

British Virgin Islands Financial Services Commission



FINANCIAL SERVICES (CONTINUITY OF BUSINESS) ACT, 2017

Frequently Asked Questions

The Virgin Islands' infrastructure was severely impacted following the passage of Hurricane Irma on 6th September 2017. This included significant damages to public and other infrastructure including building structures (both residential and commercial), losses in electricity and water supply and disruptions in communication services. The consequential effects of Hurricane Irma, may make the conduct, operation, licensing, regulation and supervision of financial services business in the Virgin Islands difficult or impossible to undertake. Being cognizant that some flexibility in regulation and supervision is required during particularly arduous periods, the Financial Services (Continuity of Business) Act, 2017 ("the Act") has been developed to promote the continuity of financial services business in the Virgin Islands without jeopardizing the prosperity and integrity of the financial services sector.

The Act seeks to facilitate the ongoing operation of financial services business through the permissibility of short-term relocation of business operations to other jurisdictions without consequential breach of relevant financial services legislation. Licensees, where necessary, are also allowed to temporarily relocate to other premises within the Virgin Islands by virtue of the Act. The Act also offers modifications and variations to certain obligations given the hindrances that may be experienced while the Virgin Islands seeks to recover during this time. Changes in the Financial Services Commission's ("the Commission") processes and procedures have also been introduced within the Act, with a view to making decisions and taking actions on an expedited basis.

The Frequently Asked Questions on the Financial Services (Continuity of Business) Act, 2017 ("the FAQs") seek to answer questions licensees may have relating to relocation, within and outside the Virgin Islands; how certain obligations are to be met; and the regulatory allowances and modifications permissible by virtue of the Act.

Licensees should read the FAQs, in conjunction with the provisions in the Act, as the improper application of the Act may have implications on the licensees' compliance with relevant financial services legislation.

Notifications, Reporting & Applications under the Act

Any notifications, reporting and requests made pursuant to the Act should be submitted to the director of the licensees' specific supervisory division at the following address:

British Virgin Islands Financial Services Commission
Pasea Estate
P.O. Box 418
Road Town, Tortola VG1110
British Virgin Islands

1. What is the Financial Services (Continuity of Business) Act, 2017?

The Financial Services (Continuity of Business) Act, 2017 (“the Act”) was developed to facilitate the continuity of financial services business in the wake of the business interruption events of September 2017. Recognising that the events may have displaced some licensees and/or caused impairment in a licensee’s ability to adequately conduct financial services business, the Act seeks to dis-apply or modify certain requirements to allow the continued provision of financial services business in the Virgin Islands in compliance with all applicable financial services legislation.

2. When does the Act take effect and when does it cease?

- The provisions of the Act have been deemed to take effect as of 7th September, 2017 and will remain in force until 31st December, 2017.
- The effects of the Act may be extended up to a period of 3 months, where it is considered that exceptional circumstances exist relating to the Virgin Islands’ level of recovery post Hurricane Irma.
- Any extension of the operation of the Act, will be published in the Virgin Islands Gazette by way of an Order.

Relocation to another Jurisdiction

3. Under the Act, where due to the passage of Hurricane Irma, persons suffered significant damage or where it is otherwise difficult or impossible to conduct its business operations in the Virgin Islands, a licensee is permitted to temporarily relocate the whole or part of its business operations to another jurisdiction where this facilitates the continuity of its business.

3.1 To whom does the ability to relocate to another jurisdiction apply?

Licensees mandated by law to maintain a physical presence in the Virgin Islands are eligible to temporarily relocate. This however does **not** extend to Insurers (Categories A or B), insurance intermediaries or banks holding General Banking, Restricted Class I or Restricted Class II Banking licences.

3.2 What should a licensee do if it has temporarily relocated to another jurisdiction?

- Notify the Commission within one month after the date of its relocation or after the Act is published in the Gazette (*whichever is later*), providing details as required under section 7(1) of the Act;
- Submit periodic reports to the Commission (*within 2 month intervals following initial notification*) detailing its progress in relocating back to the Virgin Islands;
- Ensure that its licensed financial services business remains segregated from any other business in the jurisdiction to which it has relocated, including from the business of any other related entities in that jurisdiction;
- Ensure its continued compliance with all Virgin Islands law unless otherwise dis-applied or varied pursuant to the Act; and
- Ensure that it operates within the legal confines of the jurisdiction to which it has relocated and is not in contravention of that jurisdiction’s laws.

3.3 How long can a licensee operate in another jurisdiction?

A licensee is only allowed to operate in another jurisdiction while the Act remains in effect.

3.4 What should the licensee do after it relocates back to the Virgin Islands?

The licensee must notify the Commission of its relocation back to the Virgin Islands within seven (7) days of its return.

3.5 What happens if the licensee has not relocated back to the Virgin Islands upon the expiration of the Act?

The licensee will be deemed to have left the Virgin Islands permanently and may be subject to enforcement action.

3.6 What if the licensee has good reason for not relocating to the Virgin Islands upon the expiration of the Act?

The licensee should provide to the Commission with its reason within seven (7) days of the expiration of the Act. The Commission may consider such reason and communicate its decision to the licensee and impose any consequential requirements or actions accordingly.

3.7 What happens if a licensee relocates back to the Virgin Islands and wishes to operate at premises different from its principal or registered office?

The licensee must notify the Commission of the intended change or change of its principal office and file a change of Registered Office at the Registry of Corporate Affairs, within seven (7) days of its return. Licensees will **not** be subject to any applicable fees under these circumstances.

Relocating within the Virgin Islands

4. Under the Act, where due to damage sustained to the premises where it maintained its Registered Office or conducted financial services business, or the subsequent unsuitability of the premises for the conduct of its business, a licensee may relocate to alternative premises in the Virgin Islands.

4.1 Who does this apply to?

All licensees mandated by law to maintain a physical presence in the Virgin Islands.

4.2 What should a licensee do if it relocated to another office or premises in the Virgin Islands?

Notify the Commission within one month after the date of its relocation or after the Act is published in the Gazette (whichever date is later), providing details as required under section 6(2) of the Act.

4.3 Will a licensee be subject to any fees if it relocates in the Virgin Islands?

- Where a licensee temporarily relocates to an office or premises other than its registered or principal office, and has notified the Commission in accordance with the Act, the relocation will not be treated as a change of its principal office or registered office, and as such no fee is payable.
- Where a licensee fails to resume operations at its usual principal and/or registered office within 3 months of the expiration of the Act, it would be deemed to have permanently relocated and be subject to relevant application, approval and filing fees at the Commission and the Registry of Corporate Affairs respectively.

4.4 What if a licensee fails to resume operations at its usual principal and/or registered office but instead permanently relocates to a new location due to unrepairable damage or unavailability of the premises at its principal or registered office?

The licensee must notify the Commission of this fact within seven (7) days after 3 months of the expiration of the Act. That licensee will not be liable to any fees relating to the change in principal office or registered office at the Commission or the Registry of Corporate Affairs.

Extensions of Time

5. The Act contains provisions allowing licensees and other persons, operating in the Virgin Islands, to seek further extensions in performing their obligations, where an extension was previously granted, and was due on or after 7th September, 2017.

5.1 What is required when applying for a further extension?

Within seven (7) days of the publication of the Act in the Gazette, a licensee or other person must apply to the Commission in writing providing the following:

- the obligation that remains outstanding;
- the date of the extension of time previously granted to perform the obligation;
- period of extended time being sought; and
- factors that require consideration of a grant of an extension.

5.2 Is a licensee subject to any additional fees where it requests a further extension of time pursuant to the Act?

Where a further extension of time is applied for and/or granted, the fees related to the extension do not apply.

Residence in another Jurisdiction (Directors and Authorised Agents)

6. Under the Act, where a licensee is required to have a director or authorised agents resident in the Virgin Islands by virtue of law, the director or authorised agents may establish residence in a jurisdiction outside the Virgin Islands for the period that the Act remains in effect.

6.1 What should a licensee do if its director or authorised agent(s) who is required to be resident in the Virgin Islands is resident outside the Virgin Islands?

- The licensee must notify the Commission of this fact and provide the address of that director and/or authorised agent(s) in the jurisdiction in which residency has been obtained, within one month after the change in residence or publishing of the Act in the Gazette (*whichever is later*).
- The licensee must notify the Commission where the director and/or authorised agent returns to residency in the Virgin Islands, with seven (7) days of his/her return.

Settlement of Penalties

7. Pursuant to the provisions of the Act, where the Commission imposed an administrative penalty on a licensee or other person prior to 7th September 2017 that had not been settled prior to that date, that licensee or other person may apply to the Commission in writing for an extension of time to settle its penalty or to settle the penalty in instalments. The Commission may consider applications for extensions of time for settlement or settlement in instalments on a case by case basis.

7.1 What should be included in an application for an extension of time to settle a penalty?

- the period of time for which the extension is being sought; and
- the factors considered in determining the extended time period being sought.

7.2 What should be included in an application to settle penalty in instalments?

- the date at which the licensee or other person expects to compete instalment payments;
- the total number of instalment payments expected to be made;
- the frequency of instalment payments (i.e. weekly, bi-weekly, monthly, etc.);
- the amount to be settled in each instalment; and
- the factors considered in determining the payment schedule.

Filing at the Commission and the Registry of Corporate Affairs

8. Where a licensee or other person was required to file a matter at the Commission or the Registry of Corporate Affairs on or before 30th September 2017, such person is allowed to file this matter within 7 days after the Act is published in the Gazette without attracting any further penalties.

8.1 Will a licensee or other person be liable for any penalties for filing within the seven days?

No late penalties will be applied where filing is made within the seven (7) day time period.

8.2 Does the disapplication of penalties include the 30th September 2017 deadline for filing Registers of Directors at the Registry of Corporate Affairs?

Yes. There are no additional penalties for late filing of Registers of Directors where due by 30 September 2017, where filing is made within seven (7) days of the publication of the Act in the Gazette.

Conducting Business as Loss Adjusters

9. For the period that the Act remains in the effect, licensing requirements relating to loss adjusters are dis-applied, alternatively allowing for the registration of such persons with the Commission.

9.1 How should a loss adjuster register with the Commission?

All Insurers should ensure that the Particulars of Loss Adjuster (Form LA-1) is completed and submitted to the Commission on behalf of each person retained for the provision of loss adjuster services during the period the Act remains in effect.

9.2 What if the loss adjuster has already left the Virgin Islands?

Form LA-1 should be completed on behalf of all loss adjusters that commenced operations in the Virgin Islands beginning 7th September 2017, whether or not the adjuster remain in the Virgin Islands.

9.3 When should the Form LA-1 form be submitted to the Commission?

Forms with respect to these persons should be submitted within 10 days of the publication of the Act in the Gazette.

9.4 Where can a Form LA-1 form be found?

Form LA-1 can be found on the Commission's website www.bvifsc.vg, under the Form Library for Insurance.