

VIRGIN ISLANDS
REGULATORY (AMENDMENT) CODE, 2023
ARRANGEMENT OF SECTIONS

SECTION

1. Citation and commencement
2. Explanatory Notes to Section 1 amended
3. Section 2 amended
4. Explanatory Notes to Section 6 amended
5. Explanatory Notes to Section 10 amended
6. Section 15 amended
7. Section 16 amended
8. Explanatory Notes to section 16 amended
9. Schedule 1 amended
10. Schedule 1A amended

VIRGIN ISLANDS
STATUTORY INSTRUMENT 2023 NO. 24
FINANCIAL SERVICES COMMISSION ACT
(REVISED EDITION 2020)

Regulatory (Amendment) Code, 2023

[Gazetted 16th March, 2023]

The Financial Services Commission, in exercise of the powers conferred by section 41 of the Financial Services Commission Act, Revised Edition 2020, and after consultation with the Minister of Finance and with the approval of the Board, issues this Code.

Citation and commencement

1. (1) This Code may be cited as the Regulatory (Amendment) Code, 2023.
- (2) This Code shall come into force on the 17th day of March, 2023.

Explanatory Notes to Section 1 amended

2. The Explanatory Notes to section 1 of the Regulatory Code, Revised Edition 2020 (herein after referred to as “the principal Code”) are amended

- (a) in paragraph (i),
 - (i) by deleting the word “and” at the end of subparagraph (g);
 - (ii) by deleting the full-stop at the end of paragraph (h) and substituting the words “; and”;
 - (iii) by inserting after subparagraph (h), the following new subparagraph
“(i) *Virtual Assets Service Providers Act, No. 17 of 2022.*”;
and
 - (iv) by deleting the closing paragraph and substituting the following closing paragraph
“*However, the Regulatory Code has no application with respect to the Insolvency Act, except where specified; it has limited application with respect the Securities and Investment Business Act, Revised Edition 2020 (as funds are not subject to the Code) and only incidental application with respect to the Proceeds of Criminal Conduct Act.*”; and
- (b) by deleting paragraph (xii) and substituting the following paragraph

“(xii) Specific obligations of a licensee with respect to the prevention of money laundering or terrorist financing are covered in the Anti-money Laundering Regulations and the Anti-Money Laundering and Terrorist Financing Code of Practice issued by the Commission under the Proceeds of Criminal Conduct Act. This Code and the Anti-Money Laundering and Terrorist Financing Code of Practice are to be read in conjunction with each other where areas of compliance correspond.”.

Section 2 amended

3. Section 2 of principal Code is amended in subsection (1)

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

““controller”, in relation to a licensee, means a person with a controlling interest in a licensee;”

““controlling interest”, in relation to a licensee, means the ownership or interest in the licensee or in any holding company of the licensee which entitles a person to exert influence over a licensee, or any holding company of the licensee, and includes a person who

- (a) has more than 50% of the voting rights of the licensee;
- (b) has a significant interest in the licensee which, although not constituting 50% of the voting rights of the licensee (in aggregate or otherwise), gives the person a considerable advantage in the voting rights of the licensee;
- (c) has an influence over the activities of the licensee without having a significant interest; or
- (d) gives instructions to a director or senior officer of the licensee to which that director or senior is accustomed to acting;”;

- (b) by deleting the definition of “significant interest” and substituting the following definition

““significant interest”, in relation to an undertaking or licensee, means a holding or interest in the undertaking or licensee or in any parent of the undertaking or licensee held or owned by a person, either alone or with any other person and whether legally or equitably, that entitles or enables the person, directly or indirectly

- (a) to control 10% or more of the voting rights of the undertaking or licensee;
- (b) to a share of 10% or more in any distribution made by the undertaking or licensee;

- (c) to a share of 10% or more in any distribution of the surplus assets of the undertaking or licensee; or
 - (d) to appoint or remove one or more directors of the undertaking or licensee;”; and
- (c) in the definition of “significant owner”, by inserting after the word “undertaking”, wherever it appears, the words “or licensee”.

Explanatory Notes to Section 6 amended

4. The Explanatory Notes to section 6 of the principal Code are amended

- (a) in paragraph (i), by deleting subparagraph (c) and substituting the following subparagraph

“(c) funds that are registered as public funds, or recognised as private funds, professional funds or private investment funds under the Securities and Investment Business Act, Revised Edition 2020 or approved or incubator funds under the Investment Business (Approved and Incubator Funds) Regulations, Revised Edition 2020.”;

- (b) by deleting paragraph (ii) and substituting the following paragraph

“(ii) Save for the requirements of section 15 and Schedule 1A of this Code, licensed insolvency practitioners are otherwise excluded because they are subject to a separate Code of Practice issued under the Insolvency Act, Revised Edition 2020.”; and

- (c) by deleting paragraph (iii) and substituting the following paragraph

“(iii) This Code is largely inappropriate for, and therefore does not apply to, loss adjusters or to funds (which are essentially investment vehicles). The fit and proper requirements outlined in section 15 and Schedule 1A however apply to directors of public funds.”

Explanatory Notes to Section 10 amended

5. The Explanatory Notes to section 10 of the principal Code are amended

- (a) in the heading above paragraph (iv), by inserting after the words “Significant Owners”, the words “, Controllers”; and

- (b) by deleting paragraph (iv) and substituting the following paragraph

“(iv) An applicant will have to satisfy the Commission that its directors, its senior management [individually and collectively] and its significant owners and controllers satisfy the Commission’s fit and proper criteria. In determining whether a person is a “significant owner” or “controller”, the Commission is required to look behind legal ownership to determine ultimate beneficial ownership. The Commission’s fit and proper criteria are set out in Division 2 of this Part of the Code.”

Section 15 amended

6. Section 15 of the principal Code is amended by deleting paragraph (c) and substituting the following paragraph

“(c) the directors, senior managers, significant owners and controllers of an applicant or licensee, as the case may be;”.

Section 16 amended

7. Section 16 of the principal Code is amended

(a) in subsection (2) by inserting after the words “significant owner”, the words “or controller”.

Explanatory Notes to section 16 amended

8. The Explanatory Notes to section 16 of the principal Code are amended in paragraph (i), by deleting the words “and significant owners” and substituting the words “, significant owners and controllers”.

Schedule 1 amended

9. Schedule 1 of the principal Code is amended

(a) in paragraph 7, by deleting the words “A money services licence” and substituting the words, “A Class A, Class B, Class C, Class D, Class E and Class F licence”; and

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

“9. Registration granted as a Virtual Assets Service Provider under the Virtual Assets Service Provider Act, No. 17 of 2022.”

Schedule 1A amended

10. Schedule 1A of the principal Code is amended

(a) in paragraph 2, in the closing paragraph, by inserting after the words “significant owner”, the words “or controller”;

(c) in paragraph 3, in the opening paragraph, by inserting after the words “other person concerned”, the words “, including directors, senior officers, significant owners and controllers of the regulated person”; and

(d) in paragraph 13, by inserting after the words “significant interest”, wherever they appear, the words “or controlling interest”.

Issued by the Financial Services Commission this 15th day of March, 2023.

(Sgd.) Kenneth Baker
Managing Director/CEO
Financial Services Commission