

No. 12 of 2001

**VIRGIN ISLANDS**

**FINANCIAL SERVICES COMMISSION ACT, 2001**

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No. 12 of 2001

Financial Services Commission Act, 2001

Virgin Islands

I Assent

(Sgd) 27.12.01  
Governor

**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 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;

"**Chairman**" means the Chairman of the Board appointed by the Council

under section 5;

"**Commission**" means the Financial Services Commission established under section 3;

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

"**Committee**" means the Licensing and Supervisory Committee established under section 14;

"**Council**" means the Executive Council;

"**Court**" means the High Court;

"**financial services business**" means a business covered under any financial services legislation;

"**financial services legislation**" means any principal legislation listed in Schedule 2, and any subsidiary legislation made thereunder; A foreign regulatory authority@ means an authority in a jurisdiction outside the Territory which exercises

## Schedule 2

(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;

"**licence**" means a licence granted under a financial services legislation;

"**Managing Director**" means the Managing Director of the Commission appointed under section 10;

"**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;

"**Regulatory Code**" means the Code issued by the Commission under section 41;

## PART I

### THE FINANCIAL SERVICES COMMISSION

#### **Establishment of the Financial Services Commission.**

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

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

#### **Schedule 1**

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

#### **Functions of the Commission.**

4. (1) The functions of the Commission are

- (a) to supervise and regulate regulated persons in accordance with this Act, the financial services legislation and the Regulatory Code;
- (b) to monitor and regulate, in accordance with relevant financial services legislation, financial services business carried on in or from within the Territory;
- (c) to take such measures as it considers appropriate to develop the financial services industry in the Territory, including the conduct of surveys relating to the industry;
- (d) to monitor the effectiveness of the financial services legislation in providing for the supervision and regulation of financial services business in the Territory to internationally accepted standards;
- (e) subject to the provisions of this Act, to provide the Council with periodic reports, advice, assistance and information in relation to any matters relating to financial services business as may be necessary;
- (f) to make recommendations to the Council on such

amendments or revisions to the financial services legislation or such new legislation relating to financial services business 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
  - (ii) initiating and promoting codes of conduct for regulated persons;
- (i) to maintain contact and develop relations with foreign regulatory authorities and international associations of regulatory authorities 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;
- (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;
- (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 and give such advice relating to accuracy, fairness and compliance with established laws and policies;
- (n) to enter into memoranda of understanding with regulatory and law enforcement agencies within and outside the Territory;
- (o) to promote and maintain a safe and sound financial services legislation in the Territory; and
- (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 but shall, in particular, have regard to

- (a) the protection of the public, including investors, 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.

(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)(a) or (c).

**Establishment and membership of the Board.**

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

(3) The Minister responsible for finance shall, after consultation with the Leader of the Opposition, recommend to the Council 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.

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

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

- (a) is a member of the Legislative Council;
- (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**

6. (1) The Board is the governing body of the Commission and shall

**the Board.**

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 by the Commission;
- (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; and
  - (iii) the Commission is operated in accordance with principles of good governance;
- (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 Council.

- (3) In the performance of its functions, the Board may
- (a) establish such committees as it considers appropriate on such terms and conditions as it may determine; and
  - (b) delegate such duties as it considers necessary to the Managing Director.

**Meetings  
of the  
Board.**

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

(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.**

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

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

(3) In appointing Commissioners under section 5, the Council 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.

(4) The Commissioners shall be paid such remuneration as may be determined by the Council 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.**

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

(2) The Council 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 Council shall appoint a new Commissioner to replace him.

(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.

**Appointment  
and functions  
of Managing  
Director.**

**10.** (1) The Council shall, on the recommendation of the Board, appoint a fit and proper person to be the Managing Director of the Commission on such terms and conditions as are considered appropriate.

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

- (a) be responsible for the administration and operation of the Commission and supervision of staff of the Commission;
- (b) subject to any general or special direction of the Board, execute the functions of the Commission outlined in section 4;
- (c) be responsible for identifying and classifying staff positions in the Commission, which are not designated senior management positions under section 6(1)(a) to which he 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.

**Appointment  
of other staff.**

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

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

(3) The Commission may establish and maintain such schemes or

make such other arrangements as it thinks fit for the payment of pensions and other benefits in respect of its officers and employees.

**Transfer of statutory functions, powers and duties to the Commission.**

**12.** 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.

**Schedule 5**

**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**

**LICENSING AND SUPERVISORY COMMITTEE**

**Establishment of a Licensing and Supervisory Committee.**

**14.** There is established a Committee to be known as the Licensing and Supervisory Committee.

**Membership of the Committee.**

**15.** (1) The Committee shall comprise

- (a) the Managing Director as Chairman;
- (b) the Deputy Managing Director;
- (c) the heads of the regulatory and supervisory divisions within the Commission; and

- (d) such other senior officer of the Commission as the Managing Director may, with the approval of the Board, designate.

(2) The Managing Director may co-opt the Registrar of Companies, the Registrar of Shipping and such officer of the Commission as he may determine to assist the Committee in the performance of its functions.

(3) The Managing Director may designate any suitable member of the Commission to act as Secretary to the Committee performing such duties as the Committee may determine.

**Functions and decisions of the Committee.**

**16.** (1) The functions of the Committee are

- (a) to receive, review and determine applications for authorisations, licences, registration and recognitions under any financial services legislation, provided that

- (i) applications for the registration, licensing, incorporation or continuation of companies under the Companies Act or the International or the International Business Companies Act, as the case may be, or

- (ii) applications for registration, licensing or issuing of certificates under the Merchandise Marks Act, Patents Act, Registration of United Kingdom Patents Act, Registration of

United Kingdom Trade Marks Act, or Trade Marks Act, as the case may be,

shall continue to be determined by the Registrar of Companies until otherwise determined by the Board by an Order published in the **Gazette**;

- (b) to supervise regulated persons 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 or certificates under a financial services legislation, other than certificates granted

**Cap. 285**  
**Cap. 291**

**Cap. 154**  
**Cap. 155**

**Cap. 156**  
**Cap. 157**  
**Cap. 158**

under the Companies Act and the International Business Companies Act.

(2) Where in any financial services legislation reference is made to the Commission with respect to the granting of an authorisation or a licence, registration or recognition, the power to grant such an authorisation or a licence, registration or recognition shall be construed to vest in the Committee.

(3) Where the Committee does not approve an application for a licence or for registration or recognition under a financial services legislation, it 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.

(4) Any person who is aggrieved by a decision of the Committee, other than a decision on the grant of 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, may appeal in accordance with Part VI.

**No. 6 of 1996**

**Meetings and procedures of the Committee.**

17. The Committee shall

- (a) meet at such time and place as the Managing Director may determine;
- (b) devise its own rules of procedure relating to the conduct of its business, subject to the approval of the Board; and
- (c) prepare a quarterly report on the performance of its functions which it shall submit to the Board.

**PART III**

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

**Funds and resources of the Commission.**

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

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

- (b) such monies as may be appropriated by the Legislative Council 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.**

**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 Council.

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

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

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

(5) On the last working day of each quarter or such other period as may be agreed between the Council and the Commission, all monies standing to the credit of the Government Trust Account on the previous working day 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.

(6) Monies paid to the Commission otherwise than on behalf of the Government shall be paid into the Commission's bank account.

(7) The Government represented by the Financial Secretary and the Accountant General and the Commission represented by the Chairman and the Managing Director shall be the signatories to the Government Trust Account.

**Payments  
out of the  
Government  
Trust Account.**

**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.

(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 Council and the Commission and this may be done through the process of the estimates referred to in section 24.

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

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

(4) The percentage of the monies payable to the Commission under this section shall be calculated as a percentage of the total monies paid into the Government Trust Account and shall be paid on the last working day of each quarter or such other period as may be agreed between the Council and the Commission as if the monies in respect thereof were standing to the credit of the Commission on the previous working day.

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

(6) Notwithstanding anything contained in this section, the Council 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 Council shall be sought and the Legislative Council informed by a statement issued by the Minister responsible for finance; and
- (b) exceeds one million dollars, the approval of the Legislative Council shall be sought.

(3) A resolution seeking the approval of the Legislative Council under subsection (2)(b) shall be brought only by the Minister responsible for finance.

(4) The Commission may, with the approval of the Council, 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 1<sup>st</sup> January to 31<sup>st</sup> 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 Council

- (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 Council shall, as soon as practicable, consider the estimates and work programme submitted by the Commission with a view to

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

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

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

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

**Accounts and audit.** 25. (1) The Commission shall

- (a) keep proper books of account of its income and other receipts and expenditure; and

- (b) ensure that
  - (i) all monies received are properly brought to account;
  - (ii) all payments out of its monies are correctly made and properly authorised; and
  - (iii) adequate control is maintained over its property and over the incurring of liabilities by the Commission.

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

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

(3) Within 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.

(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 Chief Auditor shall be responsible for auditing the accounts of the Commission.

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

**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 Council

(a) a copy of its audited accounts;

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

(2) Within three months of receiving the Commission's audited accounts, report and audited financial statements, the Council shall cause them to be laid in the Legislative Council.

**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

### GATEWAYS FOR DISCLOSURE AND GATHERING OF INFORMATION

**Restrictions on the disclosure of information** 29. (1) Any information, document, record, statement or thing made or disclosed to the Commission, Board, a member of the Committee or any person acting under their authority in the course of discharging any function or duty or exercising any power under this Act or any subsidiary legislation made thereunder or under any financial services legislation concerning any person in relation to such enactment is privileged and shall not be disclosed except as provided in subsection (2).

(2) The restriction on disclosure in subsection (1) does not apply when the disclosure is made

(a) to the Governor, the Council, the Board, the Committee or an officer of the Commission;

(b) to any person for the purpose of discharging any duty or exercising any power under this Act or subsidiary

legislation made thereunder or under any financial services legislation;

- (c) on the order of a court of competent jurisdiction for the purposes of any criminal or civil proceedings;
- (d) on a request by
  - (i) a high ranking officer of a competent authority in an international organisation recognised by the Board,
  - (ii) a high ranking officer of the law enforcement authority in a country or jurisdiction approved by the Board,

for the purpose of legal assistance in the investigation of a criminal activity; or

- (e) for the purpose of enabling or assisting a foreign regulatory authority, including a trading or a security or exchange authority, in a country or jurisdiction approved by the Board in discharging duties or exercising powers corresponding to those under this Act or any subsidiary legislation made thereunder or under any financial services legislation.

(3) In a disclosure made under subsection (2)(d) or (e) the authority receiving the disclosure shall be required not to transmit any information, document, record, statement or thing disclosed to any other person except with the prior written consent of the Board.

(4) For the purpose of subsection (2) (d) and (e), any jurisdiction or country or international organisation approved or recognised by the Board shall be published in the **Gazette**.

**General Powers of Disclosure and Related Restrictions**

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

(2) The power referred to in subsection (1) shall not apply to any information or document which a person would be entitled to refuse to disclose or produce on the grounds of legal professional privilege.

(3) For the purposes of subsection (2), 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.

(4) 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.

(5) Nothing in this section shall prevent a legal practitioner from providing the name and address of his client.

**Recovery of costs.**

**31.** 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.

**Power of Commission to request information and documents.**

**32.** (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 to provide such information or produce such documents as may be specified in the notice.

(2) A notice under subsection (1)

- (a) may be issued to
  - (i) a regulated person;
  - (ii) a person connected with a regulated person;
  - (iii) a person carrying on financial services business;

- (iv) a person reasonably believed to have the information or documentation 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.
- (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.
- (6) The provisions of section 30(2) to (5) shall apply to the provision of information or production of documents under this section.
- (7) For the purpose of this section, Aregulated person@ includes a person who has at any time been a regulated person but who has, on the date of the issuing of a notice under subsection (1), ceased to be a regulated person.

**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 a member of the Commission, apply to a Magistrate for a search warrant.

(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, Apremises@ includes a vehicle, a vessel or an aircraft.

## **PART V ENFORCEMENT**

### **Appointment of Compliance Officers**

- 34.** (1) A regulated person shall appoint or designate one of his staff, as may be approved by the Commission, as a Compliance Officer for the purposes of this Act.
- (2) A Compliance Officer shall
- (a) be a senior officer with relevant qualifications and experience to enable him to respond sufficiently well to enquiries relating to the regulated person and the conduct of its business;
  - (b) be responsible for establishing and maintaining such manual of compliance procedures in relation to the business of the regulated person as the Commission may require;
  - (c) be responsible for ensuring compliance by staff of the regulated person with
    - (i) the provisions of the financial services legislation;
    - (ii) the provision of any manual of compliance procedures established under paragraph (b); and
    - (iii) the Regulatory Code issued by the Commission under section 41 and any directive issued by the Commission.
  - (d) act as the liaison between the regulated person and the Commission in matters relating to compliance with the provisions of the financial services legislation and

the Regulatory Code and any directive issued by the Commission; and

- (e) prepare and submit to the Commission written reports on the regulated person's compliance with the provisions of the financial services legislation or Regulatory Code or any directive issued by the Commission and the reports shall be prepared in such form and submitted at such time as the Commission may determine.

(3) For the purpose of subsection (2)(a), the question as to whether a senior officer of a regulated person has relevant qualifications and experience shall be determined in accordance with such guidelines as the Commission may determine.

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(4) A person appointed to serve as a Compliance Officer under paragraph 12 of the Anti-money Laundering Code of Practice, 1999 may, with the approval of the Commission, also be appointed as a Compliance Officer under this section, and *vice versa*.

(5) Notwithstanding the approval by the Commission of the appointment of a Compliance Officer, the Commission may direct the removal of such Officer, and the regulated person to whom the Officer relates shall appoint another person as Compliance Officer in accordance with the provisions of this section.

**Compliance inspections.**

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

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

(2) The Commission may, for the purposes of the prudential supervision of a financial services business carried on in or from within the Territory,

- (a) inspect the premises and business, whether in or outside the Territory, including the 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; and

- (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.

(3) The Commission shall give reasonable notice to a relevant person of its intention to exercise its powers under subsection (2).

(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 there exists a memorandum of understanding between the Commission and the foreign regulatory authority and it is satisfied that

- (a) the compliance inspection is necessary for the effective supervision of a regulated person;
- (b) the foreign regulatory authority is subject to adequate legal restrictions on further disclosure and that it will not, without the written permission of the Commission,
  - (i) 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
  - (ii) take any action on information obtained or documents examined or obtained during the compliance visit; and
- (c) the participation of the foreign regulatory authority in the compliance inspection will not be contrary to the public interest.

**Appointment of examiners.**

**36.** (1) Where the Commission is entitled to take enforcement action against a regulated person under section 37, it may appoint one or more competent persons as examiners to conduct an investigation on its behalf.

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

(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.

**Enforcement  
action.**

**37.** (1) The Commission may take enforcement action against a regulated person if,

- (a) in the opinion of the Commission, the regulated person
  - (i) has contravened or is in contravention of this Act, a financial services legislation or the Regulatory Code;
  - (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 ;
  - (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;

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- (v) has failed to comply with a directive given to it by the Commission;
  - (vi) is in breach of any term or condition of its licence;
  - (vii) is no longer considered to be a fit and proper person to continue holding a licence; or
  - (viii) has provided the Commission with any false, inaccurate or misleading information, whether on making an application for a licence, registration or recognition or subsequent to the issue of a licence or a certificate of registration or recognition;
- (b) the regulated person is compulsorily wound up or passes a resolution for voluntary winding up or is dissolved;
- (c) a receiver has been appointed in respect of the financial services business carried on by the regulated person 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; or
- (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 officer of the licensee or certificate holder, is not a fit and proper person to have an interest in or be concerned with the management of a licensee or certificate holder, 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.

(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 or certificate under section 38;
- (b) appoint an examiner to conduct an investigation under section 36;
- (c) appoint a qualified person at the cost of the licensee or certificate holder to advise the licensee or certificate holder on the proper conduct of its business;
- (d) issue a directive under section 40; or
- (e) initiate such investigation as may be necessary to ensure compliance with this Act, any financial services legislation or Regulatory Code.

(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.

**Revocation or suspension of licence and certificate.**

**38.** (1) The Commission may at any time revoke or suspend the licence or certificate of a regulated person if

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

(2) Subject to subsection (3), the period of suspension of a licence or certificate 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 or certificate under this section for one or more further periods not exceeding thirty days each.

(4) Before suspending or revoking a licence or certificate under subsection (1)(a) or (b), the Commission shall give written notice to the regulated person stating

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

(5) The Commission shall revoke a licence or certificate forthwith if the regulated person concerned fails to pay the prescribed annual fee for renewing the licence or certificate on or before the date of the year in which the annual fee was due under the relevant financial services legislation.

**Application for a protection order.**

**39.** (1) If a licence or certificate is or is about to be revoked or suspended, the Commission may apply to the Court for a protection order.

(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 regulated person, or the interests of its clients, investors, creditors or the public, including

- (a) an order preventing the regulated person 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 regulated person or carried on by him immediately before the revocation or suspension of the licence or certificate, as the case may be;
- (c) in the case of a company, an order that the regulated person be wound up by the Court or be subject to the supervision of the Court under the Companies Act; and
- (d) an order granting the Commission a search warrant.

(3) Without limiting the application of subsection (2)(b), an order made under that subsection shall specify the powers of the administrator in relation to the financial services business of the regulated person 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 regulated person or the business carried on by the regulated 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.**

**40.** (1) Where the Commission is entitled to take enforcement action against a regulated person, the Commission may issue a directive directing that person

- (a) to cease to engage in any class or type of business;
- (b) not to enter into any new contracts for any class or type of business.

(2) Without prejudice to subsection (1), where it is considered necessary for the effective performance of its functions and prudential supervision of financial services business, the Commission may issue directives of a special or general nature not inconsistent with the provisions of this Act or any financial services legislation.

(3) Where the Commission issues a directive of a general nature under subsection (2), it shall cause such directive to be published in the *Gazette*.

(4) A directive issued under subsection (2) may be in the nature of a practice direction and may extend to a regulated person, a compliance officer, an authorised agent under the Banks and Trust Companies Act, a registered agent under the International Business Companies Act and such other officer of a financial services business as the Commission may prescribe in the directive.

(5) Any directive or direction issued under a financial services legislation prior to the coming into force of this Act shall, upon the coming into force of this Act, continue in operation until revoked as if it were issued pursuant to this section.

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Cap. 291**

**Power to issue  
Regulatory Code.**

**41.** (1) The Commission may, with the approval of the Council, issue such Regulatory Code as it considers necessary for the conduct of regulated persons and officers and agents of regulated persons.

(2) A Regulatory Code issued under subsection (1) may

(a) be amended in such manner and to such extent as may, with the approval of the Council, be determined by the Commission; and

(b) provide for penalties of a fine not exceeding two thousand dollars for breach of a provision of the Code.

(3) A Regulatory Code issued under this section shall

(a) provide the procedure for instituting action against a person who breaches a provision of the Code;

(b) outline the procedure for receiving complaints from aggrieved persons;

(c) provide for such measures as may be necessary to be taken by regulated persons to prevent financial crime, to regulate its detection and to monitor its incidence; and

(d) be published in the *Gazette*.

**Act No. 1 of 1997.**

(4) A breach of a provision of the Regulatory Code issued under this section shall be heard before the Board whose decision shall be enforced in such manner as if it were a decision of a court on a conviction and section 25 of the Criminal Code shall apply accordingly.

(5) Notwithstanding anything to the contrary contained in any other law, fines paid pursuant to a decision of the Board shall be paid into the Commission's reserve account to be established under section 26.

**PART VI  
FINANCIAL SERVICES APPEAL BOARD**

**Establishment and constitution of a 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.

(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 Council on such terms and conditions as the Council 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.

(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.

**Secretary of the Appeal Board.**

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

- (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.

**Right of appeal.**

**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

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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.

(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.

**Duty to take oath.  
Schedule 3**

**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.

(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.

**Obligations on confidentiality.**

**49.** (1) A Commissioner, officer, employee, agent or adviser of the Commission shall not disclose information relating to

- (a) the affairs of the Commission,
- (b) any application made to the Commission under this Act or pursuant to a financial services legislation,
- (c) the affairs of a regulated person or a customer, client or agent of the regulated person or other person benefiting from the work of the regulated person, and
- (d) a settlor or beneficiary of a trust of which the regulated person is a trustee,

that he has acquired in the course of or in relation to his duties or in the exercise or performance of the Commission's powers or duties under this Act or any financial services legislation.

(2) Subsection (1) shall not apply to a disclosure

- (a) required or permitted by a court of competent jurisdiction in the Territory;
- (b) made to the Council;
- (c) made to any person for the purpose of discharging any duty or exercising any power under this Act or any financial services legislation;
- (d) in respect of the affairs of a regulated person or a customer, client, investor or agent of the regulated person made with the consent of the regulated person or the customer, client, investor or agent of such person;
- (e) if the information disclosed is or has been available to the public from any other source;
- (f) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of a regulated person or any other person to which or to whom the information relates to be determined;
- (g) made by the Commission to a foreign regulatory authority upon the written request of that authority in

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accordance with this Act or the Financial Services (International Cooperation) Act, 2000;

- (h) 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
- (i) for the purpose of legal proceedings in connection with
  - (i) the winding up or dissolution of a regulated person ; or
  - (ii) the appointment or duties of a receiver of a regulated person.

(3) For the purpose of this section, Aregulated person@ includes a person who has at any time been a regulated person but who has ceased to be a regulated person.

**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 29 (2) or for information provided pursuant to a request under section 30 (1).

## PART VIII

### MISCELLANEOUS

**Annual meetings  
between Council  
and Board.**

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

- (1) the operation, management and performance of the Commission;
- (2) 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.

**General offences  
and penalties.**

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

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

**Specific offences and penalties.**

- 54.** (1) A person commits an offence if
- (a) he does anything contrary to section 29 (1);
  - (b) he fails to comply with a requirement of a notice issued under section 32 (1);
  - (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 49(1); or
  - (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.**

- 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

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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.

**Fees.**

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

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

(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.

**Transitional provisions:  
Officers and employees.**

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

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

- (1) 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

- (1) to terminate the employment of any officer or employee transferred to the service of the Commission, or

- (2) 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.

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### **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.

### **Repeals and amendments. Schedule 5**

**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.

### **Power to amend Schedules 1 to 4.**

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

### **Regulations.**

**62.** (1) The Council 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.

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

## **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**

**[Section 2(1)]**

### **FINANCIAL SERVICES LEGISLATION**

- (3) Merchandise Marks Act (Cap. 154)
- (4) Patents Act (Cap. 155)
- (5) Registration of United Kingdom Patents (Cap. 156)
- (6) Registration of United Kingdom Trade Marks (Cap. 157)
- (7) Trade Marks Act (Cap. 158)
- (8) United Kingdom Designs (Protection) Act (Cap. 159)
- (9) Companies Act (Cap. 285)
- (10) International Business Companies Act (Cap. 291)
- (11) Banks and Trust Companies Act, 1990
- (12) Company Management Act, 1990
- (13) Insurance Act, 1994
- (14) Mutual Funds Act, 1996
- (15) Partnership Act, 1996
- (16) Proceeds of Criminal Conduct Act, 1997
- (17) Financial Services (International Cooperation ) Act, 2000

**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.

\* Delete as necessary

**SCHEDULE 5**

**ENACTMENTS AMENDED OR REPEALED**

[Section 60]

NO.	ENACTMENT	EXTENT OF AMENDMENT/REPEAL
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>"(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 style="padding-left: 40px;">(a) subsection (1) is repealed and substituted as follows:</p> <p style="padding-left: 80px;">"(1) The Commission may provide for the purposes of this Act an office which shall be called the</p>

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”.

6. Companies Act  
(Cap. 285)

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 Ac, 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.”

7.

International Business  
Companies Act  
(Cap. 291)

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

8.

Banks and Trust  
Companies Act, 1990

“(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”.

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".
6. In regulation 8 "Commission" is substituted for "Governor".
7. In regulation 9
  - (a) "Commission" and "its" are respectively substituted for "Governor" and "his" in paragraph (d); and
  - (b) "Commission" is substituted for "Governor" in paragraph (e).

8(b).	Banks and Trust Companies (No. 2) Regulations, 1991	<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> <p>In sub-regulation (1) of regulation 2 “Commission” is substituted for “Governor”.</p>
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) after section A2”;</p> <p>(b) delete “Governor in Council” in paragraph (b) of the definition of “auditor”;</p> <p>(c) delete “Governor” and the definition thereto;</p> <p>(d) delete “Inspector” and the definition thereto;</p> <p>(e) delete “Registrar” and the definition thereto; and</p>

- (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) an (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;
    - (iii) 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”.
  4. In the First to the Fourth Schedules “Financial Services Commission” is substituted for “Ministry of Finance”.
10. Insurance Act, 1994
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 manager, agent or broker.@.

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.”.

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 ACommission@ is substituted for “Commissioner” in subsection (2).

48. In section 73 ACommission@ 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 ACommission@ is substituted for "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;”.

10(a).

Insurance  
Regulations, 1995

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”.

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”.

11. Mutual Funds Act, 1996

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).”;
- (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 21. Where the Commission  
procedure. grants recognition to a private fund,  
it shall

  - (a) enter the particulars relating to the private fund in the register maintained by it for the purpose under section 6; and
  - (b) issue a certificate of recognition to the private fund showing the date of recognition.”.
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

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

		<ul style="list-style-type: none"> <li>(a) “Governor in Council” is substituted for “Minister” in the marginal note; and</li> <li>(b) the opening paragraph is deleted and substituted as follows: <ul style="list-style-type: none"> <li>“The Governor in Council may, on the advice of the Commission, by Notice published in the <i>Gazette</i>,”.</li> </ul> </li> </ul>
		<p>35. The opening paragraph of section 42 is deleted and substituted as follows:</p> <p>“The Governor in Council may, on the advice of the Commission, make regulations,”.</p>
11(a).	Mutual Funds (Recognised Managers and Family Trusts) (Exemption) Direction, 1997	In paragraph 4 “Commission” is substituted for “Registrar” in sub-paragraphs (1) and (2).
12.	Partnership Act, 1996	<ul style="list-style-type: none"> <li>1. In section 2 <ul style="list-style-type: none"> <li>(a) delete “Minister” and “Registrar” and the definitions thereto; and</li> <li>(b) insert in the appropriate alphabetical order the following: <ul style="list-style-type: none"> <li>“Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act, 2001;”.</li> </ul> </li> </ul> </li> <li>2. In section 21 “Commission” is substituted for “Registrar” in subsection (1).</li> <li>3. Section 52 is repealed.</li> <li>4. In section 53 “Commission” is substituted for “Registrar” in subsection (1).</li> <li>5. In section 54 “Commission” and “it” are respectively substituted for “Registrar” and “he” in subsection (1),</li> </ul>

and for “Registrar” and “him” in subsection 3.

6. In section 55
  - (a) “Commission” is substituted for “Registrar” in subsections (1), (2) and (3); and
  - (b) the words “his hand” and “ in subsection (1) are deleted and substituted by “its”.
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 paid into the Government Trust Account. 9. All fees, licence fees and 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.

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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  
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		Managing Director of the Financial Services Commission”.
13(a).	Anti-money Laundering Code of Practice, 1999	<ol style="list-style-type: none"> <li>1. In paragraph 12 “Financial Services Commission” is substituted for “Director of Financial Services” in sub-paragraphs (1), (2) and (3).</li> <li>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” is sub-paragraph (2).</li> </ol>
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 style="padding-left: 40px;">“(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.	<ol style="list-style-type: none"> <li>1. In section 2 <ol style="list-style-type: none"> <li>(a) delete AGovernor@ in the definitions of “competent authority” and “foreign regulatory authority” and substitute therefor “Commission”;</li> <li>(b) delete “Director” and the definition thereto;</li> <li>(c) delete “Governor” and the definition thereto; and</li> <li>(d) insert in the appropriate alphabetical order the following: <p style="text-align: center;">“Commission” means the Financial Services Commission established</p> </li> </ol> </li> </ol>

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

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.

[Sgd.]  
REUBEN VANTERPOOL,  
Speaker.

[Sgd.]  
OLEANVINE MAYNARD,  
Ag. Clerk of the Legislative Council.