



ANGUILLA

FINANCIAL SERVICES (AMENDMENT) ACT, 2013

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FINANCIAL SERVICES COMMISSION (AMENDMENT) ACT, 2013

An Act to amend the Financial Services Commission Act to clarify supervisory functions and enhance compliance with international standards.

[Gazetted: 30th September, 2013] [Commencement: Assent under section 57 of the Constitution]

ENACTED by the Legislature of Anguilla

Interpretation

1. In this Act—

“Principal Act” means the Financial Services Commission Act, R.S.A. c. F28.

Amendment of section 1

2. Section 1 of the Principal Act is amended—

(a) in subsection (1)—

(i) by inserting by inserting the following definitions in the appropriate alphabetical order—

“affiliate”, in relation to an undertaking, means another undertaking that is in the same group as that undertaking;

“AML/CFT obligation” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;

“AML/CFT regime” means the arrangements in place for preventing the use of the financial system for, and the detection of, money laundering and terrorist financing, as provided for in the Proceeds of Crime Act, the Anti-money Laundering and Terrorist Financing Regulations, the Anti-money Laundering and Terrorist Financing Codes and other laws or Codes relating to money laundering or terrorist financing;

“Anti-money Laundering and Terrorist Financing Code” means a Code issued under section 159 of the Proceeds of Crime Act;

“director”, in relation to an undertaking, means a person appointed to direct the affairs of the undertaking and includes—

- (a) a person who is a member of the governing body of the undertaking; and
- (b) a person who, in relation to the undertaking, occupies the position of director, by whatever name called;

“externally regulated service provider” has the meaning specified in the Proceeds of Crime Act;

“FATF” means the international body known as the Financial Action Task Force or such other international body as may succeed it;

“financial crime” includes an offence involving—

- (a) fraud or dishonesty in connection with financial services business;
- (b) money laundering;
- (c) the financing of terrorism; or
- (d) misconduct in, or misuse of information relating to, a financial market;

“former licensee” means a person who has, at any time, held a licence that has been cancelled or revoked;

“group”, in relation to an undertaking (the first undertaking), means the first undertaking and any other undertaking that is—

- (a) a parent of the first undertaking;
- (b) a subsidiary of the first undertaking;
- (c) a subsidiary of a parent of the first undertaking;
- (d) a parent of a subsidiary of the first undertaking;
- (e) an undertaking in which the first undertaking, or an undertaking specified in paragraphs (a) to (d) has a significant interest;

“parent”, in relation to an undertaking (the first undertaking), means another undertaking that—

- (a) is a member of the first undertaking and, whether alone or under an agreement with other members, is entitled to exercise a majority of the voting rights in the first undertaking;
- (b) is a member of the first undertaking and has the right to appoint or remove the majority of the directors of the first undertaking;
- (c) has the right to exercise a dominant influence over the management and control of the first undertaking pursuant to a provision in the constitutional documents of the first undertaking; or
- (d) is a parent of a parent of the first undertaking;

“subsidiary”, in relation to an undertaking (the first undertaking), means another undertaking of which the first undertaking is a parent;

“undertaking” means—

- (a) a company;

- (b) a partnership; or
 - (c) an unincorporated association.”,
 - (ii) in the existing definition of “Director”, by inserting after the word “Director”, the phrase “, in relation to the Commission,”,
 - (iii) in the definition of “financial services enactment”, by inserting after “prescribed as a financial services enactment”, the words “together with any subsidiary legislation made under that enactment”,
 - (iv) in the definition of “licensee”, by deleting “having a licence” and substituting “who holds a licence”,
 - (v) by deleting the definition of “regulated person”, and
 - (vi) in paragraph (b) of the definition of “regulatory function”, by inserting after “the regulation”, the words “or supervision”; and
- (b) by deleting subsection (2) and substituting the following subsections—
- “(2) A person carries on unlicensed financial services business if the person carries on a business or activity for which a licence is required without having either—
- (a) a licence authorising him to carry on that business or activity; or
 - (b) the benefit of an exemption provided for in a financial services enactment or any other enactment, exempting him from the requirement for a licence to carry on that business or activity.
- (3) For the purposes of the definition of “financial crime”, “offence” includes an act or omission that—
- (a) takes place outside Anguilla; and
 - (b) would constitute an offence if it had occurred in Anguilla.”.

Amendment of section 3

3. Section 3 of the Principal Act is amended—

- (a) in subsection (1)—
 - (i) in paragraph (a), by inserting after “in accordance with”, the phrase “, and enforce,”,
 - (ii) by deleting paragraph (c) and substituting the following paragraph—

“(c) to monitor and enforce compliance by licensees and externally regulated service providers with their AML/CFT obligations;”,
 - (iii) in paragraph (d), by deleting “financial services business carried on in or from” and substituting “the financial services industry in”,

- (iv) by deleting paragraph (g) and substituting the following paragraph—
- “(g) to monitor the effectiveness of the financial services enactments and the Regulatory Codes in providing for the regulation and supervision of financial services business to internationally accepted standards;”
- (v) by inserting the following paragraph after paragraph (g)—
- “(gg)to monitor the effectiveness of the AML/CFT regime in preventing and detecting money laundering and terrorist financing and in implementing the standards, recommendations and guidance, relating to the prevention and detection of money laundering and terrorist financing, issued by the FATF;”
- (vi) in paragraph (h), by inserting after “relating to”, the phrase “, or connected with,”
- (vii) by deleting paragraph (i) and substituting the following paragraph—
- “(i) to make recommendations to the Governor on—
- (i) the amendment, revision or replacement of the financial services enactments or of any legislation connected with financial services business, companies, partnerships, trusts, foundations or any other business structures or arrangements;
- (ii) the amendment, revision or replacement of any legislation connected with the AML/CFT regime;
- (iii) the introduction of any new legislation connected with financial services business, companies, partnerships, trusts, foundations or any other business structures or arrangements or the AML/CFT regime; and
- (iv) the administration of the Registry Acts by the Registrar;”
- (viii) in paragraph (j), by deleting “forge relations with persons engaged in financial services business in or from within Anguilla” and substituting “develop relations with persons carrying on financial services business”,
- (ix) in paragraph (k), by deleting “forge” and substituting “develop” and by inserting before “assistance to”, the words “and supervisory”,
- (x) in paragraph (l), by inserting after “concerning financial services”, the words “and the AML/CFT regime”;
- (b) in subsection (2)—
- (i) in paragraph (a), by deleting “in Anguilla”, and
- (ii) in paragraph (c), by inserting after “financial crime”, the words “and other unlawful activities relating to financial services business”,
- (c) in subsection (3), by deleting “in or from within Anguilla”; and
- (d) by deleting subsections (4) and (5).

Amendment of section 4

4. Section 4 of the Principal Act is amended—

- (a) in subsection (1), by deleting “or more than 5” and substituting “or more than 8”; and
- (b) in subsection (4), by inserting after “under this section”, the phrase “unless the person is removed as a Board member under section 7(2) or would have been removed under that section but for his resignation”.

Amendment of section 5

5. Section 5(2)(c) of the Principal Act is amended by deleting “work plan” and substituting “work programme”.

Amendment of section 6

6. Section 6(4) of the Principal Act is amended by inserting after “accept”, the phrase “, or act on,”.

Amendment of section 7

7. Section 7 of the Principal Act is amended—

- (a) in subsection (2)—
 - (i) in paragraph (a), by inserting after “meetings of the Board”, the phrase “or from more than one third of the Board meetings held in any 12 month period”,
 - (ii) in paragraph (d), by inserting after “on an on-going basis”, the phrase “, or that is contrary to the interests of the Commission or of Anguilla”;
- (b) by inserting after subsection (2), the following subsection—

“(2A) A written notice of the removal of a Board member shall specify the reasons for the removal.”
- (c) in subsection (4), by inserting after “more than 5 years”, the phrase “, and section 4 applies to the appointment”; and
- (d) by inserting after subsection (4), the following subsection—

“(4A) This section does not apply to the Director, whose resignation and removal from office shall be governed by the Director’s contract of employment with the Commission.”.

Amendment of section 8

8. Section 8 of the Principal Act is amended—

- (a) in subsection (2), by inserting after “subsection (1), the phrase “or subsection (5)”; and
- (b) by deleting subsection (3) and substituting the following subsections—

“(3) The Director is an employee of the Commission and its chief executive officer and, subject to the general direction of the Board, is responsible for—

- (a) the administration and operation of the Commission;
- (b) the discharge of the Commission’s functions and the exercise of its powers;
- (c) the appointment of employees not classified by the Board as senior management;
- (d) the management and supervision of the Commission’s employees; and
- (e) the discharge of such functions and the exercise of such powers as may be assigned to, or conferred on, the Director by this or any other Act or that may be delegated to the Director by the Board.

(4) In discharging his functions and powers, the Director shall endeavour to ensure that—

- (a) the resources of the Commission are utilised economically and efficiently;
- (b) adequate internal financial and management controls are in place;
- (c) the Commission is operated in accordance with principles of good governance; and
- (d) the Commission fulfils its obligations and properly discharges its functions.

(5) Where, due to illness or temporary incapacity, the Director is unable to discharge his functions under this Act, or where the Director is absent from Anguilla for a period exceeding two weeks, the Governor acting in his discretion may, after consulting with the Board, appoint a person to act in the Director’s place during such illness, incapacity or absence.”.

Amendment of section 9

9. Section 9 of the Principal Act is amended—

- (a) in paragraph (b), by inserting after “services or personnel” the following words “and paying fees and expenses properly incurred by the Commission”;
- (b) by inserting after paragraph (d), the following paragraph—
 - “(dd) establishing and implementing codes, procedures and manuals for regulating the terms of service, discipline, benefits and training of the Commission’s employees;”;and
- (c) in paragraph (i), by deleting “better undertaking” and substituting “discharging”.

Insertion of section 9A

10. The Principal Act is amended by inserting after section 9, the following section—

“General provisions

9A. (1) Subject to subsection (2), 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.

(2) Subsection (1) does not apply to the issue of a Regulatory Code or Guidelines or to any notice to amend or replace the Code or Guidelines.

(3) If at any time it appears to the Governor that the Commission has failed to comply with any of the provisions of this or any other enactment or regulation, the Governor may, by notice in writing, require the Commission to make good the default within such time as may be specified in the notice.

(4) If the Commission fails to comply with the notice issued under subsection (3), the Attorney General may apply to the High Court for an order requiring the Commission to remedy the default specified and the Court may make such order on the application as it thinks fit, including an order directing the Board members, or one or more Board members, to take such action as it considers appropriate to remedy the default.

(5) Service of any process or notice on the Commission under this Act or any other enactment may be effected by leaving it with the Director or a Board member at, or sending it by registered post addressed to, the principal office of the Commission.

(6) No execution, distress or attachment shall be issued against the property of the Commission.”.

Amendment of section 12

11. Section 12 of the Principal Act is amended in subsection (1), by deleting “objects” and substituting “functions”.

Amendment of section 14

12. Section 14 of the Principal Act is amended—

(a) by deleting “work plan” in each place it occurs in the section heading and in subsections (5), (6) and (7), and substituting “work programme”;

(b) in paragraph (1)(b), by deleting “work program” and substituting “work programme”; and

(c) in subsection (3), by deleting “its estimates of recurrent and capital expenditure and its estimates of revenue” and substituting “the estimates and work programme”.

Amendment of section 15

13. Section 15 of the Principal Act is amended—

(a) in paragraph (1)(a) and subsection (2), by deleting “books of account” and substituting “records”;

- (b) in paragraph (2)(a), by deleting “record” and substituting “show”; and
- (c) by inserting after subsection (4), the following subsection—

“(5) The auditor shall prepare an audit report which includes statements as to whether, in his opinion—

- (a) he has obtained all the information and explanations necessary for the purposes of the audit;
- (b) the Commission has complied with its obligations under this section;
- (c) the Commission’s accounts are in agreement with its financial records; and
- (d) to the best of his information and according to the explanations given to him, the Commission’s accounts give a true and fair view—
 - (i) in the case of the statement of assets and liabilities, of the Commission’s financial position as at the end of the financial year, and
 - (ii) in the case of the statement of revenue and expenditure, of the surplus or deficit for that financial year; and
- (e) the Commission has discharged with diligence its obligations in relation to the collection of its revenues.”.

Amendment of section 16

14. Section 16 of the Principal Act is amended in paragraph (1)(a), by deleting “the report of the auditor on the accounts” and substituting “the auditor’s report”.

Amendment of heading to Part 4

15. The heading to Part 4 of the Principal Act is amended by inserting after “INFORMATION GATHERING, the words “AND CO-OPERATION WITH REGULATORY AUTHORITIES”.

Amendment of section 20

16. Section 20 of the Principal Act is amended—

- (a) in subsection (1), by deleting “or, subject to section 23, on the written request of a foreign regulatory authority”;
- (b) in paragraph (2)(a), by deleting subparagraphs (ii), (iii) and (iv) and substituting the following subparagraphs—
 - “(ii) person the Commission reasonably believes to be carrying on, or to have at any time carried on, unlicensed financial services business,
 - (iii) person connected with a person specified in subparagraph (i) or (ii), or

- (iv) in the case of a notice requiring the production of documents, any person who the Commission reasonably believes is in possession, or has control, of the documents; and”;
- (c) in subsection (3) —
 - (i) in paragraph (a), by deleting “and” at the end of the paragraph,
 - (ii) in paragraph (b), by deleting the full stop and substituting “; and”,
 - (iii) by inserting after paragraph (b) the following paragraph—
 - “(c) that the information is to be provided to, or the documents are to be produced to, a person specified in the notice.”; and
- (d) in subsection (9), by inserting after “by the Commission”, the words “and make any interim or other order that it thinks fit”.

Insertion of section 20A

17. The Principal Act is amended by inserting after section 20, the following section—

“Effect of application to set notice aside

20A. (1) An application to the Court under section 20(7) does not relieve a person from compliance with the notice issued by the Commission.

(2) Subsection (3) applies where—

- (a) the person who has received a notice issued under section 20(1) gives written notice to the Commission that he intends to apply to the Court to have the notice set aside; or
- (b) if written notice is not given under paragraph (a), an application made under section 20(7) is served on the Commission;

provided that the notice is given, or the application is served, within the time period specified in section 20(8).

(3) Where this subsection applies, notwithstanding section 24(3), the Commission shall not disclose to any other person any information provided, or documentation produced, to it in compliance with the notice to which the application or intended application relates—

- (a) unless required or permitted to do so by the Court, whether on the application of the Commission or otherwise; or
- (b) as permitted by subsection (4).

(4) The Commission may disclose information or documentation to which subsection (3) relates if it has reasonable grounds for believing that the immediate disclosure of the information or documentation is necessary—

- (a) to protect and preserve assets, or the value of assets, that are in jeopardy; or

(b) to assist in the prevention of the commission of an offence, whether in or outside Anguilla.

(5) For the purposes of subsection (4), “offence” includes an act or omission which would constitute an offence within the meaning of the Proceeds of Crime Act if it had occurred in Anguilla.

(6) Where a person gives the Commission written notice under paragraph (2)(a), subsection (3) ceases to have effect if that person does not serve the application to which the notice relates on the Commission within the time period specified in section 20(8).

(7) Subsection (3) ceases to have effect on the application first being heard by the Court.

(8) Nothing in this section affects the disclosure of any information or documentation by the Commission prior to the receipt of a notice under paragraph (2)(a) or the service of the application under paragraph (2)(b).”.

Repeal of section 21

18. The Principal Act is amended by repealing section 21.

Amendment of section 22

19. Section 22 of the Principal Act is amended—

(a) in subsection (1)—

(i) by deleting “Where, in connection with a direction given under section 20, the Commission considers it necessary to examine a person on oath” and substituting “Where the Commission on reasonable grounds believes that a person can provide information that it reasonably requires for the purposes of discharging its functions”, and

(ii) by inserting after “person examined”, the words “under oath”; and

(b) by deleting subsection (2), and inserting the following subsections—

“(2) On an application under subsection (1), the Magistrate may, on such terms and conditions as he considers fit, order—

(a) the examination of a person under oath; and

(b) the production by that person to the Magistrate of such documents as are specified in the order.

(3) Where the Magistrate orders the examination of a person under subsection (2), that person may choose to be represented by an attorney, and the proceedings of the examination shall be held *in camera*.

(4) An application to a Magistrate under subsection (1) shall be processed by the Magistrate within 7 days of the application and the results of the examination, together with such documents as may be produced, shall be transmitted to the Commission within a reasonable period, not exceeding 14 days, from the date of the examination.”.

Redesignation of section 25 as section 22A

20. The Principal Act is amended by designating the current section 25 (Search warrant) as section 22A.

Insertion of section 22B

21. The Principal Act is amended by inserting after the redesignated section 22A, the following section—

“Duty to cooperate

22B. (1) The Commission shall take such steps as it considers appropriate to co-operate with—

- (a) foreign regulatory authorities; and
- (b) law enforcement agencies in Anguilla.

(2) Co-operation may include the sharing of documents and information which the Commission is not prevented by this or any other enactment from disclosing.”.

Amendment of section 23

22. Section 23 of the Principal Act is amended—

- (a) by deleting subsections (1) and (2) and substituting the following—

“(1) Subject to subsection (2), the Commission may, on the written request of a foreign regulatory authority—

- (a) exercise the powers conferred on it by section 20;
- (b) make an application under section 22 for the examination of a person under oath by the Magistrate;
- (c) appoint one or more competent persons as investigators to investigate any matter; or
- (d) disclose information or provide documentation to a foreign regulatory authority whether the information or documentation—
 - (i) was obtained by the exercise of a power specified in paragraph (a), or
 - (ii) is otherwise in the possession of the Commission.

(2) The Commission shall not exercise the power conferred on it by subsection (1) unless it is of the opinion that the information or documentation to which the request relates, or the investigation is sought, is reasonably required by the foreign regulatory authority for the purposes of its regulatory functions.

(2A) An investigator appointed under paragraph (1)(d) shall have the powers of an investigator appointed under section 33.”;

- (b) in subsection (3)—

- (i) by deleting “issue a notice under section 20 on the request of a foreign regulatory authority or to disclose information or provide documentation to a foreign regulatory authority under subsection (1)” and substituting “exercise the power conferred on it by subsection (1)”,
 - (ii) by deleting paragraph (c) and substituting the following—
 - “(c) the nature and seriousness of the matter to which the request for assistance relates, the importance of the matter to persons in Anguilla and whether the assistance can be obtained by other means;”,
 - (iii) in paragraph (d), by deleting “whether the information or documentation is relevant” and substituting “the relevance of the information or documentation”;
- (c) in subsection (6)—
- (i) by deleting “section 20 or under subsection (1)” and substituting “this section”,
 - (ii) in paragraph (a)—
 - (A) by deleting “it is satisfied that any information and documentation provided to the foreign regulatory authority” and substituting “it has received satisfactory assurances from the foreign regulatory authority that any information provided to it”,
 - (B) by deleting “under” and substituting “equivalent to”, and
 - (C) by deleting “like” and substituting “equivalent”,
 - (iii) in subparagraph (c)(i), by deleting “prudential supervision” and substituting “the exercise of any of its supervisory functions”; and
- (d) by inserting after subsection (6) the following subsection
- “(7) Where, in accordance with this section, the Commission would, on the written request of a foreign regulatory authority, be entitled to disclose information or provide documentation in its possession to that foreign regulatory authority, the Commission may disclose such information or documentation to the foreign regulatory authority without having received a written request from the authority.”.

Amendment of section 24

23. The Principal Act is amended by repealing section 24 and substituting the following sections—

“Restrictions on disclosure of information

24. (1) Subject to subsection (3), for the purposes of this section, “protected information” means information which—
- (a) relates to the business or other affairs of any person; and
 - (b) is acquired by a person falling within subsection (2), for the purposes of, or in the discharge of, his or its functions under this Act or a financial services enactment, and

includes any information that is obtained from a foreign regulatory authority or a law enforcement authority.

(2) Paragraph (1)(b) applies to the following persons—

- (a) the Commission;
- (b) a Board member;
- (c) an employee of the Commission;
- (d) a person appointed as an investigator under section 33;
- (e) a person appointed as a skilled person under section 33A;
- (f) any other person acting under the authority of the Commission;
- (g) an employee of a person specified in paragraphs (d) to (f).

(3) Information is not protected information—

- (a) if the information is or has been available to the public from any other source; or
- (b) where the information is disclosed in a summary or in statistics expressed in a manner that does not enable the identity of particular persons to whom the information relates to be determined.

(4) Subject to section 25, protected information shall not be disclosed by a recipient of that information, whether the recipient of the information is a person specified in subsection (2) or a person who has directly or indirectly received the protected information from a person specified in subsection (2), without the consent of—

- (a) the person from whom he obtained the information; and
- (b) if different, the person to whom it relates.

(5) For the avoidance of doubt, the Confidential Relationships Act does not apply to the Commission with respect to any protected information.

(6) Any person who contravenes this section commits an offence.

Gateways for the disclosure of information

25. Section 24 does not apply to a disclosure by—

- (a) any person where the disclosure is—
 - (i) required or permitted by, and made in accordance with, an order of a court of competent jurisdiction in Anguilla,
 - (ii) required or permitted by this or any other Act,

- (iii) made to the Governor,
 - (iv) made to a law enforcement agency in Anguilla, or
 - (v) made to the Reporting Authority established under the Proceeds of Crime Act;
- (b) a person specified in section 24(2), where the disclosure is made to any person for the purpose of discharging any function or exercising any power under this Act or a financial services enactment, whether the function or power is of the person disclosing the information or of the Commission or the Board;
- (c) the Commission—
- (i) to a foreign regulatory authority in accordance with section 22B or 23,
 - (ii) to help protect the public, whether within or outside Anguilla, or any section of it, against financial loss arising from any financial crime;
- (d) a person, other than the Commission, where the disclosure—
- (i) is made with the written consent of the Commission, and
 - (ii) could lawfully have been made by the Commission.

Privileged documents and information

25A. (1) A person shall not be required to disclose information or produce, or permit the inspection of, a document under this Act if he would be entitled to refuse to disclose the information or to produce, or permit the inspection of, the document on the grounds of legal professional privilege in legal proceedings.

(2) For the purposes of this section, information or a document comes to an attorney 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 attorney of legal advice to the client;
- (b) by, or by the representative of, a person seeking legal advice from the attorney; or
- (c) by any person—
 - (i) in contemplation of, or in connection with, legal proceedings, and
 - (ii) for the purposes of those proceedings.

(3) Information or a document shall not be treated as coming to an attorney in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

(4) Notwithstanding subsection (1), an attorney may be required, pursuant to a power under this Part, to provide the name and address of his client.

Admissibility of statements

25B. (1) Subject to subsection (2), a statement made by a person—

- (a) in compliance with a request made by the Commission under section 20;
- (b) to the Magistrate under section 22; or
- (c) in compliance with a request made by the examiner, to an investigator appointed under section 23(1)(d) or section 33;

is admissible in evidence in any proceedings, provided that it also complies with any requirements governing the admissibility of evidence in the circumstances in question.

(2) A statement made by a person in compliance with a requirement imposed by virtue of this Act may only be used in evidence against him in criminal proceedings if—

- (a) that person has himself introduced the statement in evidence; or
- (b) the prosecution of that person relates to—
 - (i) a failure or refusal by that person to produce documents or give assistance in accordance with this Act,
 - (ii) an omission by that person to disclose material which should have been disclosed or the provision by that person of false or misleading information, or
 - (iii) an untruthful statement by that person.

Protection for disclosure

25C. A person who discloses information or produces documents as permitted or required by this Act is deemed not to be in contravention of any enactment, rule of law, agreement or professional code of conduct to which that person is subject and no civil, criminal or disciplinary proceedings shall lie against him in respect thereof.”

Amendment of heading to Part 5

24. The heading to Part 5 of the Principal Act is amended by inserting before “ENFORCEMENT”, the words “COMPLIANCE AND”.

Amendment of section 27

25. Section 27 of the Principal Act is amended—

- (a) in the section heading, by deleting “officers”;
- (b) in subsection (1) and subsection (4), by inserting after “shall appoint”, the phrase “, or designate,”;
- (c) by inserting after subsection (1), the following subsection—

“(1A) A licensee shall establish, maintain and implement a compliance policy and compliance systems and controls that are appropriate for the nature, scale, complexity and diversity of the business carried on by the licensee.”; and

(d) in subsection (2)—

(i) in paragraph (d), by deleting “and” after the semi colon,

(ii) in paragraph (e), by deleting the full stop and substituting “; and”, and

(iii) by inserting after paragraph (e), the following paragraph—

“(f) requirements with respect to the compliance policies, systems and controls of a licensee.”.

Amendment of section 28

26. Section 28 of the Principal Act is amended—

(a) in the section heading, by deleting “inspections” and substituting “visits”;

(b) in subsection (1)—

(i) in paragraph (b), by inserting “or” after the semi colon,

(ii) in paragraph (c), by deleting “; and” and substituting a full stop, and

(iii) by deleting paragraph (d);

(c) in subsection (2)—

(i) in paragraph (a), by inserting after “including the”, the phrase “procedures,”,

(ii) in paragraph (b), by deleting “and” after the semi colon,

(iii) in paragraph (c), by deleting the full stop and substituting “; and”, and

(iv) by inserting after paragraph (c), the following paragraph—

“(d) seek information and explanations from the officers, employees, agents and representatives of a relevant person, whether orally or in writing, and whether in preparation for, during or after a compliance visit.”;

(d) by deleting subsection (3) and substituting the following subsection—

“(3) A compliance visit may be undertaken for the following purposes—

(a) the supervision of financial services business, including monitoring and assessing a relevant person’s compliance with—

(i) this Act and the financial services enactments, and

- (ii) the Regulatory Codes, or any Guidelines or other guidance issued by the Commission; and
- (b) monitoring and assessing a relevant person's compliance with his AML/CFT obligations.”;
- (e) in subsection (4), by deleting “The Commission” and substituting “Subject to subsection (4A), the Commission”;
- (f) by inserting after subsection (4), the following subsection—

“(4A) Where it appears to the Commission that the circumstances so justify, the Commission may exercise its powers under subsection (2) without giving notice of its intention to do so.”;
- (g) in subsection (5), by deleting “compliance inspection” and substituting “compliance visit”; and
- (h) by deleting subsections (6) and (7) and substituting the following subsections—

“(6) In deciding whether to permit a foreign regulatory authority to take part in a compliance visit under this section, the Commission may take into account, in particular, whether, in its opinion—

 - (a) the participation of the foreign regulatory authority—
 - (i) is necessary for the effective supervision of the person to be subject to the compliance visit or its subsidiary or holding company, and
 - (ii) is not contrary to the public interest; and
 - (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 visit 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.

(7) Subject to subsection (4A), a relevant person shall permit any employee of the Commission or person appointed by the Commission for the purpose to have access during reasonable business hours to any of its business premises to enable that person to undertake a compliance visit.

(8) The Regulations may specify circumstances in which the Commission may require a licensee to contribute towards the costs of a compliance visit.”.

Amendment of section 29

27. Section 29 of the Principal Act is amended—

(a) in paragraph (1)(a)—

(i) by deleting subparagraph (ii) and substituting the following subparagraph—

“(ii) is failing to comply or has failed to comply with an AML/CFT obligation,”

(ii) in subparagraph (iii), by inserting after “is carrying on”, the phrase “, or is likely to carry on,”;

(b) in subparagraph (1)(d)(ii)—

(i) by deleting “another relevant person” and substituting “a subsidiary or holding company of the licensee”, and

(ii) by deleting “compliance inspection” and substituting “compliance visit”; and

(c) in subsection (2)—

(i) by deleting “one or more of the following powers” and substituting “such of the following powers as it considers appropriate”,

(ii) in paragraph (a), by deleting “or suspend”,

(iii) in paragraph (b), by deleting “examiner” and substituting “investigator”,

(iv) by deleting paragraph (c),

(iv) in paragraph (d), by deleting the full stop and substituting a semi colon, and

(v) by inserting after paragraph (d) the following paragraphs—

“(e) apply for a protection order under section 31;

(f) take disciplinary action against the licensee under Part 6;

(g) where the licensee is a company incorporated or continued under the Companies Act, apply to the Court for the liquidation and dissolution of the company under section 215(1)(b) of that Act.”.

Amendment of section 30

28. Section 30 of the Principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (a), by inserting “or” after the semi colon,

(ii) in paragraph (b), by deleting “; or” and substituting a full stop, and

- (iii) by deleting paragraph (c);
- (b) by inserting after subsection (1), the following subsection—
 - “(1A) The Commission may, on the application of a licensee, cancel the licensee’s licence, subject to such conditions as the Commission considers appropriate.”;
- (c) in subsection (4), by deleting “paragraph (1)(a) or (b)” and substituting “subsection (1)”; and
- (d) by repealing subsection (5).

Amendment of section 31

29. Section 31 of the Principal Act is amended—

- (a) by deleting subsection (1) and substituting the following subsection—
 - “(1) The Commission may apply to the Court for a protection order under this section with respect to—
 - (a) a licensee, where the licence of the licensee has been or is about to be revoked or where the Commission is entitled to take enforcement action against the licensee;
 - (b) a former licensee; or
 - (c) a person that is carrying on, or has carried on, unlicensed financial services business.”;
- (b) in subsection (2)—
 - (i) by deleting “of the licensee, or the interests of its customers, creditors or the public including” and substituting “of the person with respect to whom the application is made, or the interests of the person’s customers, creditors or the public, including one or more of the following orders”;
 - (ii) in paragraph (a), by deleting “the licensee” and substituting “the person concerned”;
 - (iii) in paragraph (b), by deleting “financial services business then carried on by the licensee or carried on by him immediately before the revocation or suspension of the licence, as the case may be” and substituting “person’s business, or any part of that business”;
 - (iv) by deleting paragraph (c),
 - (v) in paragraph (d), by deleting the full stop and substituting a semi colon, and
 - (vi) by inserting after paragraph (d), the following paragraph—

- “(e) where the person concerned is in contravention of this Act, a financial services enactment or a Regulatory Code, an order requiring the person concerned to take such action, or to refrain from taking such action, as is necessary to bring that person into compliance with this Act, the financial services enactments legislation or the Regulatory Codes.”;
- (c) in paragraph (3)(c), by deleting “concerning the licensee or the business carried on by the licensee” and substituting “concerning the person with respect to whom the order is made or the business carried on by that person”;
- (d) in paragraph (5)(d), by deleting “the licensee or former licensee” and substituting “the person”;
- (e) in subsection (6), by deleting paragraph (b) and substituting the following—
- “(b) where the Commission intends to revoke the licence of a licensee under section 30(1), before or after the Commission has given notice of intention to revoke the licence.”; and
- (f) by deleting subsection (7).

Amendment of section 32

30. Section 32 of the Principal Act is amended—

- (a) by designating the existing provision as subsection (1);
- (b) in paragraph (a) of the existing provision—
- (i) by deleting “or limitation” and substituting “, limitation or condition”, and
- (ii) by inserting “and” after the semi colon in subparagraph (ii);
- (c) by deleting paragraph (b) of the existing provision; and
- (d) by inserting after the existing provision, the following subsection—

“(2) Where the Commission is of the opinion that a person is carrying on, or has carried on, unlicensed financial services business, the Commission may issue a directive to that person requiring the person—

- (a) to cease carrying on that business; and
- (b) to take such other action as the Commission considers necessary to protect the property belonging to, or in the custody, possession or control of, the person, or to protect the person’s customers or creditors or potential customers or creditors.”.

Amendment of section 33

31. Section 33 of the Principal Act is amended—

- (a) in the section heading, by deleting “examiner” and substituting “investigator”;
- (b) by deleting subsection (1) and substituting the following—
- “(1) The Commission may appoint one or more competent persons as investigators to conduct an investigation on its behalf—
- (a) with respect to a licensee—
- (i) if it appears to the Commission on reasonable grounds that there are, or may be, grounds for taking enforcement action against the licensee under section 29, or
- (ii) the Commission is of the opinion that it is desirable to appoint an investigator in the interests of the customers or potential customers of the licensee or in the public interest or in order to safeguard the reputation of Anguilla as a financial services centre;
- (b) with respect to a former licensee, if the Commission would have been entitled to appoint an investigator under paragraph (a), but for the revocation or cancellation of the licensee’s licence; and
- (c) with respect to any person if it appears to the Commission on reasonable grounds that the person is carrying on, or has carried on, unlicensed financial services business.”;
- (c) in subsection (2)—
- (i) by deleting “examiner” and substituting “investigator”,
- (ii) in paragraph (a), by deleting “state of his” and substituting “financial condition of the person’s”,
- (iii) in paragraph (b), by deleting “business of the licensee; and” and substituting “person’s business.”;
- (iv) in paragraph (c), by deleting the full stop and substituting a semi colon, and
- (v) by inserting after paragraph (c), the following paragraphs—
- “(d) in the case of a licensee, whether there are grounds for taking enforcement action against the licensee;
- (e) whether the person is carrying on, or has carried on, unlicensed financial services business.”;
- (c) by inserting after subsection (2), the following subsections—
- “(2A) Where an investigator is appointed with respect to a person that was formerly a licensee, an investigation under subsection (2) shall extend only to—
- (a) in the case of paragraphs (a) and (b), the person’s business carried on at any time when the person was a licensee; and

- (b) in the case of paragraph (c), to the ownership or control of the person at any time when the person was a licensee.

(2B) Subject to subsection (2C), an investigator appointed under this section shall have the powers of the Commission—

- (a) to require the provision of information or documents under section 20;
- (b) to apply to the Magistrate under section 22 for the examination of a person under oath; and
- (c) to apply to the Magistrate under section 22A for a search warrant.

(2C) The Commission may give directions to the investigator concerning any one or more of the following—

- (a) the scope of the investigation;
- (b) the period for the conduct of the investigation;
- (c) the manner in which the investigator shall report to it.”;

(d) in subsection (3)—

- (i) by deleting “examiner” and substituting “investigator”, and
- (ii) by inserting after “purposes of his investigation,”, the phrase “on giving written notice to the person concerned,”;

(e) by inserting after subsection (3), the following subsection—

“(3A) An investigator shall submit a report of his investigation to the Commission.”; and

(f) by inserting after subsection (4), the following subsection—

“(5) A person who hinders or obstructs, or fails to provide all assistance reasonably required by, an investigator appointed under this section commits an offence.”.

Insertion of heading to Part 5A

32. The Principal Act is amended by inserting after section 33, the following Part heading—

“PART 5A

GENERAL SUPERVISORY POWERS”.

Insertion of section 33A

33. The Principal Act is amended by inserting after the heading for Part 5A, the following section—

“Appointment of skilled person

33A. (1) This section applies to—

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

(2) The Commission may, by notice in writing given to a person specified in subsection (1), require that person to appoint a person with relevant professional skills (“a skilled person”), at his cost—

- (a) in the case of a licensee, to advise the licensee on the proper conduct of the licensee’s business; and
- (b) in the case of a licensee or a subsidiary or holding company of a licensee, to investigate and report to the Commission on, or on any aspect of, the person’s business and affairs.

(3) The Commission may require the report provided under subsection (2) to be in such form as may be specified in the notice.

(4) The person appointed as a skilled person under subsection (2), shall be a person—

- (a) nominated or approved by the Commission; and
- (b) appearing to the Commission to have the skills necessary to make a report on the matter concerned.

(5) A person who appoints a skilled person and any person who is providing, or who at any time has provided, services to that person in relation to a matter on which a report is required, shall give the skilled person all such assistance as he may reasonably require.

(6) A person specified in subsection (1) who fails to comply with a notice issued under subsection (2) commits an offence.

(7) A person specified in subsection (1) or subsection (5) who hinders or obstructs, or fails to provide all assistance reasonably required by, the skilled person commits an offence.”.

Repeal and substitution of section 34

34. Section 34 of the Principal Act is repealed and the following section substituted—

“Public statements

34. (1) Subject to subsection (6), the Commission may issue a public statement in such manner as it considers fit setting out—

- (a) enforcement action that the Commission intends to take against a licensee; or
- (b) enforcement action that the Commission has taken against a licensee or former licensee.

(2) A public statement issued under subsection (1) may include such information as the Commission considers appropriate, including—

- (a) the reasons for the enforcement action taken or to be taken; and
- (b) the nature of the enforcement action taken or to be taken.

(3) Where it considers it in the public interest to do so, the Commission may issue a public statement in such manner as it considers fit with respect to—

- (a) any person who, in the opinion of the Commission, is carrying on, has carried on, intends to carry on or is likely to carry on unlicensed financial services business;
- (b) any matter relating to financial services business where the Commission considers that the statement is desirable for—
 - (i) the protection of the public, whether within or outside Anguilla, against financial loss arising out of the dishonesty, incompetence, malpractice or insolvency of persons engaged in financial services business,
 - (ii) the protection and enhancement of the reputation of Anguilla as a financial services centre, or
 - (iii) the deterrence of financial crime and other unlawful activities relating to financial services business.

(4) Subject to subsection (5), where a public statement is to be issued under this section in relation to a licensee or a former licensee, the Commission shall give that person 7 days written notice of its intention to issue the public statement and the reasons for the issue of the statement.

(5) If the Commission is of the opinion that it is in the public interest or in the interests of any of the customers or creditors of a licensee or former licensee that subsection (4) should not have effect or that the period referred to in that subsection should be reduced, the Commission may issue the public statement without notice to the licensee or former licensee or with such shorter period as it considers appropriate.

(6) The Commission shall not issue a public statement in relation to the imposition of an administrative penalty until after the imposition of the administrative penalty has become final in accordance with section 34C(3).”.

Insertion of sections 34A and 34B

35. The Principle Act is amended by inserting after section 34 the following sections—

“Conditions

34A. (1) In this section—

“approval” means an approval that may be granted by the Commission under this Act or a financial services enactment, but excludes a licence; and

“condition” means a condition attached to a licence or to an approval and includes a condition as varied in accordance with this section.

(2) A licence may be issued, or an approval granted, by the Commission subject to such conditions as the Commission considers appropriate.

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

- (a) the Commission shall, together with the licence or approval, issue a written notice specifying the condition or conditions; and
- (b) if, in respect of any condition, it considers that it is in the public interest to do so, the Commission may state that condition on the licence or approval and issue a public statement concerning the condition, in such manner as it considers fit.

(4) The Commission may, upon giving reasonable written notice to a licensee, at any time—

- (a) vary or revoke a condition; or
- (b) impose new conditions on the licence or approval.

(5) A licensee may apply to the Commission in writing for a condition to be revoked or varied and, if the Commission is satisfied that the condition is no longer necessary or should be varied, it may revoke or vary the condition.

(6) If the Commission revokes or varies a condition or imposes a new condition, the licensee shall, if requested to do so by the Commission, deliver its licence to the Commission for re-issue.

Power to require licensee to remove directors and other persons

34B. (1) If the Commission is of the opinion that a person to which this section applies does not satisfy its fit and proper criteria, it may, by written notice, require the licensee to—

- (a) remove that person and, if it considers it appropriate, to replace him with another person acceptable to the Commission; or
- (b) ensure that the person ceases to undertake certain specified functions in relation to the licensee.

(2) This section applies to—

- (a) a director of a licensee;
- (b) a senior officer of a licensee;
- (c) the compliance officer of a licensee; or
- (d) a person undertaking any function that may be prescribed for the purpose of this paragraph.

- (3) A notice issued under subsection (1)—
 - (a) shall state whether the specified requirements have immediate effect or the time period within which they must be complied with; and
 - (b) may include directions consequential upon, or ancillary to, the requirements specified in the notice.”.

Insertion of section 34C

36. The Principle Act is amended by inserting the following section after the heading for Part 6—

“Interpretation for this Part

34C. (1) For the purposes of this Part—

“disciplinary violation” means—

- (a) a contravention of a provision of this Act, a financial services enactment or a Regulatory Code; or
- (b) failure to comply with an AML/CFT obligation;

“late payment penalty” means an administrative penalty imposed in respect of the failure of a licensee to pay any fee or charge payable under this Act or any financial services enactment on or before the date on which the fee or charge is due for payment.

(2) For the purposes of determining whether a disciplinary violation has been committed—

- (a) a fee or charge payable under this Act or any financial services enactment is deemed not to have been paid until it has been paid in full; and
- (b) where the Commission extends the time for submitting any document to the Commission, or notifying the Commission of any matter, the last day of the final extension given by the Commission shall be regarded as the last date for the submission of the document or the making of the notification.

(3) The imposition of an administrative penalty becomes final on the earliest of—

- (a) the payment by the licensee of the penalty;
- (b) the date when, in accordance with section 37B, the licensee is considered to have committed the disciplinary violation;
- (c) the date when the time for any appeal has expired and no appeal has been filed; or
- (d) the dismissal of any appeal of the licensee, provided that the time for any further appeal has expired.”.

Amendment of section 35

37. Section 35 of the Principal Act is amended—

- (a) by deleting subsection (1);
- (b) in subsections (2), (4) and (5), by deleting “disciplinary offence”, wherever the term appears, and substituting “disciplinary violation”;
- (c) in subsection (3), by deleting “a financial” and substituting “an administrative”;
- (d) in subsection (4)—
 - (i) by inserting before “penalty”, the word “administrative”,
 - (ii) by deleting “the sum specified” and substituting “the sum prescribed in relation to the disciplinary violation.”, and
 - (iii) by deleting paragraphs (a) to (c);
- (e) in subsection (5)—
 - (A) by deleting “disciplinary offence” and substituting “disciplinary violation”, and
 - (B) by inserting after “section 36”, the phrase “or 37A”; and
- (f) by inserting after subsection (5), the following subsection—

“(6) If the conduct or omission that constitutes a disciplinary violation also constitutes an offence—

 - (a) the taking of disciplinary action against a licensee does not prevent the licensee being also prosecuted for the offence; and
 - (b) the prosecution of a licensee for the offence does not prevent the taking of disciplinary action against the licensee.”.

Amendment of section 36

38. Section 36 of the Principal Act is amended—

- (a) in subsection (1)—
 - (i) by inserting after “against a licensee,”, the phrase “other than by imposing a late payment penalty on the licensee,”, and
 - (ii) in subparagraph (a)(i), by deleting “disciplinary offence” and substituting “disciplinary violation and the relevant facts surrounding the violation”; and
- (b) in paragraph (2)(a), by deleting “disciplinary offence” and substituting “disciplinary violation or disputing the facts of the alleged disciplinary violation”.

Amendment of section 37

39. Section 37 of the Principal Act is amended—

- (a) by deleting the section heading and substituting “Commission may take disciplinary action”;
- (b) in subsection (1)—
 - (i) in paragraphs (a) and (b), by deleting “offence” and substituting “violation”,
 - (ii) in paragraph (c), by inserting before “penalty”, the word “administrative” and by deleting “and” after the semi colon,
 - (iii) in paragraph (d), by inserting before “penalty shall be paid”, the word “administrative” and by deleting the full stop and substituting “; and”,
 - (iv) by inserting after paragraph (d) the following paragraph—

“(e) that if the licensee does not pay the administrative penalty or exercise his rights of appeal under section 48A, on or before the date referred to in paragraph (d), the licensee will be considered to have committed the violation and be liable for the penalty set out in the notice.”;
- (b) in subsection (4), by inserting after “Commission”, the phrase “, or appeal the imposition of the penalty under section 48A,”; and
- (c) by deleting subsections (5), (6) and (7).

Insertion of sections 37A and 37B

40. The Principle Act is amended by inserting the following sections after section 37—

“Late payment penalties

37A. (1) Where the Commission decides to take disciplinary action against a licensee by imposing a late payment penalty on the licensee, it shall send the licensee a penalty notice stating—

- (a) the fee or charge in respect of which the late payment penalty is being imposed; and
- (b) the amount of the penalty.

(2) A licensee who receives a penalty notice under subsection (1) shall pay the late payment penalty stated in the notice to the Commission, or appeal the imposition of the penalty under section 48A, within 21 days of the date of the penalty notice.

Date licensee considered to commit disciplinary violation

37B. (1) If a licensee pays an administrative penalty imposed on him under section 37 or 37A on or before the last date for payment of the penalty, the licensee is considered to have committed the violation and the disciplinary action is over.

(2) A licensee who neither pays an administrative penalty imposed on him under section 37 or 37A nor appeals the imposition of the administrative penalty, on or before the last date for

payment of the penalty, is considered to have committed the disciplinary violation and is liable for the administrative penalty.

Repeal of Part 7

41. The Principal Act is amended by repealing Part 7

Amendment of section 43

42. Section 43 of the Principal Act is amended—

- (a) in subsection (1), by inserting after “considered by the Board shall”, the words “on each occasion on which the matter comes before the Board”;
- (b) in subsection (2), by deleting “A Board member” and substituting “Subject to subsections (2A), (2B) and (2C), a Board member”;
- (c) by inserting after subsection (2), the following subsections—

“ (2A) Where, in the opinion of the Chairman, the matter that falls to be considered by the Board is a matter of general policy applicable to financial institutions generally, or to financial institutions of a particular type or category, the Chairman may permit a Board member who has declared an interest under subsection (1) to participate in the meeting, to express his views and to vote on any resolution concerning the matter.

(2B) The Board may permit a Board member who has declared an interest under subsection (1) to participate in the meeting and to express his views.

(2C) The Board member concerned shall withdraw from the meeting whilst the Board considers and determines whether to exercise its power under subsection (2B).”; and

- (d) by deleting subsection (3) and substituting the following subsection—

“(3) The Chairman shall draw to the attention of the meeting of the Board prior to its consideration of the matter in respect of which the declaration was made—

- (a) any declaration of interest that he may receive under subsection (1); and
- (b) any decision he has made under subsection (2A).”.

Amendment of section 44

43. Section 44 of the Principal Act is amended—

- (a) in subsection (1), by deleting “a financial services” and substituting “any other”; and
- (b) in subsection (2)—
 - (i) in paragraph (c), by inserting “and” after the semi colon,
 - (ii) in paragraph (d), by deleting the full stop and substituting “; and”, and

- (iii) by deleting paragraph (e).

Insertion of section 45A

44. The Principle Act is amended by inserting after section 45, the following section—

“Unpaid fees, charges and penalties

45A. (1) When any fee, charge or penalty (including an administrative penalty) that is payable to the Commission under this Act or a financial services enactment has not been paid, the Commission may issue a certificate naming the person from whom the amount is payable and stating the amount that has not been paid.

(2) A certificate issued under subsection (1) may be filed in the Court as if it were a judgment of the Court and, when it is so filed, a copy shall be served without delay on the person owing the amount.

(3) When a certificate issued under subsection (1) is filed in the Court—

- (a) the certificate has the same force and effect as if it were a judgment of the Court in the amount stated in the certificate, together with interest and penalties to the day of payment; and
- (b) proceedings may be taken, after a copy of the certificate is served on the person owing the amount, to enforce payment of the amount owing in relation to the certificate in the same manner as if the certificate were a judgment of the Court.

(4) All reasonable costs and charges payable in relation to the filing of a certificate in the Court are recoverable as if they had been certified and the certificate had been filed under this section.”.

Insertion of sections 46A and 46B

45. The Principle Act is amended by inserting after section 46, the following sections—

“Enforceability of agreements made by persons carrying on unlicensed financial services business

46A. (1) An agreement to which this section applies that is made by a person in the course of carrying on unlicensed financial services business is unenforceable against the other party to the agreement.

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

- (a) any money or other property paid or transferred by him under the agreement; and
- (b) compensation for any loss sustained by him as a result of having parted with it.

(3) This section applies to an agreement—

- (a) made after this section comes into force; and

- (b) the making or performance of which constitutes, or is part of, the unlicensed financial services business being carried on.

Unenforceable agreements

46B. (1) Where an agreement is unenforceable by reason of section 46A, the amount of compensation recoverable as a result of that section is—

- (a) such amount as may be agreed by the parties; or
- (b) on the application of either party, the amount determined by the Court.

(2) Notwithstanding section 46A, if the Court is satisfied that it is just and equitable in the circumstances of the case, it may allow—

- (a) the agreement to be enforced; or
- (b) money and property paid or transferred under the agreement to be retained by the person carrying on unlicensed financial services business.

(3) In considering whether to allow the agreement to be enforced or the money or property paid or transferred under the agreement to be retained, the Court shall have regard to whether the person carrying on unlicensed financial services business reasonably believed that he was not carrying on unlicensed financial services business by making the agreement.

(4) If the person against whom the agreement is unenforceable—

- (a) elects not to perform the agreement; or
- (b) as a result of this section, recovers money paid or other property transferred by him under the agreement,

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

(5) If property transferred under the agreement has passed to a third party, a reference in section 46A or this section to that property is to be read as a reference to its value at the time of its transfer under the agreement.

(6) The commission of an offence under this Act or any financial services enactment does not make the agreement concerned illegal or invalid to any greater extent than is provided by section 46A.”.

Amendment of section 47

46. Section 47 of the Principle Act is amended by inserting after subsection (2), the following subsection—

“(3) Without limiting subsection (1), regulations made under this section may provide for the following—

- (a) in relation to an investigation under section 33—
 - (i) the notice to be given to a person to be investigated,

- (ii) the conduct of an investigation,
 - (iii) the powers of an investigator appointed under that section, and
 - (iv) the payment of remuneration to the investigator;
- (b) in relation to disciplinary action under Part 6—
- (i) the procedures to be adopted by the Commission when taking disciplinary action against a licensee,
 - (ii) penalties for late payment in an amount not exceeding 100% of the amount payable,
 - (iii) administrative penalties not exceeding \$100,000 in respect of any single disciplinary violation, and
 - (iv) the determination of, or the method for determining, the amount of the administrative penalty that may be imposed for a disciplinary violation;
- (c) exemptions referred to in section 47A(1);
- (d) matters that shall be, or may be, provided for in the Regulatory Codes.”.

Insertion of section 47A

47. The Principle Act is amended by inserting after section 47, the following section—

“Exemptions

47A. (1) Unless otherwise provided by this Act or a financial services enactment, regulations made under section 47 may—

- (a) exempt specified persons or specified classes of persons from the requirement to obtain a licence under a financial services enactment to undertake an activity for which a licence would otherwise be required;
- (b) exempt specified licensees or specified classes of licensees from a requirement under this Act or a financial services enactment; and
- (c) provide for the circumstances in which the Commission may exempt specified licensees or specified classes of licensees from specified requirements under this Act or a financial services enactment.

(2) Subject to subsection (3), the Commission may, on the application of, or with the consent of, a licensee, by notice in writing direct that specified provisions in a Regulatory Code—

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

(3) An exemption or modification under subsection (2) may be given subject to such conditions as the Commission considers appropriate, and section 34A applies to such conditions as if they were conditions attached to a licence.

(4) The Commission may, at any time, revoke or vary an exemption or modification from the Regulatory Code given under subsection (2).”.

Amendment of section 48

48. Section 48 of the Principal Act is amended by deleting subsections (1) and (2) and substituting the following subsections—

“(1) The Commission may issue one or more Regulatory Codes specifying requirements, not inconsistent with this Act or a financial services enactment, relating to the carrying on by licensees of financial services business.

(1A) Without limiting subsection (1), a Regulatory Code may specify or provide for—

- (a) policies, systems and controls, including internal controls, to be maintained by licensees;
- (b) policies and procedures to be maintained by licensees with respect to the assessment and management of risk;
- (c) principles and rules of corporate governance to be adhered to by licenses;
- (d) the duties and responsibilities of the directors and senior managers of a licensee;
- (e) prudential requirements applicable to licensees;
- (f) business conduct rules to be followed by licensees;
- (g) the preparation of, and requirements relating to, business plans;
- (h) measures for the detection and prevention of financial crime; and
- (i) such other matters as may be required or permitted by this Act or any financial services enactment or by regulations made under section 47.

(2) A Regulatory Code may—

- (a) make different provision in relation to persons, cases or circumstances of different descriptions; and
- (b) include such transitional provisions as the Commission considers necessary or expedient.”.

Insertion of section 48A

49. The Principle Act is amended by inserting after section 48, the following section—

“Appeals

48A. (1) Subject to subsection (2), a person who is aggrieved by a decision of the Commission made under this Act, a financial service enactment or any other enactment may, within 28 days of the date of the decision, apply to the Court for leave to appeal against the decision.

(2) An appeal against the refusal of the Commission to grant a licence or against a decision of the Commission to grant a licence subject to conditions, may only be made on a question of law.

(3) Unless the Court otherwise determines, an application for leave to appeal, an appeal and an application for judicial review in relation to a decision of the Commission, does not operate as a stay of the decision in relation to which the appeal or application is made.

(4) Upon hearing an appeal under this section, the Court may—

(a) dismiss the appeal; or

(b) remit the matter back to the Commission for further consideration with such directions as it considers fit.”.

Amendment of section 49

50. Section 49 of the Principal Act is amended by deleting subsection (1) and substituting the following subsection—

“(1) The Commission may issue Guidelines with respect to—

(a) compliance by licensees with this Act, the financial services enactments and the Regulatory Codes;

(b) any matter required or permitted to be specified or provided for in a Regulatory Code; and

(c) such matters as it considers relevant to its functions.”.

Insertion of section 49A

51. The Principle Act is amended by inserting after section 49, the following section—

“Approved forms

49A. (1) The Commission may, by publication in such manner as may be specified in the regulations, approve forms for the purposes of this Act, the financial services enactments and the Regulatory Codes.

(2) Where, pursuant to subsection (1), the Commission has published an approved form with respect to a document, the document shall—

(a) be in the form of, and contain the information specified in, the approved form; and

(b) have attached to it such documents as may be specified in the approved form.”.

Amendment of Schedule 4

52. Schedule 4 of the Principal Act is amended by inserting the following rows in numerical order consistent with Column 1—


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| 33(6) | Person hindering or obstructing, or failing to provide all assistance reasonably required to, an investigator appointed under section 33 Triable either way | \$25,000 | \$25,000, imprisonment for 12 months or both | \$250 |
| 33A(6) | Person failing comply with a notice issued under section 33A(2) Triable either way | \$25,000 | \$25,000, imprisonment for 12 months or both | \$250 |
| 33A(7) | Person hindering or obstructing, or failing to provide all assistance reasonably required to, a skilled person appointed under section 33A Triable either way | \$25,000 | \$25,000, imprisonment for 12 months or both | \$250 |

Consequential amendments


53. The Acts and regulations set out in Column 1 of the Schedule are amended to the extent indicated opposite in Column 2.

Citation

54. This Act may be cited as the Financial Services Commission (Amendment) Act, 2013.


Leroy C. Rogers
Deputy Speaker

Passed by the House of Assembly this 20th day of September, 2013.


Carmen A. Richardson
Clerk of the House of Assembly

SCHEDULE

(Section 53)

CONSEQUENTIAL AMENDMENTS

| Column 1 | Column 2 |
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| <p>Companies Act, R.S.A. c. C65</p> | <p>Section 1 is amended by inserting the following definition after the definition of “calendar quarter”—</p> <p>““Commission” means the Financial Services Commission established under section 2 of the Financial Services Commission Act;”.</p> |
| | <p>Section 215 is amended—</p> <p>(a) by deleting subsection (1) and substituting the following subsection—</p> <p>“(1) The Court may order the liquidation and dissolution of a company or any of its affiliated companies—</p> <p>(a) upon the application of a shareholder, debenture holder, creditor, director or officer if the Court is satisfied that—</p> <p>(i) any unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the company after the occurrence of a specified event and that event has occurred,</p> <p>(ii) it is just and equitable that the company be liquidated and dissolved, or</p> <p>(iii) the company is insolvent or unable to pay its debts;</p> <p>(b) upon the application of the Commission if—</p> <p>(i) the company is a licensee, a former licensee or the company is carrying on, or has at any time carried on, unlicensed financial services business, and</p> <p>(ii) the Court is of the opinion that it is in the public interest that the company should be liquidated and dissolved.”;</p> <p>(b) by inserting after subsection (1) the following subsection—</p> <p>“(1A) For the purposes of this section, “licensee” and “unlicensed financial service business” have the same meaning given in the Financial Service Commission Act.”.</p> |

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| | Section 218 is amended by deleting “if it is satisfied that the company is able to pay or adequately provide for the discharge of all its obligations.”. |
| Company Management Act, R.S.A. c. C75 | Section 1 is amended— (a) in the definition of “auditor”, by deleting “Governor” and substituting “Commission”; (b) by deleting the definitions of “foreign regulatory authority” and “Inspector”; and (c) by inserting after the definition of prescribed, the following definition— ““Regulatory Code” means a Regulatory Code issued under section 48 of the Financial Services Commission Act.”. |
| | Section 4(1) is amended by deleting “under section 9”. |
| | Section 5 is amended— (a) in subsection (1), by deleting “Governor” and substituting “Commission”; (b) in subsection (2)— (i) by deleting paragraph (a) and substituting the following— “(a) contain such information as the Commission may direct and be in the approved form; and”; and (ii) in paragraph (b), by inserting before “prescribed”, the words “specified in the approved form or”. |
| | Section 6 is amended— (a) in subsections (1), (2) and (3), by deleting “Governor” and substituting “Commission”; and (b) in subsection (1), by deleting “he” in both places it occurs and substituting “it”. |
| | Sections 9, 10 and 11 are repealed. |
| | Section 12 is amended— (a) in subsections (1) and (4), by deleting “Inspector” and substituting “Commission”; and (b) in subsection (1), by deleting “him” and substituting “the Commission”. |
| | Section 14 is amended— |
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| | <p>(a) in subsection (2)—</p> <p>(i) by deleting “Inspector” in both places it occurs and substituting “Commission”; and</p> <p>(ii) by deleting “his absolute” and substituting “its absolute”; and</p> <p>(iii) by deleting “he considers” and substituting “it considers”; and</p> <p>(b) in subsection (3), by deleting “Inspector” and substituting “Commission”.</p> |
| | <p>Section 15 is amended—</p> <p>(a) in subsections (1) and (2), by deleting “Governor” and substituting “Commission”; and</p> <p>(b) in subsection (2), by deleting “he” and substituting “it”.</p> |
| | <p>Section 16 is amended, by deleting “Governor” and substituting “Commission”.</p> |
| | <p>Section 17 is repealed.</p> |
| | <p>Section 18 is amended in subsection (3)—</p> <p>(a) by deleting “Governor” and substituting “Commission”;</p> <p>(b) by deleting “and in default of compliance may revoke the licence”.</p> |
| | <p>Section 19 is amended—</p> <p>(a) in paragraph (1)(c), by deleting “Code of Practice issued under section 26” and substituting “the Regulatory Code”; and</p> <p>(b) in subsection (2), by deleting “6 months” and substituting “1 year”.</p> |
| | <p>Section 20 is amended—</p> <p>(a) in paragraphs (1)(b) and (1)(c) and in subsections (2) and (3), by deleting “the Inspector” in each place the words occur and substituting “the Commission”; and</p> <p>(b) in subsection (2) by deleting “an Inspector” and substituting “the Commission”.</p> |
| | <p>Section 21 is repealed.</p> |
| | <p>Section 22 is amended in subsections (1), (2), (3) and (4), by deleting “Inspector” in each place that it occurs and substituting</p> |

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| | <p>“Commission”.</p> <p>Sections 23 and 24 are repealed.</p> <p>Section 26 is repealed.</p> <p>Section 27 is amended—</p> <p>(a) by deleting subsection (2) and substituting the following—</p> <p>“(2) Any person who contravenes any provision of this Act or regulations, for which no penalty is specifically provided commits an offence and is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of 1 year or to both”; and</p> <p>(b) by deleting subsection (4).</p> |
| Financial Services Enactments Regulations R.R.A F28-1 | In section 1, paragraphs (a) and (g) are deleted. |
| Inland Revenue Department Act, R.S.A. c. I13 | Section 2 is amended in paragraph (a) by inserting after “Financial Services Commission Act” the words “or any other enactment”. |
| Insurance Act, R.S.A. c. I16 | Section 6 is amended by deleting subsection (3). |
| | Sections 14 and 15 are repealed. |
| | <p>Section 16 is amended—</p> <p>(a) in subsections (1), (3) and (4), by deleting “section 28” and substituting “section 29”;</p> <p>(b) in subsection (5)—</p> <p>(i) by deleting “section 28” and substituting “section 29”,</p> <p>(i) by deleting “section 31” and substituting “section 32”.</p> |
| Mutual Funds Act, R.S.A. c. M107 | Section 22 is repealed. |
| | Sections 26, 27, 28, 29 and 30 are repealed. |
| | Section 33 is repealed. |
| Trust Companies and Offshore Banking Act, | <p>Section 1 is amended—</p> <p>(a) in the definition of “auditor”, by deleting “Governor”</p> |

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| <p>R.S.A. c. T60</p> | <p>and substituting “Commission”;</p> <p>(b) by deleting the definitions of “foreign regulatory authority” and “Inspector” ; and</p> <p>(c) by inserting after the definition of “prescribed”, the following definition—</p> <p> ““Regulatory Code” means a Regulatory Code issued under section 48 of the Financial Services Commission Act, R.S.A. c. F28.”.</p> |
| | <p>Section 4(1) is amended by deleting “under section 16”.</p> |
| | <p>Section 5 is amended—</p> <p>(a) in subsection (1), by deleting “Governor” and substituting “Commission”;</p> <p>(b) in subsection (2)—</p> <p>(i) by deleting paragraph (a) and substituting the following—</p> <p> “(a) contain such information as the Commission may direct and be in the approved form; and”; and</p> <p>(ii) in paragraph (b), by inserting before “prescribed”, the words “specified in the approved form or”.</p> |
| | <p>Section 6 is amended—</p> <p>(a) by deleting “Governor” and substituting “Commission”; and</p> <p>(b) by deleting “he” in both places it occurs and substituting “it”.</p> |
| | <p>Section 7(b) is amended by deleting “Governor” and substituting “Commission”.</p> |
| | <p>Section 8(2) is amended—</p> <p>(a) by deleting “Governor may, on the recommendation of the Inspector,” and substituting “Commission may”; and</p> <p>(b) by deleting “he may” and substituting “it may”.</p> |
| | <p>Section 11 is amended—</p> <p>(a) in subsection (1), by deleting “Governor” and substituting “Commission”;</p> <p>(b) in subsection (2)—</p> <p>(i) by deleting paragraph (a) and substituting the following—</p> |

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| | <p>“(a) contain such information as the Commission may direct and be in the approved form; and”;</p> <p>(ii) in paragraph (b), by inserting before “prescribed”, the words “specified in the approved form or”.</p> |
| | <p>Section 12 is amended—</p> <p>(a) by deleting “Governor” and substituting “Commission”;</p> <p>and</p> <p>(b) by deleting “he” in both places it occurs and substituting “it”.</p> |
| | <p>Section 13 is amended—</p> <p>(a) in subsection (3), by deleting “Inspector” and substituting “Commission”;</p> <p>(b) in subsection (5), by deleting “Governor” in both places it occurs and substituting “Commission”;</p> <p>and</p> <p>(c) in subsection (6)—</p> <p>(i) by deleting “Governor” and substituting “Commission”;</p> <p>and</p> <p>(ii) by deleting “he” and substituting “it”.</p> |
| | <p>Section 14(3) is amended—</p> <p>(a) by deleting “Governor may, on the recommendation of the Inspector,” and substituting “Commission may”;</p> <p>and</p> <p>(b) by deleting “he may” and substituting “it may”.</p> |
| | <p>The heading immediately after section 15 is amended by deleting “Revocation, Suspension and”.</p> |
| | <p>Sections 16 and 17 are repealed.</p> |
| | <p>Section 18 is amended—</p> <p>(a) in subsection (1), by deleting “Governor” and substituting “Commission”;</p> <p>(b) in subsection (2)—</p> <p>(i) by deleting paragraph (a) and substituting the following—</p> <p>“(a) contain such information as the Commission may direct and be in the approved form; and”;</p> <p>and</p> <p>(ii) in paragraph (b), by inserting before “prescribed”, the words “specified in the approved form or”;</p> <p>(c) in subsection (3), by deleting “Governor” in both places</p> |

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| | <p>it occurs and substituting “Commission”; and</p> <p>(d) in subsection (4), by deleting “Inspector” and substituting “Commission”.</p> |
| | <p>Section 19 is amended, by deleting “Governor” and substituting “Commission”.</p> |
| | <p>Section 20 is amended—</p> <p>(a) in subparagraph (2)(b)(ii) and subsections (3) and (4), by deleting “Inspector” and substituting “Commission”;</p> <p>(b) in subsection (5), by deleting “Inspector in his discretion” and substituting “Commission in its discretion”;</p> <p>(c) in paragraph (7)(a), by deleting “Inspector” and substituting “Commission”.</p> |
| | <p>Section 21 is amended—</p> <p>(a) in subsection (1), by deleting “Inspector” and substituting “Commission”; and</p> <p>(b) in subsection (2), by inserting after “\$25,000”, the phrase “, to a term of imprisonment for 1 year or to both”.</p> |
| | <p>Section 22 is amended—</p> <p>(a) in subsections (1) and (2), by deleting “Governor” and substituting “Commission”; and</p> <p>(b) in subsection (2), by deleting “and in default of compliance may revoke the licence”.</p> |
| | <p>Section 23 is amended, by deleting “Inspector” and substituting “Commission”.</p> |
| | <p>Section 24 is amended—</p> <p>(a) in subsections (1) and (2), by deleting “Governor” and substituting “Commission”; and</p> <p>(b) in subsection (2), by deleting “he” and substituting “it”.</p> |
| | <p>Section 25 is amended in subsections (2), (3) and (4), by deleting “Inspector” in each place it occurs and substituting “Commission”.</p> |
| | <p>Section 30 is amended—</p> <p>(a) in subsection (1), by deleting “Governor or the Inspector” and substituting “Commission”;</p> |

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| | (b) in subsections (2) and (3), by deleting “Inspector” in each place it occurs and substituting “Commission”. |
| | Section 31 is amended in subsections (1) and (4), by deleting “Inspector” and substituting “Commission”. |
| | Sections 32 and 33 are repealed. |
| | Section 34 is amended, by deleting “Inspector” and substituting “Commission”. |
| | Section 35 is amended in subsections (1), (2), (3) and (4), by deleting “Inspector” in each place it occurs and substituting “Commission”. |
| | Sections 36, 37 and 38 are repealed. |
| | Section 39 is amended— (a) by deleting subsection (1) and substituting the following— “A person who is aggrieved by a decision of the Commission made under section 7, section 13(6), section 14(3) or section 19 may appeal the decision in accordance with section 48A of the Financial Services Commission Act.”; and (b) by deleting subsections (2) and (3). |
| | Section 41 is repealed. |
| | Section 42 is amended— (a) by deleting subsection (2) and substituting the following— “(2) Any person who contravenes any provision of this Act or regulations, for which no penalty is specifically provided commits an offence and is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of 1 year or to both”; and (b) by deleting subsection (5). |