

No. 6 of 2004

VIRGIN ISLANDS
FINANCIAL SERVICES COMMISSION
(AMENDMENT) ACT, 2004

ARRANGEMENT OF SECTIONS

Section

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13. Section 57 amended.
14. Section 57A inserted.

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**Financial Services Commission
(Amendment) Act, 2004**

**Virgin
Islands**

I Assent

**THOMAS MACAN
Governor
27th April, 2004**

VIRGIN ISLANDS

No. 6 of 2004

An Act to amend the Financial Services Commission Act, 2001 (No. 12 of 2001).

[Gazetted 30th April, 2004]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and
commencement.

1. (1) This Act may be cited as the Financial Services Commission (Amendment) Act, 2004.

(2) Sections 2(a) and 11 shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint.

Section 2
amended.
No. 12 of 2001

2. Section 2(1) of the Financial Services Commission Act, 2001 (hereinafter referred to as “the principal Act”) is amended by inserting

(a) after the definition of “Court”, the following definition:

““FATF” means the Financial Action Task Force on money laundering;” and

(b) after the definition of “Managing Director”, the following definition:

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

- 3.** Section 5(3) of the principal Act is amended by deleting the words “responsible for finance”. Section 5 amended.
- 4.** Section 16(1)(a)(i) of the principal Act is amended by inserting after the words “International Business Companies Act,”, the words “or applications for the registration or licensing of limited partnerships under the Partnership Act, 1996,”. Section 16 amended.
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- 5.** Section 22 of the principal Act is amended by deleting the words “responsible for finance” occurring in subsections (2)(a) and (3). Section 22 amended.
- 6.** Section 29(2)(c) of the principal Act is amended by inserting after the word “jurisdiction”, the words “in the Territory”. Section 29 amended.
- 7.** Section 37(2) of the principal Act is amended Section 37 amended.
- (a) in paragraph (d), by deleting the word “or”;
- (b) in paragraph (e), by deleting the full-stop and substituting a semi-colon; and
- (c) by adding after paragraph (e), the following paragraphs:
- “(f) impose such administrative penalties on the licensee as may be provided for in regulations made under section 62; or
- (g) require the licensee to pay such costs and expenses as are incurred by the Commission in the taking of enforcement action against the licensee as the Commission thinks fit.”.
- 8.** Section 38(4)(b) of the principal Act is amended by deleting the word “revoked” in both places where it occurs and substituting in each place the words “suspended or revoked”. Section 38 amended.
- 9.** Section 39 of the principal Act is amended by Section 39 amended.
- (a) deleting in subsection (1) the words “If a licence or certificate is or is about to be revoked or suspended” and substituting the words “Where a licence or certificate has been revoked or where the Commission is entitled to take enforcement action against a regulated person under section 37”; and

(b) inserting after subsection (2) the following subsection:

“(2A) For the purposes of subsection (2)(c), the Commission may submit a petition to the Court for the winding up of a company and in that regard shall be treated as if it were one of the persons entitled to petition under section 117 of the Companies Act.”.

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Section 50 amended.

10. Section 50 of the principal Act is amended by deleting paragraph (b) and substituting the following paragraph:

“(b) any person for a disclosure made pursuant to section 29(2) or 49(2) or for information provided pursuant to a request under section 30(1) or 32(1).”.

Part VIIA inserted.

11. The principal Act is amended by inserting after Part VII, the following Part:

**“PART VIIA
AUTHORISED AND RECOGNISED CUSTODIANS**

Authorised custodians.

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

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

(3) An application under subsection (1) shall contain such information, be in such form and be accompanied by such documentation as may be prescribed in regulations made under section 62.

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

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

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- (i) for the secure custody of bearer shares; and
- (ii) that will enable it to comply with the obligations imposed on an authorised custodian under Part IIIA of the International Business Companies Ordinance.

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

- (a) the prudential regulation exercised over the body corporate outside the Virgin Islands; and
- (b) the anti-money laundering obligations imposed on the body corporate outside the Virgin Islands.

(6) A body corporate referred to in subsection (2) that is approved as an authorised custodian shall not, by virtue of that approval, be considered to be a regulated person within the meaning of section 2.

Recognised custodians.

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

- (a) is an investment exchange or a clearing organisation operating a securities clearance or settlement system; and
- (b) carries on business in a jurisdiction that is a member of FATF.

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

Conditions of approval.

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

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

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

Issuance of
Guidance Notes.

50D. The Commission may issue Guidance Notes specifying the practices and procedures that it expects authorised custodians to have in place for the secure custody of bearer shares and to enable it to comply with the obligations imposed on an authorised custodian under Part IIIA of the International Business Companies Ordinance.

Revocation of
approval to act
as authorised
custodian.

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

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

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

Section 54
amended.

12. Section 54(1)(b) of the principal Act is amended by inserting after the words “requirement of”, the words “a request under section 30(1) or”.

Section 57
amended.

13. Section 57 of the principal Act is amended by adding after subsection (4), the following subsection:

“ (5) Where a licence is applied for, or the approval of the Commission is required to be obtained, under this Act or any financial services legislation, the Commission may charge and

collect in respect of an application for such licence or approval, such fee as is provided for in regulations made under section 62, or in or under the relevant financial services legislation.”.

14. The principal Act is amended by inserting after section 57, the following section: Section 57A inserted.

“Entitlement of Commission to recover costs. Cap. 44 **57A.** For the removal of doubt, the Commission shall, in accordance with the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000, the Magistrate’s Code of Procedure Act and any enactment governing the awarding of costs in any proceedings, be entitled to recover its costs that arise out of, or are related to, all or any part of any proceedings to which it is a party.”.

Passed by the Legislative Council this 22nd day of April, 2004.

V. INEZ ARCHIBALD,
Speaker.

DENNISTON FRASER,
Clerk of the Legislative Council.