report on, or on any aspect of, the licensee's business and affairs.

(Amended by Act 13 of 2009)

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

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

(a) nominated or approved by the Commission; and

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

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

(Inserted by Act 19 of 2006)

Enforcement action

37. (1) The Commission may take enforcement action against a licensee, including a subsidiary or holding company listed in or included on the licence of the licensee, if—

(Amended by Act 8 of 2016)

- (a) in the opinion of the Commission, the licensee—
- (i) has contravened or is in contravention of this Act, a financial services legislation, the Regulatory Code or a practice direction; *(Amended by Act 19 of 2006)*
 - (ii) has contravened or is in contravention of the Anti-Money Laundering Regulations and Anti-money Laundering and Terrorist Financing Code of Practice or such other enactments or guidelines relating to money laundering, the financing of terrorism and the financing of proliferation of weapons of mass destruction as may be prescribed; *(Substituted by Act 8 of 2016)*
 - (iii) is carrying on or is likely to carry on business in a manner detrimental to the public interest or to the interest of clients, creditors or investors;
 - (iv) is or is likely to become insolvent;
 - (v) has failed to comply with a directive given to it by the Commission;
 - (vi) is in breach of any condition of its licence; *(Amended by Act 19 of 2006)*
 - (vii) does not satisfy the Commission's fit and proper criteria; or *(Substituted by Act 19 of 2006)*
 - (viii) has provided the Commission with any false, inaccurate or misleading information, whether on making an application for a licence or subsequent to the issue of the licence; *(Amended by Act 19 of 2006)*
- (b) a liquidator is appointed in respect of the licensee, whether by its directors, its members or the Court, or the licensee is dissolved; *(Amended by Acts 11 of 2004 and 19 of 2006)*
- (c) a receiver has been appointed in respect of the financial services business carried on by the licensee or possession has been taken of any of its property by or on behalf of the holder of a debenture secured by a registered charge;
- (d) in the opinion of the Commission—
- (i) a person having a share or interest in the licensee, whether equitable or legal, or any director or senior officer of the licensee, is not a fit and proper person to have an interest in or be concerned with the management of a licensee, as the case may be; or *(Amended by Act 19 of 2006)*
 - (ii) a licensee or another relevant person has refused or failed to cooperate with the Commission on a compliance inspection conducted by the Commission under section 35; or
- (e) the licensee fails to pay on or before the due date an administrative penalty imposed—
- (i) under the Anti-money Laundering and Terrorist Financing Code of Practice;

- (ii) pursuant to the regulations; or
 - (iii) pursuant to any other enactment under which the Commission has power to impose an administrative penalty.
(Substituted by Act 8 of 2016)
- (1A) The Commission may take enforcement action against any person who—
- (a) carries on unauthorised financial services business;
 - (b) fails to comply with a directive given to him or her by the Commission; or
 - (c) fails to pay on or before the due date an administrative penalty imposed—
 - (i) under the Anti-money Laundering and Terrorist Financing Code of Practice;
 - (ii) pursuant to the regulations; or
 - (iii) pursuant to any other enactment under which the Commission has power to impose an administrative penalty.
(Inserted by Act 13 of 2009 and amended by Act 8 of 2016)
- (2) If the Commission is entitled to take enforcement action against a licensee under subsection (1), it may exercise one or more of the following powers—
- (a) revoke or suspend the licensee’s licence under section 38;
(Amended by Act 19 of 2006)
 - (b) appoint an examiner to conduct an investigation under section 36;
 - (c) require the licensee to appoint a qualified person under section 36A; *(Substituted by Act 19 of 2006)*
 - (d) issue a directive under section 40(1) and (3); *(Amended by Acts 13 of 2009 and 8 of 2016)*
 - (e) initiate such investigation as may be necessary to ensure compliance with this Act, any financial services legislation, the Regulatory Code, the Anti-money Laundering Regulations, the Anti-money Laundering and Terrorist Financing Code of Practice and any other enactment relating to money laundering, financing of terrorism and financing of weapons of mass destruction; or
(Amended by Acts 11 of 2004, 19 of 2006 and 8 of 2016)
 - (ea) where the licensee is a company, apply to the Court under section 162(1) or section 163(1) of the Insolvency Act, 2003 for the appointment of a liquidator in respect of the company; *(Inserted by Act 11 of 2004 and amended by Act 19 of 2006)*
 - (eb) issue a warning letter against the licensee; *(Inserted by Act 10 of 2011)*
 - (f) impose such administrative penalties on the licensee as may be provided for the regulations or pursuant to the Anti-money Laundering and Terrorist Financing Code of Practice or any other enactment under which the Commission has power to impose an

administrative penalty; *(Inserted by Act 6 of 2004 and amended by Act 8 of 2016)*

- (g) require the licensee to pay such costs and expenses as are incurred by the Commission in the taking of enforcement action against the licensee as the Commission thinks fit. *(Inserted by Act 6 of 2004 and amended by Act 19 of 2006)*

(2A) If the Commission is entitled to take enforcement action against any person under subsection (1A), it may—

- (a) issue an order against the person to cease carrying on unauthorised financial services business;
- (b) issue a warning letter against the person;
- (c) appoint an examiner to conduct an investigation under section 36 as if the person were a licensee, or initiate and conduct such other investigation as the Commission thinks fit;
- (d) issue a directive under section 40(3);
- (e) impose such administrative penalty on the person as may be provided for the regulations or pursuant to the Anti-money Laundering and Terrorist Financing Code of Practice or any other enactment under which the Commission has power to impose an administrative penalty; *(Amended by Act 8 of 2016)*
- (f) require the person to pay for costs and expenses incurred by the Commission in the conduct of any investigation or the taking of enforcement action against the person as the Commission thinks fit; *(Amended by Act 8 of 2016)*
- (g) issue an order prohibiting the person from taking up employment within the financial services industry for such period as the Commission may specify in the order or for an indefinite period. *(Inserted by Act 8 of 2016)*

(3) Where a power exercisable by the Commission under subsection (2) or (2A) is also exercisable by it under a financial services legislation, such power may be exercised either under this Act or under the financial services legislation, but not both. *(Amended by Act 13 of 2009)*

(4) The Commission's power under subsections (2)(g) and (2A)(f) to require a licensee or any other person to pay costs and expenses incurred by the Commission shall be construed to include the power to require payment of costs and expenses associated with any investigation against or in relation to the licensee or other person, including the appointment of an examiner, irrespective of whether or not enforcement action has been taken against the licensee or other person. *(Inserted by Act 13 of 2009 and amended by Act 8 of 2016)*

(5) Where a person against whom an enforcement action is taken, pending or contemplated pursuant to this section, any subsequent issuing by the Commission of a licence to the person to carry on financial services business is without prejudice to the Commission's exercise of its powers under this section in respect of the person. *(Inserted by Act 13 of 2009)*

(6) Where the Commission takes enforcement action against a licensee or any other person, the Commission shall, subject to subsection (6A), publish the

name of the licensee or other person in such manner as the Commission considers fit outlining the enforcement action taken and any sanction that the Commission may have imposed. *(Inserted by Act 13 of 2009 and amended by Acts 10 of 2011, 8 of 2016 and 2 of 2017)*

(6A) Where the Commission considers in any particular case in which enforcement action is taken that the nature of the breach or offence giving rise to the enforcement action, or the type of enforcement action taken, is of such a nature as not to warrant publication of the name of a licensee or other person, it may, notwithstanding subsection (6), not publish the name of the licensee or other person. *(Inserted by Act 2 of 2017)*

(6B) The Commission may, for the purposes of subsection (6A), determine the types of enforcement action that may not warrant publication under subsection (6). *(Inserted by Act 2 of 2017)*

(7) The publication of the enforcement action referred to in subsection (6) shall be made on the Commission's website and in such other manner as the Commission considers fit. *(Inserted by Act 10 of 2011).*

(8) *(Repealed by Act 10 of 2018)*

Public statements

37A. (1) Where the Commission is entitled to take enforcement action against a licensee, former licensee or any other person, the Commission may issue a public statement in such manner as it considers fit setting out the reasons for the enforcement action and the enforcement action that it intends to take, or has taken, against the licensee, former licensee or other person. *(Amended by Act 8 of 2016)*

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

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

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

issue the public statement and the reasons for the issue of the statement.
(Amended by Act 8 of 2016)

(4) If the Commission is of the opinion that it is necessary to do so to protect the public interest or the interests of any of the customers, creditors or investors of a licensee, former licensee or any other person, it may issue a public statement under subsection (3) without notice to the licensee, former licensee or other person, or with such shorter period as it considers appropriate. (Amended by Act 8 of 2016)

(Inserted by Act 19 of 2006)

Revocation or suspension of licence

38. (1) The Commission may at any time cancel, revoke or suspend the licence of a licensee if—

- (a) it is entitled to take enforcement action against the licensee under section 37;
- (b) the licensee has failed to commence or ceased to carry on the financial services business for which it was licensed; or
- (c) the licensee applies to the Commission for its licence to be cancelled.

(Amended by Acts 19 of 2006 and 13 of 2009)

(2) Subject to subsection (3), the period of suspension of a licence under subsection (1) shall not exceed 30 days. (Amended by Act 19 of 2006)

(3) If it is satisfied that it is in the public interest to do so, the Court may, on the application of the Commission, extend the period of suspension of a licence under this section for one or more further periods not exceeding 30 days each. (Amended by Act 19 of 2006)

(4) Before suspending, cancelling or revoking a licence under subsection (1)(a) or (b), the Commission shall give written notice to the licensee stating—

- (a) the grounds upon which it intends to suspend, cancel or revoke the licence; and
- (b) that unless the licensee, by written notice filed with the Commission, shows good reason why its licence should not be suspended, cancelled or revoked, the licence will be suspended or revoked on a date not less than 14 days after the date of the notice.

(Amended by Acts 19 of 2006 and 8 of 2016)

(5) (Repealed by Act 19 of 2006)

Application for a protection order

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

- (a) a licensee where his or her licence is about to be cancelled or revoked or where the Commission is entitled to take enforcement action against him or her under section 37; (Amended by Act 8 of 2016)

- (b) a former licensee; or
- (c) a person carrying on unauthorised financial services business.
(Substituted by Act 19 of 2006)

(2) On an application made under subsection (1), the Court may make such order as it considers necessary to protect or preserve the business or property of the person with respect to whom the application is made, or the interests of his or her clients, investors, creditors or the public, including—

- (a) an order preventing the person concerned or any other person from transferring, disposing of or otherwise dealing with property belonging to him or her or in his or her custody or control;
(Amended by Act 19 of 2006)
- (b) an order appointing an administrator to take over and manage the financial services business then carried on by the person concerned or carried on by him or her immediately before the suspension, cancellation or revocation of the licence, as the case may be; *(Amended by Acts 19 of 2006 and 8 of 2016)*
- (c) *(Repealed by Act 11 of 2004)*
- (d) an order granting the Commission a search warrant; and
- (e) where the person concerned is in contravention of this Act, the financial services legislation, or the Regulatory Code, an order requiring the person concerned to take such action, or to refrain from taking such action, as is necessary to bring him or her back into compliance with this Act, the financial services legislation or the Regulatory Code. *(Inserted by Act 19 of 2006)*
(Amended by Act 19 of 2006)

(2A) *(Repealed by Act 11 of 2004)*

(3) Without limiting the application of subsection (2)(b), an order made under that subsection shall specify the powers of the administrator and may—

- (a) require an administrator to provide security to the satisfaction of the Court;
- (b) fix and provide for the remuneration of the administrator;
- (c) require such persons as it considers necessary to appear before the Court for the purposes of giving information or producing records concerning the person with respect to whom the order is made or the business carried on by that person.
(Amended by Act 19 of 2006)

(4) An order made under subsection (2)(b) shall provide for reports to be submitted by the administrator to the Court and to the Commission.

(5) The Court may on its own motion or on the application of the Commission or the administrator—

- (a) give directions to the administrator concerning the exercise of his or her powers;
- (b) vary the powers of the administrator; or
- (c) terminate the appointment of the administrator.

- (6) An application under subsection (1) may be made—
- (a) on an *ex parte* basis or upon such notice as the Court may require; and
 - (b) before or after the Commission has given notice of intention to suspend, cancel or revoke a licence under section 38(4).
(*Substituted by Act 8 of 2016*)

Power to issue directives

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

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

(*Substituted by Act 8 of 2016*)

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

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

- (a) requiring him or her to cease carrying on that business;
- (b) requiring him or her to take such other action as the Commission considers—
 - (i) may be necessary to protect his or her property, or property in his or her custody, possession or control, or to protect his or her customers or creditors or potential customers or creditors; or
 - (ii) is appropriate, having regard to his or her circumstances or his or her customers or creditors or potential customers or creditors in relation to him or her.

(*Substituted by Acts 19 of 2006 and 8 of 2016*)

PART VA

A GENERAL SUPERVISORY POWERS

Practice directions

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

(2) A practice direction may extend to—

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

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

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

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

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

(Substituted by Act 8 of 2016)

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

(Inserted by Act 19 of 2006)

Conditions

40B. (1) In this section, “condition” means a condition attached to a licence issued or granted under a financial services legislation and includes a condition as varied in accordance with this section. *(Substituted by Act 8 of 2016)*

(2) A licence issued or granted under a financial services legislation may be issued or granted subject to such conditions as the Commission considers appropriate. *(Amended by Act 8 of 2016)*

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

(a) the Commission shall, together with the licence, issue a written notice specifying the condition or conditions; and

(b) if, in respect of any conditions, it considers that it is in the public interest to do so, the Commission may state those conditions on the licence.

(Amended by Act 8 of 2016)

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

(a) vary or revoke any condition; or

(b) impose new conditions on the licence. *(Amended by Act 8 of 2016)*

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

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

(Inserted by Act 19 of 2006)

Exemptions

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

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

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

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

(Amended by Act 8 of 2016)

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

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

(Inserted by Act 19 of 2006)

Power to require licensee to remove directors and other persons

40D. (1) Where the Commission forms the opinion that a person to which this section applies does not satisfy the Commission's fit and proper criteria, it may—

- (a) require the licensee to remove that person and, if it considers it appropriate, to replace him or her with another person acceptable to the Commission; or

(b) on its own volition—

- (i) suspend the person from performing any duty or function in or in relation to the licensee for a period determined by the Commission; or
- (ii) withdraw its approval of the person, where the person has been the subject of an approval by the Commission under this Act or any financial Services legislation.

(Amended by Act 13 of 2009)

(1A) Where a person is suspended by the Commission under subsection (1)(b)(i)—

- (a) the suspension shall not operate as a bar to any subsequent decision to remove him; and
- (b) the Commission may extend the period of suspension from time to time as it considers fit, but the cumulative period of suspension shall not exceed 9 months.

(Inserted by Act 13 of 2009)

(1B) 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), the person shall immediately cease to perform any function in relation to the licensee concerned. *(Inserted by Act 13 of 2009)*

(1C) A licensee that is required by the Commission to remove a person shall ensure that the person does not perform any function in relation to the licensee. *(Inserted by Act 13 of 2009)*

(1D) A person who acts contrary to subsection (1B) or a licensee that acts contrary to subsection (1C) is liable to the imposition by the Commission of such administrative penalty as may be prescribed pursuant to the regulations. *(Inserted by Act 13 of 2009 and amended by Act 8 of 2016)*

(2) This section applies to—

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

(Inserted by Act 19 of 2006)

Power to issue Regulatory Code

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

- (a) the conduct required of licensees and officers and agents of licensees; *(Amended by Act 8 of 2016)*
- (b) matters relating to market conduct; and *(Amended by Act 8 of 2016)*

(c) such other matters as may be required or permitted by this Act or any financial services legislation. *(Amended by Act 8 of 2016)*

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

(Substituted by Act 19 of 2006)

(3) The Regulatory Code—

(a) *(Repealed by Act 19 of 2006)*

(b) *(Repealed by Act 19 of 2006)*

(c) may provide for such measures as may be necessary to be taken by licensees to prevent financial crime, to regulate its detection and to monitor its incidence; and *(Amended by Act 19 of 2006)*

(d) shall be published in the *Gazette*.

(Amended by Act 19 of 2006)

(4) *(Repealed by Act 19 of 2006)*

(5) *(Repealed by Act 19 of 2006)*

Guidelines

41A. (1) The Commission may issue Guidelines with respect to the procedures to be followed by and the conduct expected of regulated persons in the operation of their licensed businesses and with respect to any other matter concerning this Act. *(Amended by Act 13 of 2009)*

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

(3) The Commission shall publish the Guidelines and any amendments thereto on the Commission's Internet site and in such other manner as may be specified in the regulations. *(Amended by Act 8 of 2016)*

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

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

(Inserted by Act 19 of 2006)

Approved forms

41B. (1) The Commission may, by publication on the Commission's Internet site and in such other manner as may be specified in the regulations, approve forms for the purposes of the regulatory legislation. *(Amended by Act 8 of 2016)*

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

(a) be in the form of, and contain the information specified in, the approved form; and

(b) have attached to it such documents as may be specified in the approved form.

(Inserted by Act 19 of 2006)

PART VI

(Repealed by Act 8 of 2016)

PART VII

ADMINISTRATIVE PROVISIONS

Duty of a Commissioner to disclose interest

47. (1) A Commissioner who has any direct or indirect personal, professional, business or pecuniary interest in any matter before the Board shall as soon as reasonably practicable, complete declaration of interest in the form prescribed in Schedule 4 and submit it to the Secretary appointed under section 5(7) who shall, before the commencement of the meeting at which the subject matter of the declaration is to be considered, bring the form to the attention of all Commissioners. *(Amended by Act 8 of 2016)*

(2) A Commissioner who has declared an interest under subsection (1) shall withdraw from any meeting whilst the matter in respect of which he or she has declared an interest is being considered by the Board and shall not express any view or take part in any vote concerning the matter.

(3) A Commissioner who fails to disclose an interest as required under subsection (1) shall, without prejudice to any penalty that may be imposed on him or her under section 54(1)(d), be liable to be removed from office as a Commissioner.

Duty to take oath

48. (1) Every Commissioner and staff of the Commission shall, prior to assuming office with the Commission, subscribe to the Oath of Confidentiality provided in Schedule 3.

(1A) The requirement to subscribe to the Oath of Confidentiality referred to in subsection (1) applies to every agent and adviser of the Commission and the obligation to maintain the confidentiality remains in force notwithstanding the termination of any relationship between the agent or adviser and the Commission. *(Inserted by Act 10 of 2011)*

(2) The staff of the Financial Services Department who, prior to the coming into force of this Act, have opted to be transferred to the Commission in accordance with section 58(2) shall, before such transfer takes effect, subscribe to the Oath of Confidentiality referred to in subsection (1).

(3) The Oath of Confidentiality referred to in subsection (1) shall be taken before a commissioner for oaths, notary public, Magistrate, Additional Magistrate, Registrar of the High Court or a Justice of the Peace. *(Amended by Act 10 of 2011)*

(4) The Managing Director shall keep a record of all Oaths of Confidentiality taken pursuant to this section.

Privileged information and documents

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

(2) For the purposes of subsection (1), information or a document comes to a legal practitioner in privileged circumstances if it is communicated or given to him or her—

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

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

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

(Inserted by Act 19 of 2006)

Admissibility of statements

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

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

- (a) that person has himself or herself introduced the statement in evidence; or
- (b) the prosecution of that person relates to—
 - (i) a failure or refusal by that person to produce documents or give assistance in accordance with this Act;

- (ii) an omission by that person to disclose material which should have been disclosed or the provision by that person of false or misleading information; or
- (iii) an untruthful statement by that person.
(Inserted by Act 19 of 2006)

Protection for disclosure

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

(Inserted by Act 19 of 2006)

Restrictions on disclosure of information

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

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

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

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

(3) Information is not protected information—

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

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

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

Gateways for the disclosure of information

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

- (a) required or permitted by an order of a Court of competent jurisdiction in the Virgin Islands; (*Amended by Act 8 of 2016*)
- (b) required or permitted by this or any other enactment; (*Amended by Act 8 of 2016*)
- (c) to a law enforcement agency in or outside the Virgin Islands;
- (d) to the Attorney General, Financial Investigation Agency, International Tax Authority and any other competent authority acting pursuant to an enactment; (*Substituted by Act 8 of 2016*)
- (e) to any person for the purpose of discharging any function or exercising any power under this Act or any financial services legislation, in either case whether the function or power is of the person disclosing the information or of the Commission or the Board;
- (f) to a foreign regulatory authority in accordance with section 33C;
- (h) to the Cabinet;
- (i) lawfully made to a person with a view to the institution, or for the purpose, of—
 - (i) criminal proceedings;
 - (ii) disciplinary proceedings, whether within or outside the Territory, relating to the discharge by a legal practitioner, auditor, accountant, valuer or actuary of his or her professional duties;
 - (iii) disciplinary proceedings relating to the discharge by a public officer, a member or employee of a statutory board or a Commissioner or employee of the Commission of his or her duties; or
- (j) for the purpose of legal proceedings in connection with—
 - (i) the winding up or dissolution of a licensee, a former licensee or a person who has carried on unauthorised financial services business; or
 - (ii) the appointment or duties of a receiver of a licensee, a former licensee or a person who has carried on unauthorised financial services business.

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

(Substituted by Act 19 of 2006)

Immunity

50. (1) No liability shall arise in respect of, or attach to—

- (a) the Commission or any Commissioner or member of the Enforcement Committee or Licensing and Supervisory Committee or an employee or agent of the Commission for anything done, in good faith, in the exercise of powers or performance of duties conferred or imposed by this Act or any financial services legislation; and *(Amended by Act 8 of 2016)*
- (b) any person for a disclosure made pursuant to section 49A or for information provided pursuant to a request under section 30(1) or 32(1). *(Substituted by Act 6 of 2004 and amended by Act 19 of 2006)*
(Amended by Act 8 of 2016)

(2) Where a Commissioner, member of the Enforcement Committee or Licensing and Supervisory Committee, or any employee of the Commission incurs any cost in defending an action brought against him or her in relation to anything done or omitted as Commissioner, member of the Enforcement Committee or Licensing and Supervisory Committee, or an employee of the Commission, the Commission shall pay for or reimburse the cost of defending the action. *(Inserted by Act 8 of 2016)*

PART VIIA

AUTHORISED AND RECOGNISED CUSTODIANS

Authorised custodians

50A. (1) The Commission may, on the written application of a person who holds a licence, approve that person as an authorised custodian of bearer shares if it is satisfied as to the matters specified in subsection (4).

(2) The Commission may, on the written application of a body corporate incorporated or formed outside the Virgin Islands that is not resident in and does not have a place of business in the Virgin Islands, approve that body corporate as an authorised custodian of bearer shares if it is satisfied as to the matters specified in subsection (4).

(3) An application under subsection (1) shall contain such information, be in such form and be accompanied by such documentation as may be prescribed in the regulations. *(Amended by Act 8 of 2016)*

(4) The Commission shall not approve a person as an authorised custodian unless it is satisfied that the person—

- (a) is a fit and proper person to act as an authorised custodian of bearer shares; and
- (b) has systems and procedures in place—
 - (i) for the secure custody of bearer shares; and

- (ii) that will enable it to comply with the obligations imposed on an authorised custodian under Division 5 of the BVI Business Companies Act.

(5) In determining whether a body corporate referred to in subsection (2) is fit and proper, the Commission shall, in addition to any other matters that it considers relevant, have regard to—

- (a) the prudential regulation exercised over the body corporate outside the Virgin Islands; and
- (b) the obligations relating to the countering of money laundering, the financing of terrorism and the financing of weapons of mass destruction imposed on the body corporate outside the Virgin Islands. *(Substituted by Act 8 of 2016)*

(6) A body corporate referred to in subsection (2) that is approved as an authorised custodian shall not, by virtue of that approval, be considered to be a licensee within the meaning of section 2. *(Amended by Act 19 of 2006)*
(Inserted by Act 6 of 2004)

Recognised custodians

50B. (1) The Commission may, by Order, recognise a person as a custodian of bearer shares (referred to as a “recognised custodian”) if it is satisfied that the person concerned—

- (a) is an investment exchange or a clearing organisation operating a securities clearance or settlement system; and
- (b) carries on business in a jurisdiction that is a recognised jurisdiction under Schedule 2 of the Anti-money Laundering and Terrorist Financing Code of Practice. *(Amended by Act 8 of 2016)*

(2) A recognised custodian is not a licensee within the meaning of section 2. *(Amended by Act 19 of 2006)*
(Inserted by Act 6 of 2004)

Conditions of approval

50C. (1) The approval of an authorised custodian under section 50A may be granted subject to such conditions as the Commission considers appropriate.

(2) The Commission may, upon giving reasonable written notice to an authorised custodian, or on the request of an authorised custodian—

- (a) vary or revoke any condition attaching to the approval of the authorised custodian; or
- (b) impose new conditions on the authorised custodian.
(Inserted by Act 6 of 2004)

Issuance of Guidance Notes

50D. The Commission may issue Guidance Notes specifying the practices and procedures that authorised custodians must have in place for the secure custody of bearer shares and to enable it to comply with the obligations imposed on an

authorised custodian under Division 5 of Part III of the BVI Business Companies Act. *(Inserted by Act 6 of 2004 and amended by Acts 13 of 2009 and 8 of 2016)*

Revocation of approval to act as authorised custodian

50E. (1) Where the licence of an authorised custodian is revoked, that person's authorisation to act as an authorised custodian shall automatically be revoked with immediate effect.

(2) The Commission may revoke its approval of a person as an authorised custodian if, in the opinion of the Commission, the person—

- (a) is no longer a fit and proper person to act as an authorised custodian of bearer shares;
- (b) breaches any condition to which its approval as authorised custodian is subject;
- (c) breaches any Guidance Notes issued by the Commission under section 50D; or
- (d) being a person specified in section 50A(2), becomes resident in or establishes a place of business in the Virgin Islands.

(Inserted by Act 6 of 2004)

PART VIII

MISCELLANEOUS

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

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

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

- (a) any money or other property paid or transferred by him or her under the agreement; and
- (b) compensation for any loss sustained by him or her as a result of having parted with it.

(3) This section applies to an agreement—

- (a) made after this section comes into force; and
- (b) the making or performance of which constitutes, or is part of, the unauthorised financial services business being carried on.

(Inserted by Act 19 of 2006)

Unenforceable agreements

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

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

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

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

by the person carrying on unauthorised financial services business.

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

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

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

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

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

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

(Inserted by Act 19 of 2006)

Annual meetings between Cabinet and board

51. (1) The Cabinet and the Board shall in each year meet to discuss issues relating to—

- (a) the operation, management and performance of the Commission;
- (b) the initiatives and future direction of the Commission;
- (c) Government policy with respect to the financial services industry;
- (d) developments in the international markets and current international initiatives on regulatory and legal measures which may affect the Territory; and
- (e) such other matters as either party may consider essential for strengthening the role of the Commission and enhancing the welfare of the Territory.

(2) The meeting referred to in subsection (1) shall be arranged by the Managing Director in consultation with the Governor and the Chairman of the Board.

Exemption from work permit requirement

52. A person who is employed by the Commission, whether on a permanent or contractual basis, and who would be required to obtain a work permit pursuant to the Labour Code Act, is exempted from applying for and holding a work permit for the purpose of his or her employment with the Commission.

General offences and penalties

53. (1) A person who, with intent to deceive or injure another, or for any purpose of this Act, makes any representation or submits any information which he or she knows to be false or does not believe to be true, commits an offence.

(2) Where a person commits an offence under subsection (1), he or she is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding \$5,000, or both.

Specific offences and penalties

54. (1) A person commits an offence if—

(a) *(Repealed by Act 19 of 2006)*

(b) he or she fails to comply with a requirement of a request under section 30(1) or a notice issued under section 32(1); *(Amended by Act 6 of 2004)*

(ba) in purported compliance with a request under section 30(1) or a notice issued by the Commission under section 32(1), he or she—

(i) provides information which he or she knows to be false or misleading in a material respect; or

(ii) recklessly provides information which is false or misleading in a material respect;

(Inserted by Act 19 of 2006)

(bb) for the purpose of obstructing or frustrating compliance with a request under section 30(1) or a notice issued by the Commission under section 32(1), he or she destroys, mutilates, defaces, hides or removes a document; *(Inserted by Act 19 of 2006)*

(c) he or she fails to comply with a directive under section 34(5) or 40; *(Inserted by Act 19 of 2006)*

(d) he or she, being a Commissioner, fails to disclose an interest as required under section 47, or makes a false or misleading statement in a declaration pursuant to that section; *(Substituted by Act 8 of 2016)*

(e) he or she discloses any information contrary to section 49A(1); or *(Amended by Act 19 of 2006)*

(f) he or she prevents, hinders or obstructs the Commission or any examiner appointed under section 36 or any other person lawfully acting on the authority of the Commission, in discharging duties imposed by this Act.

- (2) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years;
 - (b) on conviction on indictment, to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding \$5,000, or both.

Duty to notify breach or offence

54A. (1) Where an authorised or a registered agent knows or has reasonable grounds to suspect that a licensee for which it acts as agent has committed a breach or an offence under this Act or a financial services legislation, the authorised or registered agent commits an offence if it fails to notify the Commission in writing of the breach or offence within a reasonable period after it became known to or when the suspicion was held by the authorised or registered agent.

(2) An authorised or a registered agent who commits an offence under subsection (1) is liable to be fined by the Commission for an amount not exceeding \$7,500.

(3) Where, on the basis of information available to it, the Commission is satisfied that a breach or offence committed by a licensee under this Act or any financial services legislation is due wholly or partly to the default of an authorised or a registered agent, the Commission may impose on the authorised or registered agent a fine not exceeding such amount as is prescribed for the breach or offence in respect of the licensee.

(4) Where the penalty prescribed for a breach or an offence committed by a licensee under this Act or any financial services legislation does not comprise a fine, the Commission may, for the purposes of subsection (3), impose a fine not exceeding \$25,000.

(5) The Commission shall not impose a fine under this section unless it notifies the authorised or registered agent in writing of the Commission's intention to impose such a penalty, and invites the authorised or registered agent to make such representation in writing as it considers necessary and within such period as the Commission prescribes, providing reasons why the Commission should not impose a fine.

(6) Where, after considering any representation made, or after the lapse of the period prescribed, under subsection (5), the Commission imposes a fine against an authorised or a registered agent under subsection (2), (3) or (4), it—

- (a) shall notify the authorised or registered agent in writing of such decision and prescribe a period, not exceeding 60 days from the date of the decision, within which the fine shall be paid to the Commission ; and (*Amended by Act 8 of 2016*)
- (b) may, notwithstanding paragraph (a) and after receiving representation in writing from the authorised or registered agent within 14 days from the date of the decision, require the fine to be paid in such instalments as the Commission may consider fit.

(7) Where an authorised or a registered agent fails to pay a penalty within the period prescribed by the Commission—

- (a) the fine shall attract interest at the rate of 5% per annum from the date after it became due until the date the fine is paid; and
- (b) the Commission may recover the fine (including interest) by instituting civil proceedings against the authorised or registered agent before the Magistrate's Court.

(8) Any fine payable pursuant to this section shall be paid into the Commission's bank account for use by the Commission.

(8A) Where the Commission is entitled to impose a fine under this section, it may, where it considers it appropriate having regard to the nature and circumstances of the breach or offence concerned, issue a warning letter instead of imposing a fine. *(Inserted by Act 8 of 2016)*

(9) For the purposes of subsection (1), a "reasonable period" shall be construed to be a period not exceeding 7 days after the breach or offence became known to or the suspicion for the commission of such breach or offence was held by the authorised or registered agent.

(10) The liability of an authorised or a registered agent under this section does not absolve a licensee from any liability for a breach or offence committed by the licensee.

(11) An authorised or a registered agent shall not be liable in any legal proceedings on account of the fact that it notified the Commission of a breach or an offence committed under this Act or a financial services legislation by a licensee for which it acts as agent.

(12) This section applies to an authorised representative, insurance manager or any other person who acts in the capacity of an agent with respect to a licensee, appointed under this Act or any financial services legislation, as if the reference in this section to "authorised or registered agent" were to such authorised representative, insurance manager or other person acting in the capacity of an agent.

(Inserted by Act 13 of 2009)

Offences by bodies corporate

55. (1) Where an offence under section 53 or 54 has been committed by a body corporate, section 22(2) of the Interpretation Act shall apply, except that the words "the liability of whose members is limited" shall be omitted.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

(3) Where an offence under this Act is committed by a partnership, or by an unincorporated association other than a partnership, and is proved to have been committed with the consent or connivance of, or is attributable to the failure to exercise due diligence by, a partner in the partnership or, as the case may be, a person concerned in the management or control of the association, he or she, as well as the partnership or association, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

Power to impose a fine for an offence

56. (1) Where under this Act or any financial services legislation the Commission is satisfied that an act or conduct by a person constitutes an offence, the Commission may, where—

- (a) the offence carries a penalty of a fine; and
- (b) criminal proceedings have not been instituted against the person for the offence,

impose on the person a fine (not exceeding the prescribed fine) as the Commission may consider fit.

(2) Where a penalty of a fine under this Act or any financial services legislation is prescribed to be in addition to a penalty of imprisonment or other punishment, the Commission may nevertheless impose a penalty of a fine and the imposition of the fine only shall not be construed to be inconsistent with the penalty prescribed under the Act or any financial services legislation.

(3) The Commission shall not impose a fine against a person under subsection (1) unless it notifies the person in writing of—

- (a) the offence the Commission considers the person has committed; and
- (b) the Commission's intention to impose a fine on the person,

and invites the person to make a representation in writing as it considers necessary and within a period the Commission prescribes, providing reasons why the Commission should not impose a fine.

(4) Where, after considering any representation made, or after the lapse of the period prescribed, under subsection (3), the Commission imposes a fine against a person under subsection (1), it—

- (a) shall notify the person in writing of the decision and prescribe a period, not exceeding 60 days from the date of the decision, within which the fine shall be paid to the Commission; and
- (b) may, notwithstanding paragraph (a) and after receiving representation in writing from the person within 14 days from the date of the decision, require the fine to be paid in instalments as the Commission considers fit.

(5) Where a person fails to pay a penalty within the period prescribed by the Commission—

- (a) the fine shall attract interest at the rate of 5% per annum from the date after it became due until the date the fine is paid; and
- (b) the Commission may recover the fine (including interest) by instituting civil proceedings against the person before the Magistrate's Court.

(6) For the purposes of this section and notwithstanding anything to the contrary contained in this or any other enactment, an offence under this Act or any financial services legislation in respect of which a fine is imposed by the Commission shall be treated as if it were a breach.

(7) Any fine payable pursuant to this section shall be paid into the Commission's bank account for use by the Commission.

(Substituted by Act 13 of 2009)

Powers to require returns

56A. (1) The Commission may, by an Order published in the *Gazette*, require a regulated person to prepare and submit to the Commission a return of any matter concerning the business or affairs of the regulated person and his or her clients.

(2) Any return required by the Commission pursuant to subsection (1)—

- (a) shall be in a form and contain such detail as may be prescribed by the Commission in the Order issued under subsection (1);
- (b) may be used for the purpose of analysing and developing relevant statistical data for use by the Commission or for public dissemination;
- (c) may be used for the purpose of facilitating the supervisory functions of the Commission;
- (d) may be used in response to statistical inquiries by persons who are connected to or have interest in the work of the Commission or generally in the operation of financial services business in the Territory and which the Commission considers to be legitimate and appropriate;
- (e) may be used for the purpose of meeting any obligation or undertaking of the Commission by virtue of its membership or association of any institution or organisation or of implementing any domestic or internationally established standard or commitment;
- (f) may be applied for some other purpose consistent with the duties and functions of the Commission; and
- (g) shall be prepared and submitted for the period and within the time frame as may be prescribed in the Order.

(3) A regulated person shall ensure that information provided in any return is accurate and complete.

(4) Where a regulated person fails to comply with subsection (2)(a) or (f) or subsection (3) or contravenes any provision of the Order, he or she is liable to such administrative penalty as the Commission may prescribe in the Order, and section 62(1B) shall apply accordingly as if the reference in that section to "regulations made in accordance with subsection (1) were a reference to "the Order".

(Inserted by Act 13 of 2009)

Fees

57. (1) Where fees are chargeable under any financial services legislation, the Cabinet may, on the advice of the Commission, impose or amend such fees in the manner prescribed in the financial services legislation.

(2) Any fee imposed or amended by the Cabinet pursuant to subsection (1) shall be subject to a negative resolution of the House of Assembly.

(3) Where the Commission prepares a manual or other documentation pursuant to the performance of its functions or for the purpose generally of ensuring the efficient administration of the purposes of this Act or any financial services legislation, it may charge such fee for use of the manual or other documentation as it may consider necessary to defray its costs.

(4) Any fee received pursuant to subsection (3) shall be paid into the Commission's reserve account or such other account as the Commission deems fit. *(Amended by Act 8 of 2016)*

(5) Where a licence is applied for, or the approval of the Commission is required to be obtained, under this Act or any financial services legislation, the Commission may charge and collect in respect of an application for such licence or approval, such fee as is provided for in the regulations, or in or under the relevant financial services legislation. *(Inserted by Act 6 of 2004 and amended by Act 8 of 2016)*

Entitlement of Commission to recover costs

57A. For the removal of doubt, the Commission shall, in accordance with the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000, the Magistrate's Code of Procedure Act and any enactment governing the awarding of costs in any proceedings, be entitled to recover its costs that arise out of, or are related to, all or any part of any proceedings to which it is a party. *(Inserted by Act 6 of 2004)*

Appeal

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

(Inserted by Act 8 of 2016)

Transitional provisions: Officers and employees

58. (1) Subject to subsection (2), every officer and employee of the Financial Services Department shall, upon the coming into force of this Act, be deemed to be transferred from the service of the Government to the service of the Commission upon terms and conditions not less favourable in aggregate than those which were attached to the appointments held by such officers and employees under the Government.

(2) Every officer and employee of the Financial Services Department who is deemed to have been transferred under subsection (1) shall, within 6 months of the coming into force of this Act, have the option of electing—

- (a) to continue in the service of the Commission, in which case such service shall be retrospective from the date of his or her transfer and he or she shall be entitled to such pension, gratuity and other allowances and rights, if any, as he or she would have received had he or she been retired from the service of the Government on

the abolition of his or her office on the date of his or her transfer to the Commission;

- (b) to be transferred to another department of the Government, subject to a suitable vacancy existing, with his or her service with the Commission counting as service with the Government in respect of his or her pension, gratuity and other allowances and rights, if any; or
- (c) to be deemed to have retired from the service of the Government on the abolition of his or her office on the date he or she ceases to be in the service of the Commission.

(3) Where any officer or employee referred to in this section fails to elect as provided under subsection (2), he or she shall be deemed to have elected under subsection (2)(a) and he or she shall be so treated accordingly.

(4) The Commission shall reimburse the Government with the cost of any pension, gratuity and other allowances and rights, if any, arising from the period which any such officers or employees who elect not to continue with the Commission did service with the Commission.

(5) Nothing in this section shall be deemed to affect the right of the Commission—

- (a) to terminate the employment of any officer or employee transferred to the service of the Commission; or
- (b) to vary the rate of pay or conditions of service of an officer or employee, in the manner and to the extent that the Government could have done had he or she continued in the service of the Government.

(6) Where any officer or employee has elected to continue in the service of the Commission under subsection (2) or has been deemed to so continue under subsection (3), he or she shall not be entitled to be paid any pension, gratuity or other allowance that may have accrued to him or her whilst in the service of the Commission, until the time when he or she would have qualified for a pension, gratuity or other allowance under the Pensions Act had he or she continued in the service of the Government.

Transitional provisions: contracts

59. Where, prior to the coming into force of this Act, the Financial Services Department had a contract of employment with a person other than an officer or employee referred to in section 58 or a contract for the provision of a service with any person which has not been discharged, then, upon the coming into force of this Act—

- (a) such contract shall continue to have effect in accordance with its terms as if it was originally made between such person and the Commission; and
- (b) all the rights, powers, duties and liabilities which accrued under or in connection with such contract shall be enforceable by or against the Commission as if it were originally made between that person and the Commission.

60. *(Omitted)*

Power to amend Schedules 1 to 4

61. The Cabinet may, on the advice of the Commission, amend Schedules 1 to 4 by Order published in the *Gazette*.

Regulations

62. (1) The Cabinet may, on the advice of the Commission, make such regulations as it considers necessary for the effective carrying out of the provisions of this Act.

(1A) Without limiting subsection (1), regulations made under subsection (1) may provide for the imposition by the Commission of administrative penalties on licensees that contravene a provision of this Act, any regulatory legislation, the Regulatory Code or any directive issued by the Commission. *(Inserted by Act 19 of 2006)*

(1B) An administrative penalty paid to the Commission under regulations made in accordance with subsection (1) shall be paid into the Commission's bank account for use by the Commission. *(Inserted by Act 19 of 2006)*

(2) Any regulations made under subsection (1) shall be subject to a negative resolution of the House of Assembly.

SCHEDULE 1

(Section 3(3))

ADMINISTRATION AND PROCEEDINGS OF THE COMMISSION

1. The Commission shall have an official seal for the authentication of documents issued by the Commission and the application of the seal of the Commission shall be authenticated by the signature of a person so authorised by the Commission.
 2. The Regulatory Code and any directive issued by the Commission, including any amendment to such Code or directive, 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.
 3. A document purported to be executed under the seal of the Commission, or signed on its behalf, shall be received in evidence and, unless the contrary is proved, shall be taken to be so executed or signed.
 4. Anything permitted or required to be done by the Commission may be done by any Board member or any employee of the Commission who is authorised for that purpose by the Commission either generally or specifically.
 5. Paragraph 4 does not apply to the issue of the Regulatory Code or any directive issued by the Commission, including any amendment to such Code or directive.
 6. The Board may establish committees which may include persons who are not members of the Commission.
 7. The appointment and revocation of appointment of Board members shall be notified in the *Gazette* by the Commission.
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SCHEDULE 2*(Section 2(1))***FINANCIAL SERVICES LEGISLATION**

PART 1

REGULATORY LEGISLATION

1. Banks and Trust Companies Act
2. Company Management Act
3. Insurance Act
4. Securities and Investment Business Act *(Amended by Act 2 of 2010)*
5. Proceeds of Criminal Conduct Act
6. Insolvency Act
7. Financing and Money Services Act *(Inserted by Act 8 of 2016)*

PART 2

REGISTRY LEGISLATION

1. Merchandise Marks Act (Cap. 154)
2. Patents Act (Cap. 155)
3. Registration of United Kingdom Patents (Cap. 156)
4. *(Deleted by Act 8 of 2016)*
5. *(Deleted by Act 8 of 2016)*
6. United Kingdom Designs (Protection) Act (Cap. 159)
7. Partnership Act
8. BVI Business Companies Act
9. *(Deleted by Act 8 of 2016)*
10. *(Deleted by Act 8 of 2016)*
11. Trade Marks Act *(Inserted by Act 8 of 2016)*

(Substituted by Act 19 of 2006)

SCHEDULE 3

(Section 48)

OATH OF CONFIDENTIALITY

I,, being a Board member/officer/employee/agent/adviser* of the Financial Services Commission solemnly swear/affirm* that I shall keep confidential all information concerning a regulated person, financial services business or other person in connection with or relative to a regulated person or financial services business which has come to my knowledge in my capacity as such Board member/officer/employee/agent/adviser * of the Commission or in relation to such office that I hold and I shall not divulge such information except as authorised by and in accordance with law.

So help me God (*omit if affirming*).

Sworn/Affirmed before me, a Magistrate/Additional Magistrate/Registrar of the High Court/Justice of the Peace * this day of ,

(Name of person Swearing/Affirming) (Magistrate/Additional Magistrate/Registrar of the High Court/Justice of the Peace)*

SCHEDULE 4

(Section 47(1))

DECLARATION OF INTEREST BY BOARD MEMBERS

I, of (state address), being a member of the Board of the Financial Services Commission established under the Financial Services Commission Act and in pursuance of the requirements of section 47 of the Act, hereby declare that I do have a direct/indirect* personal/professional/business/pecuniary* interest in the subject of (state the subject) which has been submitted to, or may be before, the Commission and is due for consideration by the Board on or about the day of , 20

The nature of my interest is as follows (describe nature of interest):

I FURTHER DECLARE that the declaration made herein is correct and true and within my knowledge and I shall not be taking part in the discussion of the interest above described, at the meeting schedule for the day of , 20 (same as date indicated above) or the date to which the subject matter of my declaration may be adjourned. DECLARED this day of ,.

Board Member

Received by me, the Secretary of the Board, this day of, 20 at am/pm.

* Delete as appropriate

SCHEDULE 5

(Omitted)