

**VIRGIN ISLANDS**

**THE FINANCIAL SERVICES COMMISSION ACT, 2001**

**No. 12 OF 2001**

**Amended by  
6/2004  
11/2004  
19/2006  
UKSI 2007/1678**

**Subsidiary Legislation**

**Financial Services Commission (Fees) Regulations, 2005  
(S.I. 2005 No. 60)**

**Financial Services (Administrative Penalties) Regulations, 2006  
(S.I. 2006 No. 86)  
Amended by S.I. 2007/62**

**Financial Services (Exemptions) Regulations, 2007  
(S.I. 2007 No.50)  
Amended by  
S.I. 2007/79**

**Revised under the Statute Revision Act, 2005 (No. 25 of 2005)  
as of 1<sup>st</sup> January, 2008**

**VIRGIN ISLANDS**

**FINANCIAL SERVICES COMMISSION ACT, 2001**

**ARRANGEMENT OF SECTIONS**

*Section*

**PRELIMINARY**

1. Short title and commencement.
2. Interpretation.

**PART I**

**THE FINANCIAL SERVICES COMMISSION**

3. Establishment of the Financial Services Commission.
4. Functions of the Commission.
5. Establishment and membership of the Board.
6. Functions of the Board.
7. Meetings of the Board.
8. Tenure of office.
9. Resignation and removal of Commissioners.
10. Appointment and functions of Managing Director.
11. Appointment of other staff.
12. Transfer of statutory functions, powers and duties to the Commission.
13. General powers of the Commission.

**PART II**

**COMMITTEES OF THE COMMISSION**

14. Establishment of committees.
15. Membership of the committees.
16. Functions of the Licensing and Supervisory Committee.
- 16A. Functions of the Enforcement Committee.
17. Provisions relating to each committee.

**PART III  
FINANCIAL AND REPORTING PROVISIONS  
APPLICABLE TO THE COMMISSION**

18. Funds and resources of the Commission.
19. Government Trust Account.
20. Payments out of the Government Trust Account.
21. Transfer of deposit accounts to Commission.
22. Borrowing powers.
23. Financial year of the Commission.
24. Budget and annual work plan.
25. Accounts and Audit.
26. Surplus, how dealt with.
27. Annual report.
28. Exemption from taxation, etc.

**PART IV  
INFORMATION GATHERING AND COOPERATION  
WITH FOREIGN REGULATORY AUTHORITIES**

29. *(Repealed)*
30. General powers of disclosure and related restrictions.
31. Recovery of costs.
32. Power of Commission to request information and documents.
33. Commission may apply for a search warrant.
- 33A. Examination under oath before a Magistrate.
- 33B. Examination under oath by the Commission.
- 33C. Duty to cooperate.
- 33D. Provision of assistance to foreign regulatory authorities.

**PART V  
COMPLIANCE AND ENFORCEMENT**

34. Compliance function.
35. Compliance inspections.
36. Appointment of examiners.
- 36A. Appointment of qualified person.
37. Enforcement action.
- 37A. Public statements.
38. Revocation or suspension of licence.
39. Application for a protection order.
40. Power to issue directives.

**PART VA  
GENERAL SUPERVISORY POWERS**

- 40A. Practice directions.
- 40B. Conditions.
- 40C. Exemptions.
- 40D. Power to require licensee to remove directors and other persons.
- 41. Power to issue Regulatory Code.
- 41A. Guidelines.
- 41B. Approved forms.

**PART VI  
FINANCIAL SERVICES APPEAL BOARD**

- 42. Establishment and constitution of a Financial Services Appeal Board.
- 43. Secretary of the Appeal Board.
- 44. Right of appeal.
- 45. Procedures of the Appeal Board.
- 46. Decisions of the Appeal Board, how taken.

**PART VII  
ADMINISTRATIVE PROVISIONS**

- 47. Duty of Commissioner to disclose interest.
- 48. Duty to take oath.
- 48A. Privileged information and documents.
- 48B. Admissibility of statements.
- 48C. Protection for disclosure.
- 49. Restrictions on disclosure of information.
- 49A. Gateways for the disclosure of information.
- 50. Immunity.

**PART VIIA  
AUTHORISED AND RECOGNISED CUSTODIANS**

- 50A. Authorised custodians
- 50B. Recognised custodians.
- 50C. Conditions of approval.
- 50D. Issuance of Guidance Notes.
- 50E. Revocation of approval to act as authorised custodian.

**PART VIII**  
**MISCELLANEOUS**

- 50F. Enforceability of agreements made by persons carrying on unauthorised financial services business.
- 50G. Unenforceable agreements.
- 51. Annual meetings between Council and Board.
- 52. Exemption from work permit requirement.
- 53. General offences and penalties.
- 54. Specific offences and penalties.
- 55. Offences by bodies corporate.
- 56. Power to compound an offence.
- 57. Fees.
- 57A. Entitlement of Commission to recover costs.
- 58. Transitional provisions: Officers and employees.
- 59. Transitional provisions: contracts.
- 60. Repeals and amendments.
- 61. Power to amend Schedules 1 to 4.
- 62. Regulations.

SCHEDULE 1  
SCHEDULE 2  
SCHEDULE 3  
SCHEDULE 4  
SCHEDULE 5

**I Assent**  
**FRANCIS J. SAVAGE**  
**CMG, LVO, OBE**  
**Governor**  
**27th December, 2001**

12/2001  
6/2004  
11/2004  
19/2006

Commencement ( 1<sup>st</sup> January, 2002)

Revision date (1<sup>st</sup> January, 2008)

**VIRGIN ISLANDS**

**No. 12 of 2001**

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.

[Gazetted 31<sup>st</sup> December, 2001]

ENACTED by the Legislature of the Virgin Islands as follows:

**PRELIMINARY**

Short title and commencement.

**1.** This Act may be cited as the Financial Services Commission Act, 2001 and shall come into force on such date as the Governor may, by proclamation published in the *Gazette*, appoint.

Interpretation.

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

- “Appeal Board” means the Financial Services Appeal Board established under section 42;
- “Board” means the Board of the Commission established under section 5;
- “Cabinet” means the Cabinet established under section 47 (i) of the Virgin Islands Constitution Order 2007; 2007 No. 1678
- “Chairman” means the Chairman of the Board appointed by the Council 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; 19/ 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;
- “Court” means the High Court;
- “document” means a document in any form and includes 19/2006
- (a) any writing or printing on any material,
  - (b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium, including discs and tapes,
  - (c) books and drawings, and
  - (d) a photograph, film, tape, negative or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced,
- and without limiting the generality of the foregoing, includes any Court application, order and other legal process and any notice;
- “Enforcement Committee” means the Enforcement Committee established under section 14; 19/2006
- “FATF” means the Financial Action Task Force on money laundering; 6/2004
- “financial services business” means 19/2006

- (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;

Schedule 2

“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;

19/2006

“licence” means an authorisation, licence, registration or recognition issued or granted under any regulatory legislation;

19/2006

“licensee” means a person holding a licence;

19/2006

“Licensing and Supervisory Committee” means the Licensing and Supervisory Committee established under section 14;

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

6/2004

“Minister” means the Minister to whom responsibility for financial services is assigned;

19/2006

Schedule 2

“registry legislation” means any financial services legislation listed in Part II of Schedule 2;

“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;

19/2006

“regulations” means regulations made under section 62;

19/2006

“Regulatory Code” means the Regulatory Code issued by the Commission under section 41;

19/2006

Schedule 2

“regulatory legislation” means any financial services legislation listed in Part I of Schedule 2;



“unauthorised financial services business” has the meaning specified in subsection (2). 19/2006

(2) A person carries on unauthorised financial services business if he carries on financial services business without having the appropriate licence. 19/2006

## **PART I THE FINANCIAL SERVICES COMMISSION**

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

**4.** (1) The functions of the Commission are Functions of the Commission.

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

(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; 19/2006

(c) to receive, review and determine applications for licences; 19/2006

(ca) to monitor compliance by licensees, and by such other persons who are subject to them, with the Anti-Money Laundering Code of Practice and with such other Acts, regulations, codes or guidelines relating to money laundering or the financing of terrorism as may be prescribed; 19/2006

(cb) to administer the registry legislation; 19/2006

(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;

2007 No. 1678

(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;

19/2006

2007 No. 1678

(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;

(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 the Territory with a view to

(i) encouraging the development of high professional standards within the financial services industry; and

19/2006

(ii) initiating and promoting codes of conduct for licensees;

19/2006

(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;

(j) to develop, with such persons as the Commission may determine for purposes of maintaining integrity and professionalism in the Territory's financial services industry, a system of continuing education for practitioners in financial services business and towards this end to develop such curriculum as it considers appropriate;

19/2006

(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;

(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; 19/2006
- (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 19/2006
- (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 19/2006
- (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.
- (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. 19/2006
- (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). 19/2006
- 5.** (1) There shall be a Board of the Commission whose members shall be known as Commissioners and shall be appointed by the Cabinet. Establishment and membership of the Board.
- (2) The Board shall comprise the Managing Director as an *ex officio* Commissioner and not less than four or more than six other Commissioners, one of whom shall be from outside the Territory with a financial services background, in addition to the requirements specified in subsection (4). 2007 No. 1678

6/2004  
2007 No. 1678

(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 Governor.

2007 No. 1678

(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.

19/2006

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

2007 No. 1678

- (a) is a member of the House of Assembly;
- (b) is an undischarged bankrupt or has compounded with his 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.

(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.  
19/2006

**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;
- (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;
  - (iii) the Commission is operated in accordance with principles of good governance; and
  - (iv) the Commission fulfils its statutory obligations and properly discharges its functions;
- (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.

2007 No. 1678

(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.

7. (1) The Board shall meet at least once every month at such place and time as may be designated by the Chairman.

Meetings of the Board.

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

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

(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 absence, the Deputy Chairman, shall at any time convene a special meeting of the Board upon receipt of a requisition signed by at

least three commissioners calling upon him to do so, and such meeting shall be held not later than fourteen 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 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.  
2007 No. 1678

**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 three years.

2007 No. 1678

(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 one-third of the Commissioners shall expire every two years.

2007 No. 1678

(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 may be connected and shall not accept directions from any person or authority in respect of his 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 shall be personally responsible for his actions.

Resignation and  
removal of  
Commissioners.  
2007 No. 1678

**9.** (1) A Commissioner may at any time resign his office by giving written notice to the Cabinet and such resignation becomes effective upon receipt by the Council.

2007 No. 1678

(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 three consecutive meetings of the Board or for periods exceeding one

third of the total meetings held in a year;

- (b) has become bankrupt, that his estate has been sequestrated or that he has made an arrangement with, or granted a trust deed in favour of, his 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 of his functions as a Commissioner or is liable to be removed from office under section 47(3);
- (f) is unable or unfit to discharge his functions as a Commissioner; or
- (g) is in breach of any condition imposed upon his appointment.

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

2007 No. 1678

(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 is appointed or for a new term not exceeding three 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 employment with the Commission.

19/2006

**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.

Appointment and functions of Managing Director.

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

19/2006

- (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 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 by the Board.

19/2006

(3) In discharging his functions, the Managing Director shall use his 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.

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. Schedule 5

**12.** Subject to the amendments in Schedule 5, 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.** 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.

**PART II  
COMMITTEES OF THE COMMISSION**

19/2006

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

Establishment of committees.

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

19/2006

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

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

Membership of the committees.

- (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.

19/2006

(2) The Enforcement Committee shall comprise

19/2006

- (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.

- 19/2006 (3) The Managing Director shall appoint a secretary for each committee.
- 19/2006 (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.
- 19/2006 (5) The Managing Director may co-opt onto a committee such officers of the Commission as he may determine to assist the committee in the performance of its functions.

Functions of the Licensing and Supervisory Committee.

- 6/2004 **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;
  - 19/2006 (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.

19/2006 (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.

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

19/2006 (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.

19/2006 (4) *(Repealed)*

Functions of the Enforcement Committee.

- 19/2006 **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.

17. (1) A committee shall

Provisions relating to each committee.

- (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.

19/2006

(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

19/2006

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

(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.

19/2006

(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.

19/2006

**PART III  
FINANCIAL AND REPORTING PROVISIONS  
APPLICABLE TO THE COMMISSION**

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

Funds and resources of the Commission.

- (a) fees, charges and penalties (excluding penalties imposed by a court) payable under this Act and the financial services legislation;

2007 No. 1678

- (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.

(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.  
2007 No. 1678

**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.

2007 No. 1678

(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.

19/2006

2007 No. 1678

(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.

19/2006

(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.

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

**20.** (1) From the monies paid into the Government Trust Account, a percentage of not less than seven and one-half and not more than fifteen shall be paid into the Commission's bank account for use by the Commission. Payments out of the Government Trust Account.

(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. 2007 No. 1678

(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. 19/2006  
2007 No. 1678

(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.

- 2007 No. 1678 (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 fifteen.
- 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 two hundred and fifty thousand dollars and above but not more than one million dollars, the approval of the Cabinet shall be sought and the House of Assembly informed by a statement issued by the Minister; and
  - (b) exceeds one million dollars, the approval of the House of Assembly shall be sought.
- 6/2004  
2007 No. 1678 (3) A resolution seeking the approval of the House of Assembly under subsection (2)(b) shall be brought only by the Minister.
- 2007 No. 1678 (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 three 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

2007 No. 1678

(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.

2007 No. 1678

(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.

2007 No. 1678

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

2007 No. 1678

**25.** (1) The Commission shall

Accounts and  
audit.

(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 three 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 Council; and
- (d) proper and adequate explanatory notes to the financial statements.

13/2003

(4) The accounts of the Commission shall within six 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.

2007 No. 1678

**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 reserve account to be established by the Commission, unless otherwise agreed upon with the Cabinet.

Annual report.

**27.** (1) Within three 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.

2007 No. 1678

(2) Within three 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.

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**

- |   |  |
|---|--|
| <b>29.</b> <i>(Repealed)</i>  | 6/2004<br>19/2006  |
| <b>30.</b> (1) The Board may, for the purpose of ensuring the discharging of its functions, request any person engaged in or related to any financial services business to furnish the Commission with such information as the Board may specify.   | General powers of disclosure and related restrictions.               |
| (2) <i>(Repealed)</i>   | 19/2006  |
| (3) <i>(Repealed)</i>   | 19/2006  |
| (4) <i>(Repealed)</i>   | 19/2006  |
| (5) <i>(Repealed)</i>   | 19/2006  |
| <b>31.</b> Where assistance to a foreign regulatory authority is provided in accordance with the provisions of this Act or pursuant to the provisions of any financial services legislation which makes no provision as to costs, the resulting cost of that assistance shall be borne by the foreign regulatory authority requesting the assistance in a similar manner to a claim for costs submitted to the court. | Recovery of costs.   |
| <b>32.</b> (1) Without prejudice to the generality of section 30 (1), where it is reasonably required for the purpose of discharging its functions or ensuring compliance with any financial services legislation, the Commission may, by notice in writing given to a person specified in subsection (2), require such person  | Power of Commission to request information and documents.<br>19/2006 |
| (a) to provide specified information or information of a specified description; or  |  |
| (b) to produce specified documents or documents of a specified description.   |  |
| (2) A notice under subsection (1)   | 19/2006  |
| (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 reasonably believed to have the information or documents to which the notice relates; and

(b) shall specify the place where and the period within which the information or document is to be provided or produced; and

(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.

(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 lien.

19/2006

(6) *(Repealed)*

19/2006

(7) *(Repealed)*

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. 19/2006

(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 three months; or

- (b) if within that period proceedings for a criminal offence, to which the document is relevant, are commenced against any person, until the conclusion of those proceedings.

(4) In this section, “premises” includes a vehicle, a vessel or an aircraft.

Examination under  
oath before a  
Magistrate.  
19/2006

**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 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 seven days of the application and the results of the examination shall be transmitted to the Commission within a reasonable period, not exceeding fourteen days, from the date of the examination.

Examination under  
oath by the  
Commission.  
19/2006

**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 reasonably required for the purposes of discharging its functions or ensuring compliance with any financial services legislation, 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.

(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 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 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 fails or refuses to submit to examination in accordance with the notice;
- (b) as an examinee, he fails to answer a question properly put to him by the examiner; or
- (c) having been issued with a record of an examination pursuant to subsection (8), he 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 five thousand dollars.

Duty to cooperate.  
19/2006

**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) 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, misconduct in, or misuse of information relating to, financial markets and offences involving fraud or dishonesty.

(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; and
- (c) 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.

Provision of  
assistance to  
foreign regulatory  
authorities.

19/2006

**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.

(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 (5)(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.

(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.

## **PART V COMPLIANCE AND ENFORCEMENT**

Compliance  
function.

19/2006

**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 as 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 satisfies the Commission's fit and proper criteria.

(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 (2);
- (c) the requirements for the person appointed under subsection (2) to report to the directors of the licensee, including the manner and frequency of such reporting; and
- (d) the requirements for the person appointed under subsection (2) to report to the Commission, including the manner and frequency of such reporting;

(7) A person appointed by a licensee to serve as its Compliance Officer for the purposes of any Code of Practice or regulations relating to the prevention of money laundering may, with the approval of the Commission, be appointed to oversee the licensee's compliance function under subsection (2).

**35.** (1) In this section, "relevant person" means

- (a) a licensee;

Compliance  
inspections.

19/2006

- (b) a former licensee; and
- (c) a subsidiary or holding company of a licensee or of a former licensee.

19/2006

(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.

19/2006

(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; and
- (b) monitoring and assessing a relevant person's compliance with the requirements of, and its obligations under, the Anti-Money Laundering Code of Practice, 1999 and with such other Acts, regulations, codes or guidelines relating to money laundering or the financing of terrorism as may be prescribed for the purposes of section 4(1)(ca).

S.I. No. 48 of  
1999

(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). 19/2006

(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. 19/2006

(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 19/2006

(a) for the effective supervision of a licensee; or

(b) for the purposes of the regulatory functions of the foreign regulatory authority.

(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 19/2006

(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.

(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 seventy five percent of the total costs of any compliance inspection. 19/2006

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

**36.** (1) The Commission may appoint one or more competent persons as examiners to conduct an investigation on its behalf Appointment of examiners. 19/2006

- (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.

19/2006

(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;
- (b) a particular aspect of the business of the person under investigation;
- (c) the ownership or control of the person under investigation;
- (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.

19/2006

(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.

19/2006

(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 him.

(3) An examiner appointed under subsection (1) may, if he considers it necessary for the purposes of his 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 shall, unless otherwise agreed between him and the Commission be remunerated on such terms as the Commission may determine.

(5) An examiner shall submit a report of his investigation to the Commission. 19/2006

**36A.** (1) Where it appears to the Commission that there are or may be grounds for taking enforcement action against a licensee, it may, by notice in writing, require the licensee to appoint a qualified person, at the cost of the licensee, Appointment of qualified person. 19/2006

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

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

(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 may reasonably require.

**37.** (1) The Commission may take enforcement action against a licensee if, Enforcement action. 11/2004

(a) in the opinion of the Commission, the licensee 19/2006

(i) has contravened or is in contravention of this Act, a financial services legislation, the Regulatory Code or a practice direction;

(ii) has contravened or is in contravention of the Anti-Money Laundering Code of Practice, 1999 or such other enactments or Guidelines relating to money laundering or the financing of terrorism as may be prescribed for the purposes of section 4(1)(ca); S.I. No. 48 of 1999

- (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;
  - (vii) does not satisfy the Commission's fit and proper criteria; or
  - (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;
- (b) a liquidator is appointed in respect of the licensee, whether by its directors, its members or the Court, or the licensee is dissolved;
  - (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
    - (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 an administrative penalty imposed pursuant to regulations made under section 62 on or before the date on which the penalty is due to be paid.

(2) If the Commission is entitled to take enforcement action under subsection (1), it may exercise one or more of the following powers:

- (a) revoke or suspend the licensee's licence under section 38;

6/2004  
11/2004  
19/2006

- (b) appoint an examiner to conduct an investigation under section 36;
- (c) require the licensee to appoint a qualified person under section 36A;
- (d) issue a directive under section 40;
- (e) initiate such investigation as may be necessary to ensure compliance with this Act, any financial services legislation or the Regulatory Code; or
- (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;
- (f) impose such administrative penalties on the licensee as may be provided for in regulations made under section 62; or
- (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.

No. 5 of 2003

(3) Where a power exercisable by the Commission under subsection (2) 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.

**37A.** (1) Where the Commission is entitled to take enforcement action against a licensee, or former licensee, 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 or former licensee.

Public statements.

(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 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 or former licensee, the Commission shall give that person three days written notice of its intention to issue the public statement and the reasons for the issue of the statement.

(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 or former licensee, it may issue a public statement under subsection (3) without notice to the licensee or former licensee or with such shorter period as it considers appropriate.

**38.** (1) The Commission may at any time 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 revoked.

(2) Subject to subsection (3), the period of suspension of a licence under subsection (1) shall not exceed thirty days.

(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 thirty days each.

(4) Before suspending 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 or revoke the licence; and

Revocation or suspension of licence.

19/2006

19/2006

19/2006

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19/2006



- (b) that unless the licensee, by written notice filed with the Commission, shows good reason why its licence should not be suspended or revoked, the licence will be suspended or revoked on a date not less than fourteen days after the date of the notice.

(5) *(Repealed)*

19/2006

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

Application for a protection order.

- (a) a licensee where his licence is about to be revoked or where the Commission is entitled to take enforcement action against him under section 37;
- (b) a former licensee; or
- (c) a person carrying on unauthorised financial services business.

11/2004

19/2006

(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 clients, investors, creditors or the public, including

11/2004

19/2006

- (a) an order preventing the person concerned or any other person from transferring, disposing of or otherwise dealing with property belonging to him or in his custody or control;
- (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 immediately before the revocation or suspension of the licence, as the case may be;
- (c) *(Repealed)*
- (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 back into compliance with this Act, the financial services legislation or the Regulatory Code.

(2A) *(Repealed)*

6/2004

11/2004

19/2006

(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.

(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 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 the Commission has given notice of intention to revoke a licence or certificate under section 38(4).

Power to issue directives.

19/2006

**40.** (1) Where the Commission is entitled to take enforcement action 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 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.

(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 to cease carrying on that business;
- (b) requiring him to take such other action as the Commission considers may be necessary to protect his property, or property in his custody, possession or control, or to protect his customers or creditors or potential customers or creditors of him.

## **PART VA GENERAL SUPERVISORY POWERS**

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

Practice directions.  
19/2006

(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) The regulations may provide for the manner of the publication of practice directions and for the manner and extent to which the Commission may consult prior to issuing a practice direction.

(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.

**40B.** (1) In this section, “condition” means a condition attached to a licence issued, or an approval granted, under a regulatory legislation and includes a condition, as varied in accordance with this section.

Conditions.  
19/2006

(2) A licence issued or an approval granted under a regulatory legislation may be issued or granted subject to such conditions as the Commission considers appropriate.

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

- (a) the Commission shall, together with the licence or approval, 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 or approval.

(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 or approval.

(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.

Exemptions.  
19/2006

**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, by notice in writing direct that specified provisions in the Regulatory Code

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

(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).

**40D.** (1) Where the Commission is of the opinion that a person to which this section applies does not satisfy its fit and proper criteria, it may require the licensee to remove that person and, if it considers it appropriate, to replace him with another person acceptable to the Commission.

Power to require licensee to remove directors and other persons.

19/2006

(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.

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

Power to issue Regulatory Code.

19/2006

- (a) the conduct required of licensees and officers and agents of licensees; and
- (b) such other matters as may be required or permitted by this Act or any financial services legislation.

(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.

19/2006

(3) The Regulatory Code

19/2006

- (a) *(Repealed)*
- (b) *(Repealed)*
- (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
- (d) shall be published in the *Gazette*.

19/2006 (4) *(Repealed)*

19/2006 (5) *(Repealed)*

Guidelines. 19/2006 **41A.** (1) The Commission may issue Guidelines with respect to the procedures to be followed by and the conduct expected of financial institutions in the operation of their licensed businesses and with respect to any other matter concerning this Act.

(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 in such manner as may be specified in the regulations.

(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.

Approved forms. 19/2006 **41B.** (1) The Commission may, by publication in such manner as may be specified in the regulations, approve forms for the purposes of the regulatory legislation.

(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.

**PART VI**  
**FINANCIAL SERVICES APPEAL BOARD**

**42.** (1) There is established an appeal board to be known as the Financial Services Appeal Board which shall perform the functions and powers imposed or conferred on it by or under this Act.

Establishment and constitution of a Financial Services Appeal Board.

(2) The members of the Appeal Board shall be constituted by

- (a) one legal practitioner, of not less than ten years experience, as chairman of the Appeal Board; and
- (b) two other persons with such qualifications and experience as may be determined by the Board.

(3) The members of the Appeal Board shall

- (a) be appointed by the Cabinet on such terms and conditions as the Cabinet may determine; and
- (b) be persons who are not members of the Board or the Commission and are not engaged or connected with a person engaged in financial services business in the Territory.

2007 No. 1678

(4) Any payments to be made to the members of the Appeal Board, including the defraying of costs relating to the work of the Appeal Board, shall be paid by the Commission.

**43.** The Board shall appoint a staff of the Commission to act as Secretary to the Appeal Board and he shall

Secretary of the Appeal Board.

- (a) be responsible for preparing the records of appeal and keeping the Appeal Board's records; and
- (b) perform such other duties as the Appeal Board may direct.

**44.** (1) Any person who is aggrieved by a decision of the Board, Commission or Committee, whether in respect of this Act or any financial services legislation, may, within fourteen days of the decision, file a notice of appeal against the decision to the Appeal Board, provided that no appeal shall lie under section 16(3) on a refusal to grant a licence, or a decision under the Mutual Funds Act, 1996 refusing the grant of a licence, registration or recognition to an entity which does not qualify as an existing entity within the meaning of that Act.

Right of appeal.

No. 6 of 1996

(2) A notice of appeal under subsection (1) shall be in writing addressed to the Appeal Board setting out the grounds of appeal and it shall be in such form as the Appeal Board may determine.

(3) An appeal against a decision of the Board, Commission or Committee, as the case may be, shall not operate as a suspension of the decision of such Board, Commission, or Committee.

Procedures of the Appeal Board.

**45.** (1) Upon receipt of a notice of appeal, the Appeal Board shall proceed to hear the appeal on such date and time as the Appeal Board may determine.

(2) In hearing an appeal under subsection (1), the Appeal Board shall

- (a) adopt such rules of procedures as it may determine;
- (b) have regard to the written decision of the Board, Commission or Committee, as the case may be, and any other document that forms part of the record of appeal; and
- (c) allow any party to the proceedings before the Appeal Board who wishes to do so to be represented by a legal practitioner of his choice.

Decisions of the Appeal Board, how taken.

**46.** (1) The Board shall, after hearing an appeal,

- (a) dismiss the appeal;
- (b) allow the appeal; or
- (c) make an order remitting the case to the Board, Commission, or Committee, as the case may be, for further hearing with such directions as it may consider fit.

(2) The decision of the Appeal Board on an appeal shall be final.

## **PART VII ADMINISTRATIVE PROVISIONS**

Duty of a Commissioner to disclose interest.

Schedule 4

**47.** (1) A Commissioner who has any direct or indirect personal, professional, business or pecuniary interest in any matter which falls to be considered by 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.



(2) A Commissioner who has declared an interest under subsection (1) shall withdraw from any meeting whilst the matter in respect of which he 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 under section 54(1)(d), be liable to be removed from office as a Commissioner.

**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.

Duty to take oath.  
Schedule 3

(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 Magistrate, Additional Magistrate, Registrar of the High Court or a Justice of the Peace.

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

**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 would be entitled to refuse to disclose or produce on the grounds of legal professional privilege.

Privileged  
information and  
documents.  
19/2006

(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

- (a) by, or by a representative of, a client of his 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 client.

Admissibility of statements.

19/2006

**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 in criminal proceedings if

- (a) that person has himself 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.

Protection for disclosure.

19/2006

**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 in respect thereof.

Restrictions on disclosure of information.

11/2004

19/2006

**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 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: 19/2006
- (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 19/2006
- (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 19/2006
- (a) the person from whom he obtained the information; and
  - (b) if different, the person to whom it relates.
- 49A.** (1) Section 49 does not apply to a disclosure
- (a) required or permitted by a Court of competent jurisdiction in the Virgin Islands; 19/2006
  - (b) required or permitted by this or any other Act;
  - (c) to a law enforcement agency in or outside the Virgin Islands;
  - (d) to the Financial Investigation Agency established under the Financial Investigation Agency Act; No. 19 of 2003
- Gateways for the disclosure of information.

- (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 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 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).

Immunity.

**50.** No action shall be brought against

- (a) the Commission or any Commissioner or member of the 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

- (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). 6/2004  
19/2006

**PART VIIA  
AUTHORISED AND RECOGNISED 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). Authorised  
custodians.  
6/2004

(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 regulations made under section 62.

(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, 2004.

Cap. 291

(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 anti-money laundering obligations imposed on the body corporate outside the Virgin Islands.

(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.

Recognised  
custodians.  
6/2004

**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 member of FATF.

(2) A recognised custodian is not a licensee within the meaning of section 2.

Conditions of  
approval.  
6/2004

**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.

Issuance of  
Guidance Notes.  
6/2004  
No. 16 of 2004

**50D.** The Commission may issue Guidance Notes specifying the practices and procedures that it expects authorised custodians to 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 the Business Companies Act, 2004.

Revocation of  
approval to act as  
authorised  
custodian.  
6/2004

**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.

**PART VIII  
MISCELLANEOUS**

**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.

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

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

19/2006

- (a) any money or other property paid or transferred by him under the agreement; and
- (b) compensation for any loss sustained by him 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.

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

Unenforceable agreements.

19/2006

- (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 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 under the agreement,

he must repay any money and return any other property received by him 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.

Annual meetings  
between Cabinet  
and Board.

2007 No. 1678

**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.

Cap. 293

**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 employment with the Commission.

**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 knows to be false or does not believe to be true, commits an offence. General offences and penalties.

(2) Where a person commits an offence under subsection (1), he is liable on conviction to a term of imprisonment not exceeding two years or to a fine not exceeding five thousand dollars, or both.

**54.** (1) A person commits an offence if Specific offences and penalties.

(a) *(Repealed)* 19/2006

(b) he fails to comply with a requirement of a request under section 30(1) or a notice issued under section 32 (1); 6/2004

(ba) in purported compliance with a request under section 30(1) or a notice issued by the Commission under section 32(1), he 19/2006

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

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

(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 destroys, mutilates, defaces, hides or removes a document; 19/2006

(c) he fails to comply with a directive under section 34(5) or 40;

(d) he, 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;

(e) he discloses any information contrary to section 49A(1); or 19/2006

(f) he 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 ten thousand dollars or to imprisonment for a term not exceeding three years;
- (b) on conviction on indictment, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding five years, or both.

Offences by bodies  
corporate.  
Cap. 136

**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 functions of management as if he 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, as well as the partnership or association, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

Power to  
compound an  
offence.

**56.** (1) Subject to subsection (3), the Commission may, where it is satisfied that a person has committed an offence under this Act, compound the offence by accepting on behalf of the Government from the person a sum of money of not less than one half of the maximum fine specified for that offence.

(2) No offence shall be compounded under this section unless the person who has committed the offence has expressed his willingness in writing that the offence be so dealt with.

(3) The compounding of an offence under this Act shall

- (a) be notified in writing, under the signature of the offender and the Managing Director, to the court; and
- (b) not apply to an offender who has had an offence previously compounded under this Act.

(4) In any proceedings brought against any person for an offence under this Act, it shall be a defence if the person proves that the offence with which he is charged has been compounded under this section.

- 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. Fees.
- (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. 2007 No. 1678
- (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.
- (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 regulations made under section 62, or in or under the relevant financial services legislation. 6/2004
- 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. Entitlement of Commission to recover costs. Cap. 44 6/2004
- 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. Transitional provisions: Officers and employees.
- (2) Every officer and employee of the Financial Services Department who is deemed to have been transferred under subsection (1) shall, within six 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 transfer and he shall be entitled to such pension, gratuity and other allowances and rights, if any, as he would have received had he been retired from the service of the Government on the abolition of his office on the date of his transfer to the Commission;

- (b) to be transferred to another department of the Government, subject to a suitable vacancy existing, with his service with the Commission counting as service with the Government in respect of his 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 office on the date he 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 shall be deemed to have elected under subsection (2)(a) and he 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 serve 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 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 shall not be entitled to be paid any pension, gratuity or other allowance that may have accrued to him whilst in the service of the Commission, until the time when he would have qualified for a pension, gratuity or other allowance under the Pensions Act had he continued in the service of the Government.

Cap. 161

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.** The enactments set out in the second column of Schedule 5 are repealed or amended to the extent specified in the third column thereof. Repeals and amendments.  
Schedule 5
- 61.** The Cabinet may, on the advice of the Commission, amend Schedules 1 to 4 by Order published in the *Gazette*. Power to amend Schedules 1 to 4.  
2007 No. 1678
- 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. Regulations.  
2007 No. 1678
- (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. 19/2006
- (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. 19/2006
- (2) Any regulations made under subsection (1) shall be subject to a negative resolution of the House of Assembly. 2007 No. 1678

## 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.

## **SCHEDULE 2**

11/2004

**[Section 2(1)]**

19/2006

### **FINANCIAL SERVICES LEGISLATION**

#### **PART 1 – REGULATORY LEGISLATION**

1. Banks and Trust Companies Act, 1990
2. Company Management Act, 1990
3. Insurance Act, 1994
4. Mutual Funds Act, 1996
5. Proceeds of Criminal Conduct Act, 1997
6. Insolvency Act, 2003

#### **PART 2 – REGISTRY LEGISLATION**

1. Merchandise Marks Act (Cap. 154)
2. Patents Act (Cap. 155)
3. Registration of United Kingdom Patents (Cap. 156)
4. Registration of United Kingdom Trade Marks (Cap. 157)
5. Trade Marks Act (Cap. 158)
6. United Kingdom Designs (Protection) Act (Cap. 159)
7. Partnership Act, 1996
8. BVI Business Companies Act, 2004
9. Companies Act (Cap. 285)
10. International Business Companies Act (Cap. 291)

### 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)\*

**\* Delete as appropriate**



**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, 2001 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.

**SCHEDULE 5**

[Section 60]

**ENACTMENTS AMENDED OR REPEALED**

<b>NO.</b>	<b>ENACTMENT</b>	<b>EXTENT OF AMENDMENT/REPEAL</b>
1.	Merchandise Marks Act (Cap. 154)	<p>In section 14</p> <p>(a) "Financial Services Commission established under section 3 of the Financial Services Commission Act, 2001" and "itself" are respectively substituted for "Governor" and "himself" in subsection (2); and</p> <p>(b) insert after "Governor in Council" in subsection (3) the words, "after consultation with the Financial Services Commission referred to in subsection (2),".</p>
2.	Patents Act (Cap. 155)	<p>1. In section 2 insert in the appropriate alphabetical order the following:</p> <p align="center">"Commission" means the Financial Services Commission established under the Financial Services Commission Act, 2001;</p> <p>2. In section 24 "Commission" is substituted for "Governor in Council".</p> <p>3. In section 26 delete the words "general revenue of the Territory" and substitute therefor "Government Trust Account established under section 19 of the Financial Services Commission Act, 2001."</p> <p>4. In section 27</p> <p>(a) "Commission" is substituted for "Governor in Council" in subsections (1), (3) and (5);</p>

		<p>(b) subsection (2) is repealed and substituted as follows:</p> <p style="padding-left: 40px;">“(2) Any person may enter a caveat, addressed to the Managing Director of the Commission, against the petition.”; and</p> <p>(c) insert after “Governor in Council” in subsection (6) the words A, after consultation with the Commission, @.</p> <p>5. In section 28 “Commission” is substituted for “Attorney General” in paragraphs (a) and (b) of subsection (4).</p> <p>6. In section 30 “Commission” is substituted for “crown” in subsection (1).</p> <p>7. In section 35 “Commission” is substituted for “Governor”.</p> <p>8. In section 48 insert after “may” the words “after consultation with the Commission,”.</p>
3.	Registration of United Kingdom Patents (Cap. 156)	In section 11 delete “Registrar” and substitute therefor “Commission established under section 3 of the Financial Services Commission Act, 2001”.
4.	Registration of United Kingdom Trade Marks (Cap. 157)	In section 12 insert after “may” where it first occurs the words “after consultation with the Financial Services Commission established under section 3 of the Financial Services Commission Act, 2001.”
5.	Trade Marks Act (Cap. 158)	<p>1. In section 2 insert in the appropriate alphabetical order the following:</p> <p style="padding-left: 40px;">“Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act, 2001.</p> <p>2. In section 23</p> <p>(a) subsection (1) is repealed and substituted as follows:</p>

6. Companies Act  
(Cap. 285)

"(1) The Commission may provide for the purposes of this Act an office which shall be called the Trade Marks Office."; and

- (b) "Commission" is substituted for "Governor in Council" in subsections (2) and (3).

3. Section 24 is repealed.

4. In section 36 "Commission" is substituted for "Attorney General".

5. In section 41

- (a) insert after "Governor in Council" in the opening paragraph of subsection (1) the words "after consultation with the Commission,";
- (b) the comma after "Registrar" in paragraph (f) of subsection (1) is deleted and substituted by a full-stop and the words "or of the Governor in Council" are deleted; and
- (c) insert after "Governor in Council" in subsection (2) the words "on the advice of the Commission".

1. In section 2 insert in the appropriate alphabetical order the following:

"Commission" means the Financial Services Commission established under section 3 of the Financial Services Commission Act, 2001;"

2. In section 4A

- (a) "Banks and Trust Companies Act, 1990" is substituted for "Banking Ordinance" in subsections (1) and (3); and

(b) the words "Banking Ordinance, and "banking" has a corresponding meaning" in subsection (2) are deleted and substituted by "Banks and Trust Companies Act, 1990".

3. In subsection (1) of section 5A "Commission" is substituted for "Ministry of Finance".

4. In section 42

(a) delete "Governor" and "Governor aforesaid" and substitute therefor "Governor in Council, on the advice of the Commission,"; and

(b) delete the words "Treasury to be applied as is hereinafter provided" and substitute therefor "Government Trust Account established under section 19 of the Financial Services Commission Act, 2001".

5. In section 95 "Commission" is substituted for "Governor".

6. In section 96 "Commission" is substituted for "Governor".

7. In section 98

(a) "Commission" is substituted for "Governor"; and

(b) "the Commission" is substituted for "he".

8. In section 99 "Commission" is substituted for "Governor".

9. In section 206

(a) "rules of court" is substituted for "Rules of the Supreme Court" where that term first occurs; and

- (b) “Civil Procedure Rules” is substituted for “Rules of the Supreme Court” where that term last occurs.

10. In section 207

- (a) subsection (1) is repealed and substituted as follows:

“(1) There shall be a Registrar of Companies appointed by the Commission.”;

- (b) subsection (2) is repealed and substituted as follows:

“(2) The Commission may make rules with respect to the duties to be performed by the Registrar.”;

- (c) the word “Treasury” in subsection (3) is deleted and substituted by “Government Trust Account established under section 19 of the Financial Services Commission Act, 2001”; and

- (d) subsection (5) is repealed and substituted as follows:

“(5) The powers and duties of the Registrar under this Act may be exercised or performed by such other officer of the Commission as the Commission may designate in writing.”.

11. In section 236 “Commission” and “it” are respectively substituted for “Governor” and “he”.

12. Section 237 is repealed and substituted as follows:

“Right of 237. Any person who is aggrieved by an appeal decision of the Registrar under this Act may appeal in accordance with Part VI of the

Financial Services Commission Act, 2001, and for that purpose the reference under that Part to Board, Commission or Committee shall be construed to include a reference to the Registrar.”

13. In section 241 the word “Governor” is deleted and substituted by “Governor in Council, on the advice of the Commission,”.

7. International Business Companies Act (Cap. 291)

1. In subsection (1) of section 2 insert in the appropriate alphabetical order the following:

“Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act, 2001;”.

2. In section 21A “Commission” is substituted for “Registrar” in subsection (2).

3. In section 40A

- (a) “Commission” is substituted for “Registrar” in subsections (1) to (4);
- (b) insert after “Governor in Council,” in subsection (3) the words “on the advice of the Commission,”; and
- (c) delete the words “Inspector of Company Managers or the Inspector of Banks and Trust Companies, as the case may be, “in subsection (5) and substitute therefor “Commission”.

4. In section 107 the words “Attorney General before a Magistrate in civil proceedings as a debt due to the Crown notwithstanding the amount sought to be recovered.” are deleted and substituted by “Commission before a Magistrate in civil proceedings notwithstanding the amount sought to be recovered.”

6. In section 109 the words “Consolidated Fund” are deleted and substituted by “Government Trust

Account established under section 19 of the Financial Services Commission Act, 2001”.

7. In section 112

(a) subsection (1) is repealed and substituted as follows:

“(1) The Governor in Council may, on the advice of the Commission, make regulations with respect to the duties to be performed by the Registrar and the Commission under this Ordinance.”; and

(b) insert after “Governor in Council,” in subsection (2) the words “on the advice of the Commission,”.

8. In section 113 “Commission” is substituted for “Governor in Council”.

9. In the opening paragraph of subsection (1) of section 115 insert after “section 85” the words “and sections 29 and 30 of the Financial Services Commission Act, 2001”.

8. Banks and Trust Companies Act, 1990

1. In section 2(1)

(a) delete “Governor in Council” in paragraph (b) of the definition of “auditor” and substitute therefor “Commission”;

(b) delete “Governor” and the definition thereto;

(c) delete “Inspector” and the definition thereto ;

(d) delete “Registrar” and the definition thereto; and

(e) insert in the appropriate alphabetical order the following:



“Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act, 2001;”

2. In section 4

- (a) “Commission” is substituted for “Governor” in subsection (1);
- (b) subsection (3) is repealed and substituted as follows:

“(3) The Second Schedule may be amended by an order made by the Commission, subject to section 57 (2) of the Financial Services Commission Act, 2001”;

- (c) “Commission” and “it” are respectively substituted for “Governor” and “he” in subsection (4) ; and
- (d) “Commission” is substituted for “Governor” in subsection (6).

3. In section 8 “Commission” is substituted for “Governor”.

4. In section 9

- (a) “Commission” is substituted for “Governor” in subsection (1);
- (b) the words “as the case may be, the Governor or the Inspector” are deleted and substituted by ‘the Commission’ in subsection (2);
- (c) “Commission” is substituted for “Governor” in subsection (3); and

- (d) “Commission” and “it” are respectively substituted for “Governor” and “he” in subsection (4).

5. In subsection (2) of section 10 “Commission” is substituted for “Governor”.

6. In paragraph (c) of section 11 “Commission” is substituted for “Governor”.

7. In section 12

- (a) “Commission” is substituted for “Governor” in subsections (1), (2) and (3); and

- (b) subsection (4) is repealed and substituted as follows:

“(4) The Commission may require a licensee to increase its fully paid up capital to such greater amount as the Commission may determine for the nature of the banking business or trust business being, or sought to be, undertaken.”

8. In section 13

- (a) “Commission” is substituted for “Governor” in subsection (1); and

- (b) “Commission” is substituted for “Attorney General” in subsection (2).

9. In section 14 “Commission” is substituted for “Governor”.

10. In section 15

- (a) subsection (1) is repealed and the marginal note is substituted by “Functions of the Commission”;

- (b) the words “The functions of the Inspector

are – “ in subsection (2) are deleted and substituted by “For the purposes of this Act, the functions of the Commission are”;

- (c) paragraph (b) of subsection (2) is repealed and substituted as follows:

“(b) where it thinks fit, to examine by way of the receipt of regular returns or in such other manner as it thinks fit the affairs or business of any licensee carrying on business within or outside the Virgin Islands for the purpose of satisfying itself that all provisions of this Act are being complied with and that the licensee is in a sound financial position and is carrying out its business in a satisfactory manner;”;

- (d) “it” is substituted for “he” in paragraph (c) of subsection (2);

- (e) paragraph (d) of subsection (2) is repealed and substituted as follows:

“(d) to examine the accounts and audited annual accounts forwarded to it under section 17”;  
and

- (f) “Commission” is substituted for “Governor” in paragraph (e) of subsection (2);

- (g) the opening paragraph of subsection (3) is deleted and substituted as follows:

“(3) In the performance of its functions under this Act and subject to the provisions of Part IV of the Financial Services Commission Act, 2001, the Commission may at all reasonable times”;

- (h) “it” is substituted for “he” in paragraph (b) of subsection (3);
- (i) “Commission” and “its” are respectively substituted for “Inspector” and “his” in paragraph (c) of subsection (3) ;
- (j) subsection (4) is repealed and substituted as follows:
  - “(4) For the purpose of subsection (3) and subject to the provisions of the Financial Services (International Co-operation) Act, 2000 and the Financial Services Commission Act, 2001, the Commission shall have access to the name or title of an account of a depositor or a licensee or to the settlor, name or title of a trust, only under the authority of any order of the court made on the ground that there is no other way of obtaining the information required by it.”;
- (k) subsection (5) is repealed and substituted as follows:
  - “(5) The Commission may authorise in writing any other person to assist it in the performance of its functions under this Act.” and
- (l) subsection (6) is amended by substituting
  - (i) “Commission” for “Inspector”;
  - (ii) “it” for “him” where that word first occurs;
  - (iii) “the Commission” for “him” where that word last occurs; and

(iv) “it” for “he”.

11. In section 16

- (a) “Commission” is substituted for “Governor” in subsections (1) and (2);
- (b) “Commission” and “its” are respectively substituted for “Governor” and “his” in subsection (3);
- (c) “Commission”, “it” and “its” are respectively substituted for “Governor” and “he” in subsection (4); and
- (d) “Commission”, “it” and “its” are respectively substituted for “Governor”, “he” and “his”.

12. In section 17

- (a) the words “Governor or the Inspector” in subsection (1) are deleted and substituted by “Commission”. and
- (b) “Commission” is substituted for “Inspector” in subsections (2) and (3).

13. In section 18 “Commission” is substituted for “Governor”.

14. In section 19

- (a) “Commission” and “its” are respectively substituted for “Governor” and “his” in subsection (2); and
- (b) “Commission” is substituted for “Governor” in subsection (3).

15. In section 20

- (a) “Commission” and “it” are respectively substituted for “Governor” and “he” in subsection (1);

(b) the opening paragraph of subsection (2) is deleted and substituted as follows:

“(2) Without prejudice to the powers conferred on the Commission by section 38 of the Financial Services Commission Act, 2001, the actions that the Commission may take in pursuance of subsection (1) are”;

(c) “Commission” is substituted for “Inspector” and “Governor” in paragraphs (d) and (f) respectively of subsection (2);

(d) “Commission” and “its” are respectively substituted for “Governor” and “his” in subsection (3);

(e) the words “Governor and the Inspector” in subsection (4) are deleted and substituted by “Commission”;

(f) “Commission” is substituted for “Governor” in subsection (5);

(g) the words “instruct the Attorney General to” in paragraph (d) of subsection (5) are deleted; and

(h) “Commission” and “it” are respectively substituted for “Governor” and “he” in subsection (6).

16. In section 21

(a) “Commission” is substituted for “Attorney General” in the marginal note;

(b) the words “The Attorney General may, upon being instructed by the Inspector” are deleted and substituted by “The Commission may”; and

(c) “it” is substituted for “he”.

17. In section 22

- (a) the opening paragraph of subsection (1) is deleted and substituted as follows:

“(1) If a Judge or Magistrate is satisfied by information on oath, whether oral or written, given by an officer of the Commission or other person authorised by the Commission that”;

- (b) delete “Inspector” in the closing paragraph of subsection (1) and substitute therefor the words “officer of the Commission or other person authorised by the Commission”; and
- (c) “officer of the Commission” is substituted for “Inspector” in subsection (2).

18. In section 23 “Commission” is substituted for “Inspector”

19. Sections 24 and 24A are repealed.

20. In section 25

- (a) “Commission” is substituted for “Governor or the Inspector” in subsection (1);
- (b) “Commission” is substituted for “Inspector” in paragraph (a) of subsection (5);
- (c) the words “the Inspector” in paragraphs (b) (c) and (d) of subsection (5) are deleted and substituted by the words “an officer of the Commission”; and
- (d) “or” is substituted for “and” at the end of paragraph (d) of subsection (5).

21. Section 26 is repealed and substituted as follows:

“26. An appeal lies to the Financial Services Appeal Board (established under

the Financial Services Commission Act, 2001) from any decision of the Commission

- (a) revoking a licence under subsection (5) of section 16 or under paragraph (a) of subsection (2) or paragraph (d) of subsection (5) of section 20;
- (b) withdrawing any approval under subsection (4) of section 16; or
- (c) requiring a licensee to take certain steps which the Commission may specify under section 20".

22. Section 27 is repealed.

23. In section 28 the words "The Governor may" are deleted and substituted by the words "The Governor in Council may, on the advice of the Commission,".

24. Section 29 is repealed.

25. In the First Schedule

- (a) "Commission" is substituted for "Governor" wherever it occurs; and
- (b) "its" is substituted for "his" in paragraph (10) (a).

8(a). Banks and Trust Companies Regulations, 1991

1. In regulation 3 "Commission" is substituted for "Governor".

2. In regulation 4 "Commission" is substituted for "Governor".

3. In regulation 5 "Commission" is substituted for "Governor" in sub-regulation (1).

4. In regulation 6 "Commission" is substituted for "Governor" in sub-regulation (1).

5. In regulation 7 "Commission" is substituted for "Governor".



		<p>6. In regulation 8 “Commission” is substituted for “Governor”.</p> <p>7. In regulation 9</p> <p>(a) “Commission” and “its” are respectively substituted for “Governor” and “his” in paragraph (d); and</p> <p>(b) “Commission” is substituted for “Governor” in paragraph (e).</p> <p>8. In regulation 11 “Commission” and “its” are respectively substituted for “Governor” and “his” in paragraph (d).</p> <p>9. In the First Schedule delete the words “Governor or the Inspector” under Exhibit O of the form for the Application for a Banking or Trust Licence and substitute “Commission” therefor.</p> <p>10. In the Fourth Schedule “Commission” is substituted for “Governor”.</p> <p>11. In the Seventh Schedule “Commission” is substituted for “Governor”.</p> <p>12. In the First to the Seventh Schedules “Financial Services Commission” is substituted for “Ministry of Finance”.</p>
8(b).	Banks and Trust Companies (No. 2) Regulations, 1991	In sub-regulation (1) of regulation 2 “Commission” is substituted for “Governor”.
8(c).	S.I. No. 6 of 1992 (Made under the Banks and Trust Companies Act, 1990)	In paragraphs 1, 2 and 3 “Commission” is substituted for “Governor in Council”.
9.	Company Management Act, 1990	<p>1. In section 2</p> <p>(a) insert the figure “(1)” as subsection (1)</p>

after section A2”;

- (b) delete “Governor in Council” in paragraph (b) of the definition of “auditor”;
- (c) delete “Governor” and the definition thereto;
- (d) delete “Inspector” and the definition thereto;
- (e) delete “Registrar” and the definition thereto; and
- (f) insert in the appropriate alphabetical order the following:

“Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act, 2001;”.

2. In section 4

“Commission” is substituted for “Governor” in subsections (1), (3) and (5).

3. In section 9 “Commission” is substituted for “Governor”.

4. In section 12 “Commission” is substituted for “Governor” and “Attorney General” in subsection (1) and subsection (2) respectively.

5. In section 14

- (a) subsection (1) is repealed and the marginal note is substituted by “Functions of the Commission”;
- (b) the words “The functions of the Inspector are – “ in subsection (2) are deleted and substituted by the words “For the purposes of this Act, the functions of the Commission are”;

(c) paragraph (b) of subsection (2) is repealed and substituted as follows:

“(b) where it thinks fit, to examine in such manner as it considers necessary the affairs or business of any licensee for the purpose of satisfying itself that all provisions of this Act are being complied with and that the licensee is in a sound financial position and is carrying on its business in a satisfactory manner;”;

(d) paragraph (c) of subsection (2) is repealed;

(e) paragraph (d) of subsection (2) is repealed and substituted as follows:

“(d) to receive and examine all applications for licences.”;

(f) the opening paragraph of subsection (3) is deleted and substituted as follows:

“(3) In the performance of its functions under this Act and subject to the provisions of Part IV of the Financial Services Commission Act, 2001, the Commission may at all reasonable times”;

(g) “its” is substituted for “his” in paragraph (a) of subsection (3);

(h) “Commission”, “it” and “its” are respectively substituted for “Inspector”, “him” and “his” in the closing paragraph of subsection (3);

(i) subsection (4) is repealed and substituted as follows:

“(4) Notwithstanding subsection (3), but subject to the provisions of the Financial Services (International

Co-operation) Act, 2000 and the Financial Services Commission Act, 2001, the Commission does not have access to any document of a company managed by a licensee or to any information, matter or thing relating to or concerning the affairs of any such company without first having obtained

- (a) the written consent of that company; or
- (b) an order of the Court made on the grounds that there are no other reasonable means of obtaining such a document, matter or thing; and

- (j) subsection (5) is repealed and substituted as follows:

“(5) The Commission may authorise in writing any person to assist it in the performance of its functions under this Act.”.

6. In subsections (1) and (2) of section 15 “Commission” is substituted for “Governor”.

7. In subsections (1), (2) and (3) of section 17 “Commission” is substituted for “Inspector”.

8. In section 18

- (a) the opening paragraph of subsection (1) is deleted and substituted as follows:

“(1) If a Judge or Magistrate is satisfied by information on oath, whether oral or written, given by an officer of the Commission or other person authorised by the Commission,”

- (b) delete “Inspector” in the closing paragraph of subsection (1) and substitute therefor

the words “officer of the Commission or other person authorised by the Commission”; and

- (c) “officer of the Commission” is substituted for “Inspector” in subsection (2).

9. In section 19 “Commission” is substituted for “Inspector”.

10. Sections 20 and 20A are repealed.

11. In subsections (1) and (2) of section 21 “Commission” is substituted for “Governor” and “Inspector” respectively.

12. Section 22 is repealed and substituted as follows:

“22. The Commission may revoke a licence

- (a) if the licensee has ceased to carry on the business of company management;
- (b) if the licensee
  - (i) becomes bankrupt;
  - (ii) is wound up; or
  - (iv) is otherwise dissolved; or
- (c) if it is of the opinion that it would be detrimental to the public interest for the licensee to continue to carry on the business of company management.”

13. In section 23

- (a) “an officer of the Commission” is substituted for “the Inspector” in paragraph (a) of subsection (5); and
- (b) “an officer of the Commission” is substituted for “an Inspector” in

paragraphs (b) and (c) of subsection (5).

14. Section 24 is repealed and substituted as follows:

“24. An appeal lies to the Financial Services Appeal Board (established under the Financial Services Commission Act, 2001) from any decision of the Commission

- (a) revoking a licence under subsection (2) of section 15 or under subsection (1) of section 22; or
- (b) suspending a licence or requiring a licensee to take certain steps which the Commission may specify under subsection (1) of section 21. @.

15. Section 25 is repealed.

16. In section 26 the words “The Governor may” are deleted and substituted by the words “The Governor in Council may, on the advice of the Commission”.

17. Section 27 is repealed.

18. In the Schedule

- (a) “Commission” is substituted for “Governor” wherever it occurs; and
- (b) “its” is substituted for “his” in paragraph (12) (a).

9(a).

Company Management Regulations, 1991

1. In regulations 3, 4 and 5 “Commission” is substituted for “Governor”.

2. In the First Schedule delete the words “Governor or the Inspector” under Exhibit N of the form for the Application for a Company Management Licence and substitute “Commission” therefor.

3. In the Third Schedule “Commission” is substituted for “Governor”.

10.

Insurance Act, 1994

4. In the First to the Fourth Schedules “Financial Services Commission” is substituted for “Ministry of Finance”.

1. In subsection (1) of section 2

- (a) “Commission” is substituted for “Governor” in the definition of “actuary”;
- (b) “Commission” is substituted for “Governor” in the definition of “auditor”;
- (c) delete “Commissioner”, “Governor” and “Minister” and the definitions thereto;
- (d) “Commission” is substituted for “Governor” in the definition of “insurance manager”; and
- (e) insert in the appropriate alphabetical order the following:

“Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act, 2001;”.

2. Section 3 is repealed and substituted as follows:

“Restrictions on interest. 3. The Commission or any of its employees shall not directly or indirectly be interested

- (a) as a shareholder in any company that is licensed under this Act as an insurer

carrying on insurance business in or from within the Territory; or

- (b) as a shareholder in a company or a partner in a partnership that is authorised under this Act to act as an insurance

3. In section 4

- (a) “Commission” is substituted for “Commissioner” in the opening paragraph of subsection (1);
- (b) the words “prepare reports” are substituted for “report to the Minister” in paragraph (c) of subsection (1);
- (c) “its” and “Commission” are respectively substituted for “his” and “Commissioner” in subsection (2); and
- (d) the words “Managing Director of the Commission” are substituted for “Commissioner” in subsection (3).

4. In section 5 “Commission” and “by it” are respectively substituted for “Commissioner” and “under his hand” in subsections (1) and (2).

5. In section 6

- (a) “Commission” and “Governor in Council” are respectively substituted for “Commissioner” and “Minister” in subsection (1); and
- (b) subsection (2) is repealed and substituted as follows:

“(2) The Governor in Council shall cause the report to be laid before the Legislative Council.”.

6. In section 7 “Commission” is substituted for “Commissioner” in the marginal note and in subsections (1) and (3).

7. In section 8 the words “hand and seal of office of the Commissioner” are deleted and substituted by “seal of office of the Commission”.



8. Section 9 is repealed.

9. In section 12 “Commission” is substituted for “Governor”.

10. In section 13 “Commission” and “the insurer” are respectively substituted for “Governor” and, “it” where it first occurs in subsection (2).

11. In section 14

(a) subsection (2) is repealed and substituted as follows:

“(2) The Commission may require an insurer to increase its fully paid-up capital or reserve fund, as the case may be, to such greater amount as the Commission may determine for the nature and volume of the insurance business being or being sought to be carried on by the insurer.”; and

(b) subsection (3) is repealed and substituted as follows:

“(3) The minimum capital or reserve fund, as the case may be, required for licences may be in the form of cash or an irrevocable letter of credit issued by a financial institution approved by the Commission.”

12. In section 15 “Commission” is substituted for “Governor” in subsection (1).

13. In section 16

(a) “Commission”, “it” and “its” are respectively substituted for “Governor” in subsection (2) and the words “in any Court” in that subsection are deleted.

14. In subsection 17 “Commission” is substituted for

“Governor”.

15. In section 20 “Commission” is substituted for “Commissioner”.

16. In section 21 “Commission” is substituted for “Commissioner” in subsections (1), (2) and (3).

17. In section 22 “Commission” is substituted for “Commissioner” in subsection (1).

18. In section 25

(a) “Commission” is substituted for “Governor” and “Commissioner” in subsection (1); and

(b) “Commission” and “it” are respectively substituted for “Governor” and “he” in subsection (2).

19. In section 26 “Commission” is substituted for “Governor” and “Commissioner”.

20. In section 27

(a) subsection (1) is repealed and substituted as follows:

“(1) The Commission shall give an insurer reasonable notice in writing of its intention to cancel the insurer’s licence under section 26 and shall afford the insurer an opportunity of making representations to the Commission.”;

(b) “Commission” is substituted for “Governor” in subsection (2);

(c) “Commission”, “it” and “its” are respectively substituted for “Governor”, “he” and “his” in subsection (3);

(d) “Commission” and “its” are respectively

substituted for “Governor” and “his” in subsection (4); and

(e) subsection (5) is repealed.

21. Section 28 is repealed and substituted as follows:

“Appeal procedure.	28. An insurer aggrieved by the cancellation by the Commission of its licence may appeal to the Financial Services Commission Appeal Board (referred to in sections 29 and 56 (a) as “the Appeal Board) established under the Financial Services Commission Act, 2001.”.
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22. In section 29 “Appeal Board” and “Commission” are respectively substituted for “Court” and “Commission”.

23. In section 30 “Commission” is substituted for “Commissioner”.

24. In section 32 “Commission” is substituted for “Commissioner”.

25. In section 33 “Commission” is substituted for “Governor” and “Commissioner” in subsections (1) and (2).

26. In section 36 “Commission” is substituted for “Commissioner” and “Governor” in subsections (1) and subsections (2).

27. In section 37 “Commission” is substituted for “Commissioner” and “Governor”.

28. In section 38 “Commission” and “it” are respectively substituted for “Governor” and “he”.

29. In section 39 “Commission” is substituted for “Governor”.

30. In section 42 “Commission” is substituted for

“Commissioner” in subsections (1) and (2).

31. In section 43

- (a) “Commission” is substituted for “Commissioner” in subsection (1); and
- (b) “Commission” and “it” are respectively substituted for “Commissioner” and “he” in subsection (2).

32. In section 45 “Commission” is substituted for “Commissioner” in subsection (4).

33. In section 46 “Commission” is substituted for “Commissioner”.

34. In section 47 “Commission” is substituted for “Commissioner” in subsections (2) and (3).

35. In section 50

- (a) the words “Commissioner with the approval of the Governor” in paragraph (a) of subsection (1) are deleted and substituted by “Commission”;
- (b) “Commission” is substituted for “Commissioner” in sub-paragraph (ii) of paragraph (a) of subsection (1); and
- (c) “Commission” and “it” are respectively substituted for “Commissioner” and “he” in subsection (4).

36. In section 55 “Commission” is substituted for “Commissioner” in subsections (1), (2) and (3).

37. In section 56

- (a) “Commission” is substituted for “Governor” in the opening paragraph and paragraph (b);
- (b) the words “The Court in accordance with the provisions of this Act” in paragraph (a)

are deleted and substituted by “the Appeal Board in accordance with the provisions of the Financial Services Commission Act, 2001;” and

- (c) the words “the Governor may direct the Commissioner to” in the closing paragraph are deleted and substituted by “the Commission may”.

38. In section 57 the words “the Minister, upon the recommendation of the Commissioner,” in paragraph (b) of subsection (3) are deleted and substituted by “the Commission”.

39. Subsection (1) of section 58 is repealed and substituted as follows:

- “(1) An application for a certificate of authority shall be made to the Commission in the form determined by it, accompanied by the prescribed fee, and any information and documents the Commission may reasonably require.”.

40. In section 59

- (a) the words “the Minister may, upon the recommendation of the Commissioner and if he” in subsection (1) are deleted and substituted by “the Commission may, if it”; and
- (b) “Commission” is substituted for “Minister” in subsection (2).

41. In section 60

- (a) “Commission”, “it” and “its” are respectively substituted for “Minister”; “he” and “his” in subsections (1) and (2); and
- (b) the words “in any Court” in subsection (2) are deleted.

42. In section 61 “Commission” is substituted for “Commissioner” in subsections (1) and (2).

43. In section 64 “Commission” is substituted for “Commissioner” in subsections (1) and (2).

44. In section 66 “Commission” is substituted for “Commissioner” and “Minister” in subsections (1), (2) and (4).

45. In section 69 “Commission” is substituted for “Commissioner” in subsections (1) and (2).

46. Section 70 is repealed.

47. In section 72 “Commission” is substituted for “Commissioner” in subsection (2).

48. In section 73 “Commission” is substituted for “Commissioner” in subsection (1).

49. In section 74

- (a) “Commission’s” is substituted for “Governor’s” in the marginal note;
- (b) “Commissioner” is substituted for “Governor” in subsection (1) and the words “and upon the recommendation of the Commissioner, the Governor” in that subsection are substituted by “the Commission”;
- (c) the words “and the recommendation of the Commissioner, the Governor in subsection (3) are deleted and substituted by “the Commission” and “it” is substituted for “he” in that subsection; and
- (d) “its” and “Commission” are respectively substituted for “his” and “Governor” in subsection (4).

50. In section 75 “Commission” is substituted for

10(a). Insurance  
Regulations, 1995

“Commissioner” in subsection (2).

51. In the opening paragraph of section 76 the words “(a) or (b)” are deleted.

52. In section 77

- (a) the words “The Governor may” in subsection (1) are deleted and substituted by “The Governor in Council may, on the advice of the Commission,”;
- (b) “Commission” is substituted for “Governor” in subsection (2).

53. In section 78

- (a) “Commission” is substituted for “Governor” in subsections (1), (3) and (5); and
- (b) the words “The Governor” in subsection 4 are deleted and substituted by “The Governor in Council, on the advice of the Commission,”.

54. Paragraph (b) of section 82 is repealed and substituted as follows:

- “(b) wilfully makes any statement or gives any information to the Commission or to any person acting under its authority, which is false or misleading;”.

1. In regulation 2

- (a) “Commission” is substituted for “Minister” in the definition of “appointed stock exchange”; and
- (b) delete “Minister” and the definition thereto.

2. In paragraph (a) of regulation 6 “Commission” is substituted for “Commissioner”.

11.

Mutual Funds Act, 1996

3. In regulation 8 “Commission” is substituted for “Commissioner” in sub-regulations (2) and (3).
  4. In regulation 9 “Commission” is substituted for “Commissioner” in sub-regulations (1) and (2).
  5. In regulation 10 “Commission” is substituted for “Commissioner” in sub-regulation (1).
  6. In regulation 11 “Commission” is substituted for “Commissioner” in sub-regulations (1) and (2).
  7. In regulation 12
    - (a) “Commission”, “it” and “the Commission” are respectively substituted for “Commissioner”, “him” and “he” in sub-regulation (1); and
    - (b) “Commission” is substituted for “Minister” and “Commissioner” in sub-regulation (2), and the words “in his name of office” in that sub-regulation are deleted and substituted by “in its name”.
1. In section 2
- (a) delete “Governor” and the definition thereto in subsection (1);
  - (b) delete “Minister” and the definition thereto in subsection (1);
  - (c) “Commission” is substituted for “Minister” in the definition of “recognised Country or Jurisdiction” in subsection (1);
  - (d) delete “Registrar” and the definition thereto in subsection (1);
  - (e) insert in subsection (1) in the appropriate alphabetical order the following:  
  
“Commission” means the Financial Services Commission established under



section 3 of the Financial Services Commission Act, 2001;” and

- (f) “Commission” is substituted for “Minister” in subsection (3).

2. In section 3

- (a) “Duties of the Commission” is substituted for the marginal note;
- (b) subsection (1) is repealed;
- (c) “Commission” and “it” are respectively substituted for “Registrar” and “him” in subsection (2);
- (d) “Commission” is substituted for “Registrar” in subsection (3); and
- (e) subsection (4) is repealed and substituted as follows:

“(4) The Commission or any of its employees shall not knowingly have any financial interest in any person registered, recognised or licenced under this Act.”.

3. Section 4 is repealed.

4. In section 5

- (a) “Commission” and “Governor in Council” are respectively substituted for “Registrar” and “Minister” in subsection (1); and
- (b) subsection (2) is repealed and substituted as follows:

“(2) Upon receiving the report referred to in subsection (1), the Governor in Council shall, as soon as practicable, cause the report to be laid before the Legislative Council.”

5. In section 6

- (a) “Commission is substituted for “Registrar” in subsection (1); and
- (b) “Commission” and “it” are respectively substituted for “Registrar” and “he” in subsection (3).

6. In section 7

- (a) “Commission” and “it” are respectively substituted for “Minister” and “him” in subsection (1);
- (b) subsection (2) is repealed and substituted as follows:

“(2) The Commission shall designate one of the persons appointed under subsection (1) as Chairman of the Mutual Funds Advisory Committee.”;

- (c) “Commission” and “the Commission” are respectively substituted for “Minister” and “him” in paragraph (a) of subsection (3);
- (d) “Commission” is substituted for “Minister” in paragraph (b) of subsection (3); and
- (e) the words, “subject to the approval of the Commission,” are inserted after the words “have power to establish” in paragraph (c) of subsection (3).

7. In section 9 “Commission” is substituted for “Governor” in subsections (1) and (2).

8. In section 10

- (a) “Commission” is substituted for “Governor” in subsections (1) and (3); and

- (b) “Commission’s” and “Commission” are respectively substituted for “Governor’s” and “Governor” in subsection 4.

9. In section 11

- (a) “Commission” and “its” are respectively substituted for “Governor” and “his” in subsection (1); and
- (b) “Commission”, “its” and “it” are respectively substituted for “Governor”, “his” and “he” in subsections (2) and (3); and
- (c) place a full-stop after “review” in subsection (3) and delete the rest of the words thereafter.

10. In section 12

- (a) subsection (1) is repealed and substituted as follows:

“(1) Where the Commission grants registration pursuant to section 9, it shall

- (a) register the public fund in the register maintained by it for the purpose under section 6; and
  - (b) issue a certificate to the registered public fund showing the date of registration.”;
- (b) “Commission” is substituted for “Governor” and “Registrar” in subsection (2), and “its” is substituted for “his” in the same subsection;
  - (c) paragraph (a) of subsection (2) is repealed;
  - (d) “Commission” and “the Commission” are respectively substituted for “Registrar” and

“he” in subsection (3);

- (e) subsection (4) is repealed and substituted as follows:

“(4) The Commission shall not register the proposed public fund if the public fund

- (a) has not received a consent for registration under section 10; or

- (b) has not complied with any of the requirements of subsection (2).”; and

- (f) subsection (5) is repealed and substituted as follows:

“(5) Any person aggrieved by a decision of the Commission under subsection

- (4) may appeal to the Financial Services Appeal Board established under the Financial Services Commission Act, 2001.”.

#### 11. In section 13

- (a) “and” is deleted in the opening paragraph of subsection (1);

- (b) paragraph (b) of subsection (1) is repealed and substituted as follows:

“(b) keep such accounting records and financial statements available for examination by the Commission or any person authorised by the Commission at

- (i) the public fund ' s place of business or registered office in the Territory; or
- (ii) such other place as the public fund ' s officers may see fit, provided that copies of such records and statements or such other documents or information as the Commission may consider adequate are kept at the public fund ' s place of business or registered office in the Territory.'; and

(c) "Commission" is substituted for "Registrar" in paragraph (a) of subsection (2).

12. In section 14

- (a) "Commission" is substituted for "Registrar" in subsections (1) and (5); and
- (b) "Commission" and "the Commission are respectively substituted for "Registrar" and "him" in subsection (4).

13. In section 15 "Commission" is substituted for "Registrar" in subsections (1) and (2).

14. In section 19 "Commission" is substituted for "Minister" in subsections (1) and (2).

15. In section 20

- (a) "Commission" and "its" are respectively substituted for "Minister" and "his" in subsection (1);
- (b) "Commission" is substituted for Minister in subsections (2) and (3);

- (c) “it” is substituted for “he” in paragraph (b) of subsection (3);
- (d) “Commission”, “it” and “its” are respectively substituted for “Minister”, “he” and “his” in subsection (4); and
- (e) “Commission” is substituted for “Minister” in subsection (5).

16. Section 21 is repealed and substituted as follows:

- |                         |  |
|-------------------------|--|
| “Recognition procedure. | <p>21. Where the Commission grants recognition to a private fund, it shall</p> <ul style="list-style-type: none"> <li>(a) enter the particulars relating to the private fund in the register maintained by it for the purpose under section 6; and</li> <li>(b) issue a certificate of recognition to the private fund showing the date of recognition.”.</li> </ul> |
|-------------------------|--|

17. In section 22 “Commission” is substituted for “Minister”.

18. In section 23 “Commission” is substituted for “Minister”.

19. In section 24

- (a) “Commission” is substituted for “Minister” in subsections (1), (2) and (4); and
- (b) “Commission” and “it” are respectively substituted for “Minister” and “he” in subsection (3).

20. Section 25 is repealed and substituted as follows:

“Licencing  
procedure.

25. Where the Commission grants a licence to an applicant, it shall

- (a) enter the particulars of the applicant in the register maintained by it for the purpose under section 6; and
- (b) issue a licence to the applicant showing the date on which the licence is granted.”.

21. In section 25A the words “Minister may” are deleted and substituted by “Commission may, with the approval of the Governor in Council,”.

22. In section 26 “Commission” is substituted for “Registrar” in subsection (2).

23. In section 27 substitute “Commission” for the words “Governor or the Minister, as the case may be,”.

24. In subsection 28 “Commission” is substituted for “Government” in subsection (3).

25. The opening paragraph of section 29 is deleted and substituted by the following:

“With respect to a registered public fund or a recognised private fund, or a licenced manager or administrator, the Commission, may, subject to sections 30 and 31, cancel a certificate or a licence, as the case may be,”.

26. In section 30

- (a) “Commission” is substituted for “Governor or the Minister, as the case may be,” in the opening paragraph of subsection (1);
- (b) “it” is substituted for “he” and “him”

respectively in paragraphs (a) and (b) of subsection (1); and

- (c) subsection (2) is repealed and substituted as follows:

“(2) Where in the exercise of its powers under section 29 (b) the Commission decides to cancel a certificate or licence, it shall give notice in writing to the holder thereof of such cancellation and the reasons therefor.”.

27. Section 32 is repealed and substituted as follows:

“Appeal by existing entities.

32. Notwithstanding any provision in this Act, where the Commission, in the exercise of its powers under section 11 (1) (a), 20 (1) or 24 (1), refuses to grant registration, recognition or a licence, as the case may be, to an existing entity, it shall give such existing entity a notice in writing of its decision and the reasons therefor and the existing entity may appeal such decision in accordance with section 33.”.

28. Section 33 is repealed and substituted as follows:

“Appeal procedure.

33. An appeal under section 20 (4), 31 or 32 shall lie to the Financial Services Appeal Board established under the Financial Services Commission Act, 2001.”.

29. In section 34 “Commission” and “it” are respectively substituted for “Registrar” and “he”.

30. In section 35

- (a) the opening paragraph of subsection (1) is deleted and substituted as follows:



“Where the Commission is satisfied that to do so would not be prejudicial to the public interest, it may direct that all or any of the provisions of this Act or the regulations shall”; and

- (b) “Commission” is substituted for “Governor” in subsection (2).

31. In section 35A “Commission” is substituted for “Governor”.

32. In section 36

- (a) the opening paragraph is deleted and substituted as follows:

“For the purpose of discharging its duties under this Act and the regulations and subject to the provisions of the Financial Services (International Co-operation) Act, 2000 and the Financial Services Commission Act, 2001, the Commission or any person acting under its authority may, at all reasonable times, in writing, direct any person to whom this Act applies to”; and

- (b) “Commission” and “it” are respectively substituted for “Registrar” and “him” in the closing paragraph.

33. Sections 37 and 38 are repealed.

34. In section 41

- (a) “Governor in Council” is substituted for “Minister” in the marginal note; and

- (b) the opening paragraph is deleted and substituted as follows:

“The Governor in Council may, on the advice of the Commission, by Notice published in the *Gazette*,”.

11(a).	Mutual Funds (Recognised Managers and Family Trusts) (Exemption) Direction, 1997	35. The opening paragraph of section 42 is deleted and substituted as follows:  “The Governor in Council may, on the advice of the Commission, make regulations.”  In paragraph 4 “Commission” is substituted for “Registrar” in sub-paragraphs (1) and (2).
12.	Partnership Act, 1996	<p>1. In section 2</p> <p>(a) delete “Minister” and “Registrar” and the definitions thereto; and</p> <p>(b) insert in the appropriate alphabetical order the following:</p> <p style="padding-left: 40px;">“Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act, 2001;”.</p> <p>2. In section 21 “Commission” is substituted for “Registrar” in subsection (1).</p> <p>3. Section 52 is repealed.</p> <p>4. In section 53 “Commission” is substituted for “Registrar” in subsection (1).</p> <p>5. In section 54 “Commission” and “it” are respectively substituted for “Registrar” and “he” in subsection (1), and for “Registrar” and “him” in subsection 3.</p> <p>6. In section 55</p> <p>(a) “Commission” is substituted for “Registrar” in subsections (1), (2) and (3); and</p> <p>(b) the words “his hand” and “ in subsection (1) are deleted and substituted by “its”.</p>

7. In section 57 “Commission” is substituted for “Registrar” in subsections (2) and (4).

8. In section 59 “Commission” is substituted for “Registrar” in subsections (4), (6) and (7).

9. In section 60 “Commission” is substituted for “Registrar” in subsection (1) and (3).

10. In section 86

- (a) “Commission” is substituted for “Registrar” in subsection (1);
- (b) paragraph (a) of subsection (2) is repealed.
- (c) “Commission” and “the Commission” are respectively substituted for “Registrar” and “him” in paragraph (b) of subsection (2); and
- (d) “Commission” is substituted for “Registrar” in paragraph (c) of subsection (2).

11. In section 87 the words “to the Registrar” are deleted.

12. In section 89

- (a) the words “to the Registrar” in subsection (1) are deleted; and
- (b) insert the words “on the advice of the Commission,” after “may” in subsection (2).

13. In section 90 “Commission” is substituted for “Registrar”.

14. Section 91 is repealed and substituted as follows:

“Fees, etc. to be	9.	All fees, licence fees and
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paid into the Government Trust Account. penalties paid under this Act shall be paid into the Government Trust Account in accordance with Section 19 of the Financial Services Commission Act, 2001.”.

15. In section 92 “Commission” and “it” are respectively substituted for “Registrar” and “him”.

16. In section 94

- (a) insert the words “, on the advice of the Commission,” after “may” in the opening paragraph;
- (b) “Commission” is substituted for “Registrar”; and
- (c) paragraph (b) is repealed.

17. In section 95 “Commission” is substituted for “Registrar” and “Governor in Council”.

18. In section 96

- (a) “Commission” is substituted for “Registrar” in subsections (1) and (2); and
- (b) the words “his hand and” in subsection (1) are deleted and substituted by “its”.

19. In section 97

- (a) “Commission” is substituted for “Registrar” in subsections (1) and (2); and
- (b) the words “hand and official” in subsection (2) are deleted.

20. In section 98

- (a) “Commission” is substituted for “Minister” in subsections (1), (2), (7), (8) and (9);

- (b) “it” is substituted for “he” in subsections (8) and (9); and

21. In section 99

- (a) “Commission’s” is substituted for “Minister’s” in the marginal note;

- (b) subsection (1) is repealed and substituted as follows:

“(1) Without prejudice to the powers of the Commission under the Financial Services (International Co-operation) Act, 2000 and the Financial Services Commission Act, 2001 to request or order the production of documents or the provision of information, the Commission may, at any time, if it thinks there is good reason to do so, require a limited partnership, a partner or the registered agent of a limited partnership to produce at the time and place as may be specified in the directions, to the person specified by the Commission in the directions, the books and documents as may be so specified.”;

- (c) the words “The Minister or the public servant specified by the Minister” in subsection (2) are deleted and substituted by “The Commission or the person specified by the

Commission”; and

- (d) subsections (5), (6) and (7) are repealed.

22. Section 100 is repealed.

23. In section 101

- (a) the figure “(1)” after “101” is deleted such that that section reads as section 101 without a subsection;
- (b) the words “subsections (2) and (3)” are deleted and substituted by “the Financial Services (International Co-operation) Act, 2001 and the Financial Services Commission Act, 2001”;
- (c) paragraph (a) is repealed;
- (d) the words “subsections (3), (4) and (7)” in paragraph (c) are deleted and substituted by “subsections (3) and (4)”;
- (f) a full-stop is substituted for “; or” in paragraph (e);
- (g) paragraph (f) is repealed; and
- (h) subsections (2), (3) and (4) are repealed.

24. In section 105

- (a) “Commission” is substituted for “Registrar” in subsections (1), (3), (4), (5), (6) and (7);
- (b) “which” is substituted for “who” in subsection (3);
- (c) the words “his hand” and in subsections (5) and (6) are deleted and substituted by “its”.

25. In section 106 “Commission” is substituted for “Registrar” in subsections (1), (2) and (3).

26. In section 107 “Commission” is substituted for “Registrar” in subsections (1) and (2).

27. In the Schedule

(a) the words “to the Registrar” in paragraph (a) of Part I are deleted; and

(b) the words in the opening paragraph of Part II are deleted and substituted as follows:

“There shall be paid the following fees:”.

13.

Proceeds of Criminal  
Conduct  
Act, 1997

“subsections (3) and (4)”;

- (f) a full-stop is substituted for “; or” in paragraph (e);
- (g) paragraph (f) is repealed; and
- (h) subsections (2), (3) and (4) are repealed.

24. In section 105

- (a) “Commission” is substituted for “Registrar” in subsections (1), (3), (4), (5), (6) and (7);
- (b) “which” is substituted for “who” in subsection (3);
- (c) the words “his hand and” in subsections (5) and (6) are deleted and substituted by “its”.

25. In section 106 “Commission” is substituted for “Registrar” in subsections (1), (2) and (3).

26. In section 107 “Commission” is substituted for “Registrar” in subsections (1) and (2).

27. In the Schedule

- (a) the words “to the Registrar” in paragraph (a) of Part I are deleted; and
- (b) the words in the opening paragraph of Part II are deleted and substituted as follows:  
“There shall be paid the following fees:”.

In section 27

- (a) the words “, after consultation with the Financial Services Commission,” are inserted after “may” in subsection (1); and
- (b) the words “the Director of Financial Services” in paragraph (a) of subsection (2) are deleted and substituted by “the Managing Director of the Financial Services Commission”.



13(a).	Anti-money Laundering Code of Practice, 1999	<p>1. In paragraph 12 “Financial Services Commission” is substituted for “Director of Financial Services” in sub-paragraphs (1), (2) and (3).</p> <p>2. In paragraph 13 “Financial Services Commission” and “it” are respectively substituted for “Director of Financial Services” and “him” in sub-paragraph (1) and, for “Director of Financial Services” and “he” in sub-paragraph (2).</p>
13(b).	Reporting Authority (Constitution and Procedure) Order, 1998	<p>Paragraph (a) of subsection (1) of section (2) is revoked and substituted by the following:</p> <p>“(a) the Managing Director of the Financial Services Commission as Chairman.”.</p>
14.	Offshore Legislation (Delegation of Functions and Powers) Act, 2000.	The Whole Act is repealed.
15.	Financial Services (International Co-operation) Act, 2000.	<p>1. In section 2</p> <p>(a) delete “Governor” in the definitions of “competent authority” and “foreign regulatory authority” and substitute therefor “Commission”;</p> <p>(b) delete “Director” and the definition thereto;</p> <p>(c) delete “Governor” and the definition thereto; and</p> <p>(d) insert in the appropriate alphabetical order the following:</p> <p>“Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act, 2001;”.</p>

2. Section 3 is repealed.
3. In section 4
  - (a) substitute “Commission” for “Director” in subsections (1) to (3), (5) to (8) and (10);
  - (b) “it” is substituted for “he” in subsection (2); and
  - (c) subsection (4) is repealed.
4. In section 5
  - (a) “Commission” is substituted for “Director” in subsections (1) to (3) and (5) and (6);
  - (b) “it” is substituted for “he” and “him” in subsection (1).
5. In section 6
  - (a) “Commission” is substituted for “Director” in subsections (1), (2) and (3); and
  - (b) “its” and “it” are respectively substituted for “his” and “he” in subsection (1).
6. In section 7 “Commission” is substituted for “Director” in subsections (2) and (3).
7. In section 9 “Commission”, “its” and “it” are respectively substituted for “Director”, “his” and “him”.
8. Section 11 is repealed and substituted as follows:
  11. The powers of the Commission under this Act are without prejudice to the powers conferred on it under Part IV of the Financial Services Commission Act, 2001 in relation to a request for assistance from a

foreign regulatory authority.”.

9. The Schedule is repealed.

Passed by the Legislative Council this 7<sup>th</sup> day of December, 2001.

REUBEN VANTERPOOL  
Speaker

OLEANVINE MAYNARD  
Ag. Clerk of the Legislative Council

## **SUBSIDIARY LEGISLATION**

**Financial Services Commission (Fees) Regulations, 2005  
(S.I. 2005 No. 60)**

**Financial Services (Administrative Penalties) Regulations, 2006  
(S.I. 2006 No. 86)  
Amended by  
S.I. 2007/62**

**Financial Services (Exemptions) Regulations, 2007  
(S.I. 2007 No. 50)  
Amended by  
S.I. 2007/79**

**VIRGIN ISLANDS**  
**FINANCIAL SERVICES COMMISSION (FEES) REGULATIONS, 2005**

**ARRANGEMENT OF REGULATIONS**

***Regulation***

1. Citation.
  2. Fees.
  3. Commencement.
- SCHEDULE**

**VIRGIN ISLANDS**

**STATUTORY INSTRUMENT 2005 NO. 60**

**FINANCIAL SERVICES COMMISSION ACT, 2001  
(No. 12 of 2001)**

**Financial Services Commission (Fees) Regulations, 2005**

[Gazetted 4<sup>th</sup> August , 2005]

The Executive Council, acting on the advice of the Financial Services Commission and in exercise of the powers conferred by section 62 of the Financial Services Commission Act, 2001 (No. 12 of 2001), makes the following Regulations:

- Citation.                   **1.** These Regulations may be cited as the Financial Services Commission (Fees) Regulations, 2005.
- Fees.  
Schedule                   **2.** The fees specified in the Schedule shall be paid to the Commission and shall not be refundable.
- Commencement.           **3.** These Regulations come into force on the 1<sup>st</sup> day of August, 2005.

**SCHEDULE**

[Regulation 2]

<b>Category</b>	<b>Fee</b>
1. Application for approval of a compliance officer	\$100.00
2. Application for approval of an authorised custodian of bearer shares	\$100.00

Made by the Executive Council this 8<sup>th</sup> day of July, 2005.

SUZETTE VANTERPOOL,  
Clerk of the Executive Council.

**VIRGIN ISLANDS**

**FINANCIAL SERVICES COMMISSION ACT, 2001**

**FINANCIAL SERVICES**

**(ADMINISTRATIVE PENALTIES) REGULATIONS, 2006**

**ARRANGEMENT OF REGULATIONS**

*Regulation*

1. Citation and commencement.
2. Interpretation.
3. Power of Commission to impose administrative penalties.
4. Procedure to be followed by Commission.
5. Determination of appropriate penalty.
6. Appeal against an administrative penalty.
7. Limitation period.
8. Miscellaneous provisions concerning administrative penalties.

**VIRGIN ISLANDS**

**STATUTORY INSTRUMENT 2006 NO. 86**

**FINANCIAL SERVICES COMMISSION ACT, 2001**

**(No. 12 of 2001)**

**Financial Services (Administrative Penalties) Regulations, 2006**

[Gazetted 14<sup>th</sup> December, 2006]

The Executive Council, acting on the advice of the Commission and in exercise of the powers conferred by section 62 of the Financial Services Commission Act, 2001 (No. 12 of 2001) makes the following regulations:

Citation and  
Commence-ment.

**1.** These Regulations may be cited as the Financial Services (Administrative Penalties) Regulations, 2006 and shall come into effect on 15<sup>th</sup> January, 2007.

Interpretation. No.  
12 of 2001 S.I.  
2007/62

**2.** (1) In these Regulations,  
“the Act” means the Financial Services Commission Act, 2001;

“late payment penalty” means an administrative penalty imposed by the Commission under regulation 5A.

S.I. 2007/62

(2) Any reference in these Regulations and the Schedules to a “contravention”, means a contravention of the Act, unless the context otherwise requires, any financial services legislation, the Regulatory Code or any directive issued by the Commission, and references to failures, requirements and obligations shall be construed accordingly.

S.I. 2007/62



(3) Where the Commission, in accordance with a power granted under the Act, any financial services legislation or the Regulatory Code, extends the time for the filing of any document or the notifying of any matter, the last day of the final extension given by the Commission shall be regarded as the last date for the filing of the document or the making of the notification.

(4) For the purposes of Schedule 1, “filing” includes “submitting”, “delivering”, “giving” or any similar word describing the provision of a document to the Commission. S.I. 2007/62

(5) In determining whether a late payment penalty is payable by a licensee, a fee, charge or penalty is deemed not to have been paid until it is paid in full. S.I. 2007/62

**3.** (1) This regulation and regulations 4 and 5 apply to any contravention, other than a contravention for which a late payment penalty is payable. Power of Commission

(1A) If the Commission considers that a licensee has committed a contravention to which this regulation applies, it may impose an administrative penalty on the licensee, with respect to the contravention, as provided for in this regulation and regulations 4 and 5. to impose administrative penalties. S.I. 2007/62

(2) Where the Commission decides to impose an administrative penalty on a licensee under subregulation (1A), it shall, after taking into account the matters specified in regulation 5, fix the amount of the administrative penalty within the range specified for the contravention as provided in Schedule 1. S.I. 2007/62  
Schedule 1

(3) *(Repealed)* S.I. 2007/62

(4) *(Repealed)* S.I. 2007/62

**4.** (1) Where the Commission proposes to impose an administrative penalty on a licensee for a contravention in respect of which this regulation applies, it shall send a notice of proposed penalty to the licensee stating Procedure to be followed by Commission.

(a) the contravention in respect of which it proposes to impose the penalty; S.I. 2007/62

(b) the amount of the proposed penalty; and

(c) the entitlement of the licensee to make representation to the Commission in accordance with subregulation (2).

(2) Where a licensee receives a proposed penalty notice, it may, within twenty-one days of the date of the notice, make representation to the Commission as

to why it should not be required to pay the administrative penalty or as to why the proposed penalty should be reduced.

(3) The Commission may at any time prior to the issuing of a penalty notice under subregulation (4), withdraw a notice of proposed penalty and substitute a new notice of proposed penalty for a different amount.

(4) Subject to subregulation (5), following the expiration of twenty-one days from the date of the proposed penalty notice, the Commission may, by written penalty notice, impose an administrative penalty on the licensee in an amount not exceeding the amount stated in the proposed penalty notice.

(5) Before imposing an administrative penalty on a licensee, the Commission shall consider any representations received under subregulation (2).

(6) Subject to subsection (7), a licensee that receives a penalty notice shall pay the penalty stated in the notice to the Commission within fourteen days of receipt of the notice.

(7) (Repealed)

S.I. 2007/62

**5.** In determining the administrative penalty to be imposed on a licensee under regulation 4, the Commission

(a) shall take into account the following matters:

- (i) the nature and seriousness of the contravention;
- (ii) whether the licensee has previously contravened the Act or any regulatory legislation;
- (iii) whether the contravention was deliberate or reckless or caused by the negligence of the licensee;
- (iv) whether any loss or damage has been sustained by third parties as a result of the contravention; and
- (v) the ability of the licensee to pay the penalty, including any gain resulting to the licensee as a result of the contravention; and

(b) may take into account such other matters as it considers appropriate.

**5A.** (1) The Commission may impose an administrative penalty on a licensee in accordance with Schedule 2 where the licensee fails to pay

Determination of appropriate penalty. S.I. 2007/62

Late payment penalty. Schedule 2 S.I. 2007/62

- (a) any fee or charge payable under the Act or any regulatory legislation, or
- (b) any penalty payable under these Regulations,

on or before the date upon which the fee, charge or penalty is due for payment.

(2) Where the Commission decides to impose a late payment penalty on a licensee under subregulation (1), it shall send a penalty notice to the licensee stating

- (a) the fee, charge or penalty in respect of which the penalty is imposed; and
- (b) the amount of the proposed penalty calculated in accordance with Schedule 2.

(3) Subject to regulation 8(6), a licensee that receives a penalty notice shall pay the penalty stated in the notice to the Commission within fourteen days of receipt of the notice.

**6.** (1) Where a licensee is aggrieved by a decision of the Commission to impose an administrative penalty on it, or by the amount of such administrative penalty, the licensee may, within fourteen days of receiving the penalty notice, appeal to the Appeals Board.

Appeal against an administrative penalty.

(2) An appeal of a decision of the Commission to impose an administrative penalty does not operate as a stay on the obligation of the licensee to pay the penalty.

**7.** (1) The Commission may not issue a proposed penalty notice to a licensee under regulation 3(1A) with respect to a contravention after the end of the period of two years commencing on the date that the Commission first knew of the contravention.

Limitation period.  
S.I. 2007/62

(2) For the purposes of subregulation (1), the Commission is deemed to know of a contravention if it has information from which the contravention can reasonably be inferred.

S.I. 2007/62

(3) The Commission may not issue a penalty notice under regulation 5A more than six years after the date upon which the fee, charge or penalty became due for payment.

Miscellaneous provisions concerning administrative penalties.

**8.** (1) The imposition by the Commission of an administrative penalty on a licensee with respect to a contravention does not limit the power of the Commission to take any other enforcement action against the licensee with respect to that contravention, except that where the Commission imposes an administrative penalty, it shall not revoke the licensee's licence in reliance on the same contravention.

(2) Where the Act or any regulatory legislation provides for the payment of a penalty by a licensee with respect to a contravention, the Commission

- (a) may, in its discretion, determine whether to impose a penalty under these regulations or under the Act or the regulatory legislation, but
- (b) shall not impose more than one administrative penalty on a licensee in respect of the same contravention..

Schedule 1  
S.I. 2007/62

(3) Where a contravention committed by a licensee falls into more than one of the categories specified in Schedule 1, the Commission

- (a) may, in its discretion, determine into which category the contravention will fall, but
- (b) shall not impose an administrative penalty under more than one category.

S.I. 2007/62

(4) Where a licensee has, by reason of committing more than one contravention, become liable to more than one penalty, the Commission may compound the penalties.

S.I. 2007/62

(5) The Commission may agree to the payment of an administrative penalty in instalments over such period of time as it considers appropriate.

**SCHEDULE 1**

[Regulation 3 (2)]  
S.I. 2007/62

**ADMINISTRATIVE PENALTIES**

<b>Categories of contravention and description</b>	<b>Penalty range</b>
<p><b>1. Licensing contravention</b></p> <p>Licensee:</p> <ul style="list-style-type: none"> <li>(a) carrying on financial services business not authorised by its licence; or</li> <li>(b) carrying on business in breach of a condition of its licence or contrary to a directive issued by the Commission.</li> </ul>	<p>\$2,000 to \$20,000</p>
<p><b>2. Contravention of financial resource requirement</b></p> <p>Licensee failing to comply with any financial resource requirement, including, where applicable to the licensee, any failure:</p> <ul style="list-style-type: none"> <li>(a) to maintain the required level of capital;</li> <li>(b) to maintain the required solvency margin;</li> <li>(c) to comply with any reserving requirements;</li> <li>(d) to maintain any deposit required to be maintained.</li> </ul>	<p>\$2,000 to \$20,000</p>
<p><b>3. Late filing/notification</b></p> <p>Licensee filing any document required to be filed or notifying the Commission of any matter required to be notified after last date on which the document is to be filed or the matter is to be notified to the Commission:</p> <ul style="list-style-type: none"> <li>1 to 30 business days late</li> <li>31 to 60 business days late</li> <li>61 to 90 business days late</li> <li>91 to 120 business days late</li> <li>121 to 150 business days late</li> <li>151 or more business days late</li> </ul>	<ul style="list-style-type: none"> <li>\$100 to \$500</li> <li>\$500 to \$2,000</li> <li>\$750 to \$3,000</li> <li>\$1,000 to \$4,000</li> <li>\$2500 to \$6,000</li> <li>\$3,000 to \$10,000</li> </ul>

<p><b>4. Failure to obtain approval</b></p> <p>Licensee taking any action for which the approval of the Commission is required without having obtained the necessary approval.</p>	<p>\$1,000 to \$5,000</p>
<p><b>5. Record keeping contravention</b></p> <p>Licensee failing to maintain any records required to be maintained or failing to maintain records in the manner or at the place required.</p>	<p>\$500 to \$5,000</p>
<p><b>6. Compliance contravention</b></p> <p>Licensee failing to establish or maintain adequate systems and controls for ensuring compliance with the requirements of, and its obligations under, the Act, the regulatory legislation, the Regulatory Code or directives issued by the Commission as required by section 34 of the Act, including</p> <ul style="list-style-type: none"> <li>(a) failure to appoint a compliance officer;</li> <li>(b) failure to establish and maintain a compliance procedures manual;</li> <li>(c) failure to comply with any requirement of a regulatory code with respect to compliance.</li> </ul>	<p>\$2,000 to \$10,000</p>
<p><b>7. Late payment of fee or penalty</b></p> <p>Licensee</p> <ul style="list-style-type: none"> <li>(a) paying any fee or penalty required to be paid under any regulatory legislation or any penalty required to be paid under these Regulations more than 360 days after the date when fee or penalty is due; or</li> <li>(b) persistently paying fees or penalties required to be paid under any regulatory legislation or any penalty required to be paid under these Regulations after the date when fee or penalty is due.</li> </ul>	<p>\$500 to \$5,000</p> <p>In addition to any penalty payable in accordance with Schedule 2</p>

<p><b>8. Other contravention</b></p> <p>Licensee committing any other contravention not falling within a category specified above.</p>	<p>\$100 to \$5,000</p>
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**SCHEDULE 2**

**[Regulation 5A (1)]**  
S.I. 2007/62

**LATE PAYMENT PENALTIES**

*The following penalties are payable for the late payment of any fee or penalty payable under any regulatory legislation or for the late payment of any penalty payable under these Regulations*

<b>Description of Fee/Penalty</b>	<b>Penalty payable</b>
<p>1. Penalties for late payment of fee or charge payable under any regulatory legislation</p> <p>For the late payment of a fee or charge payable under any regulatory legislation</p> <p><i>(a) Where the fee or charge is paid 1-30 days after due date</i></p> <p><i>(b) For each additional period of 30 days, or any part thereof, during which fee or charge remains unpaid</i></p>	<p>20% of fee or charge payable, subject to a minimum of \$80.00</p> <p>10% of fee or charge payable, subject to a minimum of \$20.00</p> <p>The maximum penalty payable under paragraphs (a) and (b) shall be 100% of the fee or charge payable</p>

<p>2. Penalty for late payment of administrative penalty, other than late payment penalty)</p> <p><b>For the late payment of an administrative penalty imposed under Schedule 1,</b></p> <p>(a) <b>Penalty paid 1-30 days after due date</b></p> <p>(b) <b>For each additional period of 30 days, or any part thereof, during which penalty remains unpaid</b></p>	<p>10% of penalty payable</p> <p>10% of penalty payable</p> <p>The maximum penalty payable under paragraphs (a) and (b) shall be 100% of the administrative penalty payable</p>
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Made by the Executive Council this 1<sup>st</sup> day of December, 2006.

SUZETTE VANTERPOOL,  
Clerk of the Executive Council.



**VIRGIN ISLANDS  
FINANCIAL SERVICES (EXEMPTIONS) REGULATIONS, 2007  
ARRANGEMENT OF REGULATIONS**

*Regulation*

1. Citation and commencement.
2. Interpretation.
3. Banks and Trust Companies Act exemptions
4. Revocation.

SCHEDULE

**VIRGIN ISLANDS  
STATUTORY INSTRUMENT 2007 NO. 50**

**FINANCIAL SERVICES COMMISSION ACT, 2001**

**(No. 12 of 2001)**

**Financial Services (Exemptions) Regulations, 2007**

[Gazetted 3<sup>rd</sup> August, 2007]

The Executive Council, acting on the advice of the Financial Services Commission and in exercise of the powers conferred by sections 40C and 62 of the Financial Services Commission Act, 2001 (No. 12 of 2001), makes the following Regulations:

Citation and commencement.

**1.** (1) These Regulations may be cited as the Financial Services (Exemptions) Regulations, 2007.

(2) These Regulations come into effect as follows:

(a) paragraph (d) of the definition of “qualifying BVI company” on 1 January 2008; and

(b) the remainder of these Regulations on 1 August 2007.

Interpretation.

**2.** In these Regulations, unless the context otherwise requires,

“Act” means the Financial Services Commission Act, 2001;

No. 12 of 2001

“Business Companies Act” means the BVI Business Companies Act, 2004;

No. 16 of 2004

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

“qualifying BVI company” means a BVI company that

(a) was first incorporated under the Business Companies Act;

(b) has been re-registered under Part II of Schedule 2 of the Business Companies Act;

- (c) has been re-registered under paragraph 6(1)(a) of Part III of Schedule 2 of the Business Companies Act and, in respect of which, an election to disapply Part IV of Schedule 2 of the Business Companies Act has been registered; or
- (d) has been re-registered under paragraph 6(1)(b) of Part III of Schedule 2 of the Business Companies Act and, in respect of which, an election to disapply Part VI of Schedule 2 of the Business Companies Act has been registered.

**3.** The exemptions specified in the Schedule shall have effect with respect to the Banks and Trust Companies Act, 1990.

**4. (1)** The Banks and Trust Companies (Application Procedures) Directions, 1991

Revocation.

are revoked.

(2) Where, immediately prior to 2<sup>nd</sup> August, 2007, paragraph 7 (c) or (d) of the Banks and Trust Companies (Application Procedures) Directions, 1991 applied to a trust company, that paragraph of the Directions shall continue to apply to the company until 31<sup>st</sup> July, 2008, notwithstanding the repeal of the Directions.

Banks and  
Trust  
Companies Act  
exemptions.  
Schedule  
No. 9 of 1990

**EXEMPTIONS APPLICABLE TO**

**THE BANKS AND TRUST COMPANIES ACT, 1990**

**Part I - Private Trust Companies**

- Interpretation.
- No. 9 of 1990
- No. 16 of 2004
- No. 16 of 2004
1. For the purposes of this Part,
    - “Class I trust licence” means a Class I trust licence issued under the Banks and Trust Companies Act, 1990;
    - “connected person” has the meaning specified in paragraph 3;
    - “private trust company” means a company
      - (a) that is a qualifying BVI company;
      - (b) that is a limited company within the meaning of the BVI Business Companies Act, 2004; and
      - (c) the memorandum of which states that it is a private trust company;
    - “qualifying trust” means a trust where each beneficiary of the trust is
      - (a) a connected person in relation to the settlor of the trust; or
      - (b) a charity;
    - “registered agent”, with respect to a private trust company, means the person appointed as its registered agent in accordance with section 91 of the Business Companies Act;
    - “related trust” has the meaning specified in paragraph 4;
    - “related trust business” means trust business provided in respect of
      - (a) a single qualifying trust; or
      - (b) a group of related qualifying trusts;

“relevant trust”, with respect to a private trust company, means a trust with respect to which the private trust company is providing services that constitute trust business;

“specified exemption” means the exemption provided in paragraph 5; and

“unremunerated trust business”, in respect of a private trust company, has the meaning specified in paragraph 2.

2. (1) Trust business carried on by a private trust company is unremunerated trust business if no remuneration is payable to, or received by, the private trust company, or any person associated with the private trust company, in consideration for, or with respect to, the services that constitute the trust business.

Meaning of unremunerated trust business.

(2) For the purposes of subparagraph (1),

- (a) “remuneration” includes money or any other form of property; and
- (b) it is immaterial whether remuneration is payable or received
  - (i) out of the assets, or underlying assets, of a relevant trust;
  - (ii) from the settlor or beneficiary of a relevant trust; or
  - (iii) from any other person pursuant to an arrangement with the settlor or beneficiary of a relevant trust.

(3) For the purposes of, but without limiting subparagraph (1), a person is associated with a private trust company if

- (a) he has an interest, whether legal or beneficial, in the private trust company;
- (b) he is a director or former director of the private trust company; or
- (c) he is an employee or former employee of the private trust company.

(4) Any remuneration payable to, or received by, a director of a private trust company as a director is remuneration payable to, or received by, a person associated with the private trust company within the meaning of subparagraph (1) unless payable to, or received by, the director by way of director’s remuneration

- (a) with respect to professional director services provided to the private trust company; and

- (b) where the director is not otherwise associated with the private trust company, whether by virtue of having a direct or indirect beneficial interest in the private trust company or otherwise.

(5) For the avoidance of doubt, payments made to a private trust company to indemnify it in respect of costs and expenses paid or incurred by the private trust company, shall not be regarded as “remuneration” within the meaning of subparagraph (1).

Meaning of “connected person”.

**3.** (1) A person is a connected person in respect of any of the following relationships:

- (a) his spouse;
- (b) his descendants and their spouses;
- (c) his parents, including step-parents;
- (d) his grandparents and his spouse’s grandparents;
- (e) his parents-in-law, including step-parents-in-law;
- (f) his brother, step-brother, sister, step-sister and their spouses and children;
- (g) his spouse’s brother, step-brother, sister, step-sister and their spouses and children
- (h) his parent’s brother, step-brother, sister, step-sister and their spouses;
- (i) children of the brother, step-brother, sister or step-sister of his parents, both present and future, including step-children and their spouses; and
- (j) children of his brother, step-brother, sister or step-sister, both present and future, including step-children and their spouses.

(2) For any of the relationships specified in subparagraph (1) that may be established by affinity or consanguinity, that same relationship may be established by adoption.

Meaning of “related trust” and “group of related trusts”.

**4.** (1) A trust (the first trust) is related to another trust (the second trust) where the settlor of the first trust is a connected person with respect to the settlor of the second trust.

(2) A group of trusts are related trusts where each trust in the group is related to all of the other trusts in the group.

5. (1) Subject to paragraph 6(2), a private trust company is exempt from the requirement to obtain a trust licence under the Banks and Trust Companies Act, 1990 where its trust business consists solely of

Exemption from requirement to obtain trust licence. No. 9 of 1990

- (a) unremunerated trust business; or
- (b) related trust business.

(2) For the purposes of subparagraph (1), the business of a private trust company is deemed

- (a) to consist solely of unremunerated trust business, notwithstanding that part or all of that unremunerated trust business is also related trust business; or
- (b) to consist solely of related trust business, notwithstanding that part or all of that related trust business is also unremunerated trust business.

6. (1) A private trust company shall

Obligations on private trust company.

- (a) ensure that, at all times, its registered agent is a person holding a Class I trust licence; and
- (b) not
  - (i) carry on any business that is not trust business;
  - (ii) solicit trust business from members of the public; or
  - (iii) carry on any trust business other than either unremunerated trust business or related trust business, as the case may be.

(2) Subject to subparagraph (3), a private trust company shall not have the benefit of the specified exemption during any period in which it is in contravention of subparagraph (1).

(3) If, subsequent to its appointment as the registered agent of a private trust company, the registered agent ceases to hold a Class I trust licence, subparagraph (2) does not apply for the period of four weeks following the date on which the registered agent ceases to hold a Class I trust licence.

7. (1) Where a private trust company is not entitled to the specified exemption, it shall forthwith amend its memorandum to remove the statement that it is a private trust company.

Private trust company not entitled to specified exemption.

(2) For the avoidance of doubt, a company carries on unauthorised financial services business for the purposes of the Act if,

- (a) without having the benefit of the specified exemption, it carries on any trust business; or
- (b) having the benefit of the specified exemption, it carries on trust business that is not unremunerated or related trust business, as the case may be.

Application of  
Banks and Trust  
Companies Act to  
private trust  
companies.

No. 9 of 1990

**8.** (1) Where a private trust company has the benefit of the specified exemption, section 6 of the Banks and Trust Companies Act, 1990 applies to the private trust company with respect to its unremunerated or related trust business, as the case may be.

(2) For the avoidance of doubt, section 16(1) of the Banks and Trust Companies Act, 1990 applies to a private trust company, and section 16(2) applies with respect to a private trust company, notwithstanding that it is entitled to the benefit of the specified exemption.

Application of Act  
to private trust  
companies.

**9.** (1) For the purposes of the Act, unremunerated and related trust business is deemed to be financial services business.

(2) Section 32 of the Act applies to a private trust company as if it was a licensee.

(3) Sections 36, 37, 37A and 40 of the Act apply to a private trust company, as if it was a licensee, with the following modifications:

- (a) the Commission may take enforcement action against a private trust company only where it is of the opinion that:
  - (i) the private trust company has contravened or is in contravention of the Act, the Banks and Trust Companies Act, 1990 or these Regulations;
  - (ii) the private trust company is carrying on, or is likely to carry on, business in a manner detrimental to the public interest or the interests of beneficiaries of any trust with respect to which it provides, or has provided, trust services;
  - (iii) the private trust company has failed to comply with a directive given to it by the Commission; or



(iv) a liquidator is appointed in respect of the private trust company, whether by its directors, its members or the Court, or the private trust company is dissolved;

(b) where the Commission is entitled to take enforcement action against a private trust company, it may

(i) appoint an examiner to conduct an investigation under section 36 of the Act;

(ii) issue a directive to the private trust company under section 40 of the Act;

(iii) require the private trust company to pay such costs and expenses as are incurred by the Commission in the taking of enforcement action against it, as the Commission thinks fit.

(4) Where the Commission is entitled to take enforcement action against a private trust company under subparagraph (3), section 39 of the Act applies as if the private trust company was a licensee.

(5) For the avoidance of doubt, nothing in this paragraph limits the powers of the Commission to take action against a private trust company which is carrying on, or has carried on, unauthorised financial services business.

**10.** (1) A person holding a Class 1 trust licence shall not agree to act as the registered agent of a private trust company unless it has taken all reasonable steps to satisfy itself that the private trust company

Duties of  
registered agent  
of private trust  
company.

(a) complies with paragraph 6(1)(b); or

(b) where the private trust company is not at that time carrying on trust business, that the private trust company will, on commencing its trust business, comply with paragraph 6(1)(b).

(2) The registered agent of a private trust company shall on a periodic basis take all reasonable steps to satisfy itself that the private trust company continues to comply with paragraph 6(1)(b).

(3) The frequency with which the registered agent reviews the compliance of a private trust company with paragraph 6(1)(b) shall be determined by the registered agent on the basis of its assessment of the risk that the private trust company may fail to comply with that paragraph.

(4) The registered agent shall take all reasonable steps to ensure that up to date copies of the following records with respect to each private trust company for which it acts as registered agent are kept at its office in the Virgin Islands:

- (a) the trust deed, or other document creating or evidencing a trust and any deed or document varying the terms of the trust, for each relevant trust; and
- (b) the documentation and other information on which it has relied to satisfy itself that the private trust company complies with paragraph 6(1)(b).

(5) If at any time the registered agent of a private trust company forms the opinion that the private trust company does not comply with paragraph 6(1)(b), it shall immediately notify the Commission in writing of its opinion.

## **Part II - Bare Trustees**

Bare trustees.

**11.** (1) A company is not required to obtain a trust licence under the Banks and Trust Companies Act, 1990 where it acts solely as a bare trustee.

No. 9 of 1990

(2) Any criteria specified in the Regulatory Code for determining whether a trustee acts as a bare trustee for the purposes of this Part shall apply accordingly.

Made by the Executive Council this 2<sup>nd</sup> day of August, 2007.

NATALIE FAHIE SMITH,  
Clerk of the Executive Council.

**CERTIFICATE ISSUED BY THE GOVERNOR  
CERTIFYING THE REVISION OF THE FINANCIAL SERVICES  
COMMISSION ACT, 2001 (NO. 12 OF 2001) AS A CORRECT  
CONSOLIDATION OF THE ACT AND ALL RELATED  
ENACTMENTS**

WHEREAS section 3 of the Statute Revision Act, 2005 (No. 25 of 2005) empowers the Attorney General, with the approval of the Executive Council, to (amongst other things) prepare a revision of a particular enactment, including its subsidiary enactments, in force in the Virgin Islands, by consolidating the particular enactment and its subsidiary enactments and all amendments thereto into one enactment;

WHEREAS section 5 of the Statute Revision Act, 2005 (No. 25 of 2005) requires the Attorney General, upon completion of a revision of an enactment, to forward such revision to the Governor who may certify the revision as a correct consolidation of the enactments contained in it;

AND WHEREAS the Attorney General, with the approval of the Cabinet and in exercise of his powers, has prepared a revision by consolidating the

- (a) Financial Services Commission Act, 2001 (No. 12 of 2001),
- (b) Financial Services Commission (Fees) Regulations, 2005 (S.I. 2005 No. 60), and
- (c) Financial Services (Administrative Penalties) Regulations, 2006 (S.I. 2006 No. 86),
- (d) Financial Services (Exemptions) Regulations, 2007 (S.I. 2007 No. 50),

which have been forwarded for my consideration;

NOW THEREFORE, I, DAVID PEAREY, Governor of the Virgin Islands, hereby certify that the revision of the Financial Services Commission Act, 2001 (No. 12 of 2001) is a correct consolidation of the enactments contained therein.

GIVEN under my hand this 25<sup>th</sup> day of March, 2008.

DAVID PEAREY,  
Governor.

