

VIRGIN ISLANDS

THE BANKS AND TRUST COMPANIES ACT, 1990

No. 9 of 1990

**Amended by
2/1995
12/2001
14/2006**

Subsidiary Legislation

Banks and Trust Companies Regulations, 1991 (S.I. 1991 No. 18)

**Amended by
12/2001**

Banks and Trust Companies (No. 2) Regulations, 1991 (S.I. 1991 No. 37)

**Amended by
12/2001**

**Banks and Trust Companies (Non-Negotiable Certificates of Indebtedness)
Order, 2002 (S.I. 2002 No. 28)**

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

No. 9 of 1990

VIRGIN ISLANDS

BANKS AND TRUST COMPANIES ACT, 1990

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I Assent
J. M. A. Herdman
Governor
27th September, 1990

9/1990
2/1995
12/2001
14/2006

Commencement 15th June, 1991

Revision date 1st June, 2007

VIRGIN ISLANDS

No. 9 of 1990

An Act to provide for the licensing and control of banking business and trust business and related matters.

[Gazetted 11th October, 1990]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

1. The Act may be cited as the Banks and Trust Companies Act, 1990.

**PART I
PRELIMINARY**

Interpretation.
2/1995
12/2001

2. (1) In this Act,

14/2006
No. 12 of 2001

“approved form” means a form approved by the Commission in accordance with section 50A of the Financial Services Commission Act, 2001;

“auditor” means a person who

- (a) is qualified as an accountant by examination conducted by one of the institutes of Chartered Accountants or Certified Accountants in England and Wales, Ireland or Scotland, the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants and is a current member in good standing of one of those institutes; or

<p>(b) possesses such other qualification in accountancy as may be prescribed and is in good standing with respect to such qualification;</p>	<p>12/ 2001 14/2006</p>
<p>“authorised agent” means a person designated as authorised agent by a licensee under paragraph (b) of subsection (1) of section 9;</p>	<p>14/ 2006.</p>
<p>“banking business” means the business of accepting deposits of money which may be withdrawn or repaid on demand or after a fixed period or after notice, by cheque or otherwise and the employment of such deposits, either in whole or in part,</p> <p>(a) in making or giving loans, advances, overdrafts, guarantees or similar facilities, or</p> <p>(b) the making of investments,</p> <p>for the account and at the risk of the person accepting such deposits;</p>	
<p>“Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act, 2001;</p>	<p>12/2001 No.12 of 2001.</p>
<p>“company management” and “company management business” have the meanings specified in the Company Management Act, 1990;</p>	<p>14/2006 No. 8 of 1990</p>
<p>“financial year” means, in relation to a licensee under this Act,</p> <p>(a) the period not exceeding 53 weeks at the end of which the balance of the licensee’s account is struck; or</p> <p>(b) if no such balance is struck, or if a period in excess of 53 weeks is used, then, a calendar year;</p>	
<p>“licence” means a licence granted under section 4(4);</p>	<p>14/ 2006.</p>
<p>“licensee” means a company holding a licence under this Act;</p>	
<p>“prescribed” means prescribed in a Regulatory Code;</p>	<p>14/2006</p>
<p>“registered agent services” has the meaning specified in subsection (1A);</p>	<p>14/2006</p>
<p>“Regulatory Code” means a Regulatory Code issued under the Financial Services Commission Act, 2001;</p>	<p>14/ 2006 No. 12 of 2001</p>
<p>“senior officer” means a person appointed to perform such supervisory or managerial functions with respect to a licensee as may be prescribed;</p>	<p>14/2006</p>

14/ 2006

“significant interest”, in respect of a licensee, means a holding or interest in the licensee or in any holding company of the licensee held or owned by a person, either alone or with any other person and whether legally or equitably, that entitles or enables the person, directly or indirectly

- (a) to control five per cent or more of the voting rights of the licensee,
- (b) to a share of five per cent or more in any distribution made by the licensee, or
- (c) to a share of five per cent or more in any distribution of the surplus assets of the licensee;

“trust” means the legal relationship created *inter vivos* or on death by a person, known as a settlor or grantor, when assets have been placed under the control of a person, known as a trustee, for the benefit of a person, known as a beneficiary, or for a specified purpose or when a person declares that he holds assets as trustee for the benefit of a beneficiary or a specified purpose and-

- (a) the assets constitute a separate trust fund and are not part of the trustee’s own estate;
- (b) title to the trust assets stand in the name of the trustee or in the name of another person on behalf of the trustee; and
- (c) the trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed on him by law;

14/ 2006

“trust business” means the business of

- (a) acting as a professional trustee, protector or administrator of a trust or settlement; or
- (b) managing or administering any trust or settlement;

14/2006

“Virgin Islands company” means a company that is

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- (a) a company incorporated or continued under the International Business Companies Act;

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- (b) a company incorporated under the Companies Act; or
- (c) a company incorporated, continued or re-registered under the BVI Business Companies Act, 2004; and

(1A) A person provides registered agent services if he acts as the registered agent of

14/2006

- (a) a Virgin Islands company;
- (b) a foreign company registered under the BVI Business Companies Act, 2004; or
- (c) a limited partnership registered under the Partnership Act, 1996.

No. 16 of 2006

No. 5 of 1996

(2) For the purposes of this Act and subject to subsection (5), a company is deemed to be a subsidiary of another if

- (a) that other, either
 - (i) is a member of it and controls the composition of its board of directors, or
 - (ii) holds more than half in nominal value of its equity share capital; or
- (b) the first-mentioned company is a subsidiary of any company that is the other's subsidiary.

(3) For the purposes of subsection (2), the composition of a company's board of directors is deemed to be controlled by another company if that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships.

(4) For purposes of subsection (3), the other company is deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied

- (a) that a person cannot be appointed to it without the exercise in his favour by the other company of such a power as is mentioned in subsection (3);
- (b) that a person's appointment to the directorship follows necessarily from his appointment as a director of the other company; or
- (c) that the directorship is held by the other company itself or by a subsidiary of it.

(5) In determining whether one company is a subsidiary of another

- (a) any shares held or power exercisable by the other in a fiduciary capacity are to be treated as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable
 - (i) by any person as nominee for the other except where the other is concerned only in a fiduciary capacity, or
 - (ii) by, or by a nominee for, a subsidiary of the other not being a subsidiary which is concerned only in a fiduciary capacity;
 are to be treated as held or exercisable by the other;
- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed securing any issue of such debentures are to be disregarded; and
- (d) any shares held or power exercisable by, or by a nominee for, the other or its subsidiary, not being held or exercisable as mentioned in paragraph (c), are to be treated as not held or exercisable by the other if the ordinary business of the other or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable as above-mentioned by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(6) For the purposes of this Act,

- (a) a company is deemed to be another's holding company if the other is its subsidiary; and
- (b) a body corporate is deemed the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.

PART II LICENCES

3. (1) No person shall carry on any kind of banking business in or from within the Virgin Islands unless the person holds a valid licence authorising him to carry on that kind of banking business.

(2) No company shall carry on any kind of trust business in or from within the Virgin Islands unless the company holds a valid licence authorising him to carry on that kind of trust business.

(3) For the purposes of subsections (1) and (2), a Virgin Islands company that carries on banking or trust business outside the Virgin Islands is deemed to be carrying on banking or trust business from within the Virgin Islands.

(4) A person who contravenes subsection (1) or a company that contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding, two years or to both.

4. (1) A licence is obtainable by making written application to the Commission in the approved form.

Application for
licence.
12/ 2001
14/ 2006.

(2) *(Repealed)*

(3) *(Repealed)*

12/2001
14/ 2006

(4) The Commission may issue a licence to an applicant if it is satisfied that

12/2001
14/ 2006

- (a) the applicant satisfies the requirements of the Act and the Regulatory Codes in respect of the application and will, upon issuance of the licence, be in compliance with this Act and the Regulatory Codes;
- (b) the applicant satisfies the Commission's fit and proper criteria;
- (c) the organisation, management and financial resources of the applicant are adequate for the carrying on of the business in respect of which a licence is sought; and
- (d) issuing the licence is not against the public interest.

(5) A decision to refuse to grant a licence, other than a licence in respect of a business in existence at the date of the commencement of this Act, is final and is not subject to any appeal.

(6) The Commission shall cause notice of the grant of a license under this Act to be published in such manner as shall be specified in regulations made under section 28.

12/ 2001
14/ 2006

(7) A license issued under this Act shall be prominently displayed on the premises where the business is carried on.

4A. The fees prescribed by or under the Statutory Rates, Fees and Charges Act, 2005 in respect of and pertaining to this Act, shall be payable to the Commission.

Fees.
No. 28 of 2005
14/ 2006

5. A licence is valid until it is suspended or revoked by the Commission in accordance with the Financial Services Commission Act, 2001.

Validity of licence.
No. 12 of 2001
14/2006

Exemptions.
Cap. 200

6. (1) A person who is licensed under this Act is not required to be licensed under the Business, Professions and Trade Licences Act to carry on banking business or trust business.

No. 8 of 1990.

(2) This Act does not apply to a person licensed under the Company Management Act, 1990.

14/ 2006
No. 6 of 1996

(3) A person who is licensed under the Mutual Funds Act, 1996 as a manager or administrator and whose licence authorises him to act as the manager or administrator of one or more unit trusts, is exempted from the requirement to obtain a licence under this Act for the purposes of managing or administering any unit trust that he is authorised under his licence to manage or administer.

Existing
businesses.

7. A person who at the commencement of this Act is carrying on banking business or trust business has a period of three months to comply with the trust provisions of the Act.

Notification of
change in
particulars of
licensee.
12/ 2001
14/2006

8. (1) Where a change occurs in the particulars of a licensee as set out in the application for the licence, the licensee shall, within fourteen days, inform the Commission of the change.

14/ 2006

(2) A licensee who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Principal office and
authorised agent.
12 / 2001

9. (1) A licence shall not be granted to any person unless the person designates, and notifies to the Commission

(a) a principal office in the Virgin Islands; and

14/2006

(b) by name, two individuals resident in the Virgin Islands approved by the Commission to be that person's authorised agents;

12/2001

(2) The functions of an authorised agent are to act as an intermediary between the licensee and the Commission, except that in the absence or inability of one authorised agent to act, the other authorised agent may carry out the functions of both authorised agents under this subsection.

12/ 2001
14/2006

(3) A licensee shall obtain the prior written approval of the Commission for any change of

(a) its principal office in the Virgin Islands; or

(b) any of the persons designated as an authorised agent pursuant to paragraph (b) of subsection (1).

12/ 2001
14/ 2006

(4) Where the Commission has approved a person under subsection (1)(b) and (3)(b) as an authorised agent, it may in writing revoke the approval.

14/ 2006

(5) A licensee who contravenes subsection (3) commits an offence and

is liable on summary conviction to a fine not exceeding \$10,000.

- 10.** (1) A license issued under this Act must be in one of the following categories: Type of licences.
- (a) a general banking license, for the purpose of carrying on banking business within and outside the jurisdiction of the Virgin Islands; 14/2006
 - (b) a restricted Class I banking licence, for the purpose of carrying on banking business with the restrictions on that business set forth in section 11;
 - (c) a restricted Class II banking licence, for the purpose of carrying on banking business with the restrictions on that business set forth in section 11 with the further restriction that the licensee shall not receive or solicit funds by way of trade or business from persons other than those listed in any undertaking accompanying the application for the licence;
 - (d) a Class I trust licence, for the purposes of carrying on trust business and company management business; 14/ 2006
 - (e) a Class II trust licence, for the purposes of carrying on trust business only; 14/ 2006
 - (f) a Class III trust licence, for the purposes of carrying on company management business only. 14/ 2006
- (1A) Without limiting section 4(4A) 14/ 2006
- (a) a Class II trust licence may be issued as a restricted Class II licence, in which case the holder of the licence shall not undertake trust business other than in connection with those trusts, not exceeding fifty, listed in a sworn undertaking; and
 - (b) a Class III trust licence may be issued as a restricted Class III licence, in which case the holder of the licence shall undertake no company management business, other than the provision of directors and officers, and nominee shareholders, for Virgin Islands companies.
- (2) There may be listed in a schedule to the application for a Class I or II trust licence the name of any company engaging in trust business being a subsidiary of the company applying for a Class I or II trust licence together with a description of the particular type of trust business being carried on or to be carried on by the subsidiary and the Commission, upon granting the Class I or II trust licence to the applicant company, include in the licence the name of each subsidiary to be included in the licence together with the terms and conditions, if any, subject to which the licence is extended to include each subsidiary. 12/ 2001
14/ 2006
- (3) There may be listed in a schedule to the application for a general banking licence the name of any company engaging in banking business, being a subsidiary 14/ 2006

of the company applying for a general banking licence, together with a description of the particular type of banking business being carried on or to be carried on by the subsidiary and the Commission may, upon granting the general banking licence to the applicant company, include in the licence the name of each subsidiary, or category of business to be undertaken, to be included in the licence, together with the terms and conditions, if any, subject to which the licence is extended to include each subsidiary.

14/ 2006

(4) A licensee who wishes to add a subsidiary to, or remove a subsidiary from, its licence may apply to the Commission in the approved form and shall, upon approval of the application, submit its licence to the Commission for the necessary amendment to be made.

14/ 2006

(5) The holder of a restricted Class II trust licence that wishes to make any change in the trusts in connection with which it may undertake trust business, may apply to the Commission in the approved form attaching a sworn undertaking to replace that specified in subsection (1)(e) and the Commission may grant or refuse the application.

Limitations on
restricted banking
licences.
14/2006

11. (1) The holder of a restricted Class I or Class II banking licence shall not

- (a) take deposits from any person resident in the Virgin Islands other than another licensee or a company incorporated under the International Business Companies Act;
- (b) invest in any asset that represents a claim on any person resident in the Virgin Islands except a claim resulting from
 - (i) a transaction with another licensee; or
 - (ii) the purchase of bonds or other securities issued by the Government, a statutory corporation or a company in which the Government is the sole or majority beneficial owner; or
- (c) without the written approval of the Commission, carry on any business in the Virgin Islands other than the business for which the restricted Class I or Class II banking licence has been obtained.

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12/ 2001
14/ 2006

14/ 2006

(2) A licensee who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$25,000 or to a term of imprisonment for one year or to both.

Capital resource
requirements
and deposits.
12/2001
14/2006

12. (1) A company holding a general banking licence shall, at all times

- (a) maintain capital resources of not less than the prescribed minimum or such greater capital resources as the Commission may require the licensee to maintain; and
- (b) keep deposited or invested such sum as may be prescribed in such manner as may be prescribed.

(2) A company holding a restricted Class I banking licence or a restricted Class II banking licence shall, at all times

- (a) maintain capital resources of not less than the prescribed minimum or such greater capital resources as the Commission may require the licensee to maintain; and
- (b) keep deposited or invested such sum as may be prescribed in such manner as may be prescribed.

(3) A company holding a banking licence shall at all times maintain the prescribed risk weighted capital adequacy ratio, calculated in such manner and by such methods as may be prescribed.

(4) A company holding a Class I or Class II trust licence shall, at all times

- (a) maintain capital resources of not less than the prescribed minimum or such greater capital resources as the Commission may require the licensee to maintain; and
- (b) keep deposited or invested such sum of money, not exceeding the prescribed maximum, as may be required by the Commission, in such manner as may be prescribed.

(5) For the purposes of this section, the definition of "capital resources" and acceptable forms of capital may be prescribed in a Regulatory Code.

(6) A company that contravenes subsection (1)(b), (2)(b) or (4)(b) commits an offence and is liable on summary conviction to a fine not exceeding \$25,000 or to a term of imprisonment not exceeding one year or to both.

13. *(Repealed)*

12/2001
14/ 2006

PART III TRANSFERABILITY OF SIGNIFICANT INTERESTS

14. (1) A person owning or holding a significant interest in a licensee shall not sell, transfer, charge or otherwise dispose of his interest in the licensee, or any part of his interest, unless the prior written approval of the Commission has been obtained.

Disposing of or
acquiring
significant interest
in licensee.
12/2001
14/ 2006

(2) A person shall not, whether directly or indirectly, acquire a significant interest in a licensee unless the prior written approval of the Commission has been obtained.

(3) A licensee shall not, unless the prior written approval of the Commission has been obtained,

- (a) cause, permit or acquiesce in a sale, transfer, charge or other disposition referred to in subsection (1);
- (b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation of its share capital that results in
 - (i) a person acquiring a significant interest in the licensee, or
 - (ii) a person who already owns or holds a significant interest in the licensee, increasing or decreasing the size of his interest.

(4) An application to the Commission for approval under subsection (1), (2) or (3) shall be made by the licensee.

(5) The Commission shall not grant approval under subsection (1), (2) or (3) unless it is satisfied that following the acquisition or disposal

- (a) the licensee will continue to meet the criteria for licensing specified in section 4(4); and
- (b) any person who will acquire a significant interest in the licensee satisfies the Commission's fit and proper criteria.

(6) An approval under subsections (1), (2) or (3) may be granted by the Commission on such conditions as it considers appropriate.

(7) A person who contravenes subsection (1) or (2) and a licensee that contravenes subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

14A. The Commission may exempt a licensee from the provisions of section 14, or any of them, on such conditions as it considers appropriate.

PART IV ADMINISTRATION

15. *(Repealed)*

16. (1) No person, other than a licensee, shall except with the approval of the Commission

Power to grant exemption.
14/2006

12/2001
14/2006

Use of word "bank", etc.
12/2001

- (a) use or continue to use the words “bank”, “savings”, “savings and loans”, “trust”, “trustee”, “trust company”, “trust corporation” or “fiduciary” or any of their derivatives, either in English or in any other language, in the name, description or title under which that person is carrying on business from within the Virgin Islands, whether or not the business is carried on within or outside the Virgin Islands; 14/2006
- (b) make or continue to make any representation in any advertisement, billhead, circular, letter, letterhead, notice, paper or in any other manner that that person is carrying on banking business or trust business; or
- (c) in any manner solicit or receive deposits from the public.

(2) No company incorporated in the Virgin Islands shall, except with the approval of the Commission, be registered, or continue to be registered, by a name which contains “bank”, “savings”, “savings and loan”, “trust”, “trustee”, “trust company”, “trust corporation” or “fiduciary” or any of their derivatives, either in English or in any other language, in the description or title under which the company is carrying on business within or outside the Virgin Islands. 12/ 2001
14/2006

(3) The Commission may, before giving its approval under subsection (1) or (2), require the production of such references and such information and particulars as may be prescribed. 12/2001

(4) The Commission may withdraw any approval given under subsection (1) where it considers it to be in the public interest. 12/2001

(5) A person who contravenes subsection (1) and a company that contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding \$50,000 or a term of imprisonment not exceeding two years or to both. 12/2001
14/2006

- 17.** (1) A licensee shall keep financial records that Licensee to keep financial records.
12/2001
14/ 2006.
- (a) are sufficient to show and explain its transactions;
 - (b) will, at any time, enable its financial position to be determined with reasonable accuracy;
 - (c) will enable it to prepare the financial statements and make the returns required under this Act and any Regulatory Code; and
 - (d) will enable its financial statements to be audited in accordance with this Act and the Regulatory Code.

(2) A licensee shall retain all financial records for a period of at least five years after the completion of the transaction to which they relate.

(3) Subject to subsection (4), a licensee shall

- (a) keep its financial records in the Virgin Islands; and
- (b) if its financial records, or any of them, are kept at a place other than its principal office in the Virgin Islands, notify the Commission in writing of the place where those financial records are kept.

(4) A licensee that is not a Virgin Islands company shall

- (a) keep accounting records in the Virgin Islands sufficient to comply with subsection (1) in respect of the business it undertakes in the Virgin Islands; and
- (b) notify the Commission in writing of the place, whether in or outside the Virgin Islands, where its financial records, other than those specified in paragraph (a) are kept.

(5) A licensee that holds a trust licence shall comply with such rules as may be prescribed concerning

- (a) the segregation of its assets from trust assets and any client assets that it holds;
- (b) the segregation of trust assets of one trust from those of another and from other client assets;
- (c) the maintenance of separate bank and other accounts with respect to different trusts and clients;
- (d) accounting rules and procedures to be applied with respect to trust and client assets.

(6) A licensee that contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding one year or to both.

Meaning of
"financial
statements".
14/ 2006

17A. (1) In this Act, "financial statements" in relation to a licensee and to a financial year, means

- (a) a statement of the financial position of the licensee as at the last date of the financial year;
- (b) a statement of the financial performance of the licensee in relation to the financial year;
- (c) a statement of cash flows for the licensee in relation to the financial year;
- (d) such statement relating to the prospects for the licensee's business as may be prescribed or as may be required by the accounting standards in accordance with which the accounts are prepared; and
- (e) such other statements as may be prescribed;

together with any notes or other documents giving information relating to the matters specified in paragraphs (a), (b), (c), (d) or (e).

17B. (1) A licensee shall prepare financial statements for each financial year that comply with generally accepted accounting standards or such other accounting standards as may be prescribed.

Preparation of
financial
statements.
14/ 2006

(2) If, in complying with the accounting standards in accordance with which they are prepared, the financial statements do not give a true and fair view of the matters to which they relate, the notes to the financial statements shall contain such information and explanations as will give a true and fair view of those matters.

(3) The financial statements prepared under subsection (1) shall be

- (a) approved by the directors of the licensee; and
- (b) following approval under paragraph (a), signed by at least one director on behalf of all the directors.

(4) The director signing the financial statements shall state the date when the financial statements were approved by the directors and the date when he signs the financial statements.

17C. (1) The financial statements signed by a director in accordance with section 17B shall be submitted to the Commission within six months of the end of the financial year to which they relate accompanied by

Submission of
financial
statements to the
Commission and
publication.
14/2006

- (a) a directors' certificate;
- (b) an auditor's report;
- (c) any report on the affairs of the licensee made to the members of the licensee in respect of the relevant financial year;
- (d) a certificate of compliance issued by the auditor that the information set out in the application for a licence, as modified by any subsequent notification of change in accordance with section 8, remains correct and gives an accurate summary of the business of the licensee; and
- (e) such other documents as may be prescribed.

(2) Unless accompanied by the certificates, reports and documents specified in subsection (1), the financial statements referred to in subsection (1) are deemed not to have been submitted to the Commission.

(3) A licensee that holds a banking licence shall publish its financial statements, together with the auditors report, within six months of the end of the financial year to which they relate, in at least two newspapers published and circulating in the Virgin Islands'.

(4) A licensee who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

17D. (1) A licensee that holds a banking licence shall, in respect of each quarter, submit to the Commission, within such time period as shall be prescribed

- (a) financial statements, that may be unaudited;
- (b) a return in the approved form;
- (c) such other information and documentation as may be prescribed.

(2) In this section, "financial statements" has the meaning specified in section 17A with the substitution of "quarter" for "financial year".

(3) A licensee who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

17E. (1) The Commission may, on the application of a licensee, extend the time for compliance with section 17C or section 17D for a period of, or where it grants more than one extension for an aggregate period not exceeding, three months.

(2) An extension under subsection (1) may be granted subject to such conditions as the Commission considers appropriate.

Submission of
quarterly financial
statements and
report.
14/2006

Extension of time.
14/2006

17F. (1) If the Commission considers that any document submitted by a licensee under section 17C or 17D is inaccurate or incomplete or is not prepared in accordance with this Act or a Regulatory Code, it may by written notice require the licensee to amend the document or to submit a replacement document.

Amendment of
financial
statements.
14/2006

(2) If a licensee fails to comply with a notice under subsection (1), the Commission may reject the document.

17G. (1) A licensee shall appoint an auditor, which in the case of a licensee that is a Virgin Islands company, shall be an auditor approved by the Commission, for the purposes of auditing its financial statements.

Licensee to
appoint
auditor.
14/2006

(2) The Commission shall not approve the appointment of an auditor under subsection (2) unless it is satisfied that he has sufficient experience and is competent to audit the financial statements of the licensee.

(3) A licensee shall make such arrangements as are necessary to enable its auditor to audit its financial statements in accordance with this Act.

(4) The approval of the Commission is not required where the auditor appointed in respect of a financial year acted as the auditor of the licensee in the previous financial year.

(5) A licensee shall, within 14 days of the appointment of its auditor, submit a notice of appointment in the approved form to the Commission.

(6) A licensee shall not change its auditor without the prior written approval of the Commission.

(7) A licensee who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

17H. (1) Upon completion of his audit of the financial statements of a licensee, the auditor shall provide an audit report to the licensee complying with the Regulatory Codes.

Audit report.
14/2006

(2) The Commission may at any time, by notice in writing, direct a licensee to supply the Commission with a report, prepared by its auditor or other person nominated by the Commission, on such matters as the Commission may determine which may include an opinion on the adequacy of the accounting and control systems of the licensee.

(3) A report prepared under subsection (2) shall be at the cost of the licensee.

17I. (1) Notwithstanding anything to the contrary in any other enactment, the auditor of a licensee shall

Obligations of
auditors.
14/2006

- (a) provide the Commission with a copy of the audit report provided to a licensee under section 17H;
- (b) report immediately to the Commission any information relating to the affairs of a licensee that he has obtained in the course of acting as its auditor that, in his opinion, suggests
 - (i) that the licensee is insolvent or is likely to become insolvent or is likely to be unable to meet its obligations,
 - (ii) that a criminal offence has been or is being committed by the licensee or in connection with its business,
 - (iii) that the licensee is in breach of any provision of this Act or any Regulatory Code with respect to capital resources, liquidity or any other matter that may be prescribed,
 - (iv) that serious breaches of this Act or any Regulatory Code or such enactments, regulations or Codes relating to money laundering or the financing of terrorism as may have been prescribed have occurred in respect of the licensee or its banking or trust business,
 - (v) that the licensee has significant weaknesses in internal controls which render it vulnerable to significant risks or exposures that have the potential to jeopardise the licensee's financial viability.

(2) Where the appointment of an auditor is terminated, the former auditor shall

- (a) forthwith inform the Commission of the termination of his appointment and disclose to the Commission the circumstances that gave rise to such termination; and
- (b) if, but for the termination of his appointment, he would have
 - (i) sent an audit report to the Commission under subsection (1)(a), or
 - (ii) reported information to the Commission under subsection (1)(b),

he shall send a copy of the report to the Commission, or report the information concerned to the Commission, as if his appointment had not been terminated.

(3) The Commission may require an auditor of a licensee to discuss any audit he has conducted or commenced with, or provide additional information regarding the audit to, the Commission.

(4) Where, in good faith, an auditor or former auditor provides a report or any

information to the Commission under subsections (1), (2) or (3), he is deemed not to be in contravention of any enactment, rule of law or professional code of conduct to which he is subject and no civil, criminal or disciplinary proceedings shall lie against him in respect thereof.

(5) The failure, in good faith, of an auditor or former auditor to provide a report or any information to the Commission under subsections (1), (2) or (3) does not confer upon any other person a right of action against the auditor which, but for that failure, he would not have had.

17J. (1) Where the Commission is satisfied that the auditor of a licensee has failed to fulfil his obligations under this Act or any Regulatory Code, or is otherwise not a fit and proper person to act as the auditor of a licensee, it may, by written notice to the licensee, revoke the approval of the appointment of the auditor and the licensee shall appoint a new auditor in accordance with section 17G.

Powers of Commission with regard to appointment of auditor.
14/2006

(2) A notice revoking the appointment of an auditor under subsection (1) shall be given to the auditor.

(3) If a licensee fails to appoint an auditor in accordance with section 17G, the Commission may appoint an auditor of the licensee.

(4) An auditor appointed under subsection (3) is deemed for the purposes of this Act to have been appointed by the licensee

17K. (1) Where a licensee is a member of a group of companies, the Commission may require the licensee to submit group accounts.

Group accounts.
14/2006

(2) The Commission may require that the group accounts are audited by the auditor of the licensee or by another auditor approved by the Commission.

(3) The Regulatory Codes may prescribe the form and content of group accounts to be submitted under this section.

18. (1) A licensee shall not change its name or operate inside or outside the Virgin Islands any subsidiary, branch, agency or representative office without the prior written approval of the Commission.

Certain approvals required.
12/2001
14/2006

(2) A licensee who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding one year or to both.

14/2006

19. (1) A licensee shall at no time have less than two (2) directors.

Number and approval of directors.
12/2001

(2) A licensee shall, before the appointment of a director or other senior officer, apply to the Commission for its written approval of the appointment.

(3) Notwithstanding subsection (2), the Commission may exempt a licensee from the requirements specified in that subsection but such an exemption-

- (a) *ipso facto* lapses if the director or senior officer becomes bankrupt, makes an arrangement or composition with his creditors or is convicted of an offence involving dishonesty; and

(b) may be revoked by the Commission.

(4) A licensee who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

19A. (1) For the purposes of this section,

- (a) "licensee" means a licensee holding a licence that authorises him to carry on banking business";
- (b) an account is deemed to be a dormant account, where during the dormancy period, no transaction has been effected or instruction received by the licensee for the dormant account by the account holder; and
- (c) "dormancy period" means a period of not less than four years.

(2) A licensee shall, in writing, notify the holder of a dormant account of the following:

- (a) the name and current address of the licensee and any information regarding a change of name since the opening of the account concerned;
- (b) that a dormant account to which the account holder appears to be entitled, is held with the licensee;
- (c) that if a transaction or instruction received is not effected on the account within ninety days from the date of the notification, the moneys in the account will be transferred to a special fund without further notice to the account holder; and
- (d) that the account holder is entitled, subject to this Act, to claim repayment of the moneys in the account from the licensee.

(3) A notification under subsection (2) shall be sent by ordinary post to the last known address of the account holder.

(4) A licensee shall, in relation to dormant accounts, publish or cause to be published in at least two newspapers published and circulating in the Virgin Islands, a public notification containing the following information, but not disclosing the names of the account holders:

- (a) the name and current address of the licensee and any information regarding a change of name;
- (b) that the licensee holds dormant accounts;
- (c) that if a transaction or instruction received is not effected on a dormant account within ninety days from the date of the public notification, the moneys in the account will be transferred to a special fund without further notice to the account holder;
- (d) that any interested person should contact the licensee to establish if he holds a dormant account with the licensee; and
- (e) that the holder of a dormant account is entitled, subject to this Act, to claim repayment of the moneys in the account from the licensee.

(5) Where no transaction or instruction received is effected on a dormant account within ninety days from the date of a notification under subsection (2) or the date of a public notification under subsection (4), the licensee shall transfer the moneys in the dormant account to a special fund established for that purpose.

(6) A licensee shall state in its annual financial statements the total amount of moneys transferred to the special fund referred to in subsection (5) and the total number of dormant accounts from which the moneys were transferred.

(7) A licensee shall keep a register of dormant accounts and shall enter in the register the following particulars:

- (a) the name and address of the account holder;
- (b) the account number;
- (c) the date on which a notification under subsection (2) was sent to the account holder;
- (d) the date on which the account was deemed to be a dormant account;
- (e) the date on which moneys were transferred from the account to the special fund;
- (f) the amount transferred from the account to the special fund; and
- (g) if the moneys transferred to the special fund were repaid to the account holder, the date on which the moneys were repaid and the amount repaid.

20. *(Repealed)*

12 /2001
14/2006

21. *(Repealed)*

12/2001
14/2006

12/2001
14/2006

22. *(Repealed)*

PART V MISCELLANEOUS

Power of
Commission to
require insurance.
12/2001
14/2006

23. (1) The Commission may require a licensee to effect a policy of insurance with a reputable insurance company against

- (a) losses arising out of claims of negligence or breach of duty by the licensee or any employee;
- (b) the dishonesty of employees or of the licensee;
- (c) loss of documents; and
- (d) such other risks as the Commission may from time to time stipulate,

14/2006

in such amount and of such a nature as the Commission may determine to be fit and proper, having due regard to the nature and type of business carried on by the licensee; and in the event that the insurance is withdrawn, canceled or not renewed, the licensee shall immediately notify the Commission.

14/ 2006

(2) A licensee who fails to effect a policy of insurance as required by the Commission under subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

2/1995
12/2001

24. *(Repealed)*

2/1995
12/2001

24A. *(Repealed)*

Offences.
12/2001

25. (1) *(Repealed)*

14/2006

(2) *(Repealed)*

(3) Any licensee who advertises inviting either directly or indirectly other parties to commit breaches of the laws of the country in which the advertisement appears or to which such advertisement is directed is guilty of an offence and is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 6 months or both.

(4) Where a limited liability company is convicted of an offence against subsection (3), every director and every officer concerned with the management of the company is liable to be convicted for that offence unless he satisfies the court that the offence was committed without his knowledge or consent and that he took all reasonable steps to prevent the commission of the offence.

(5) Any person who

12/2001

- (a) fails to comply with a request made of him by the Commission or by any other person acting under this Act;
- (b) assaults or obstructs an officer of the Commission or other person in the performance of his functions under this Act; 12/2001
- (c) uses any insulting language to an officer of the Commission or other person in the performance of his functions under this Act; 12/2001
- (d) by the offer of any gratuity, bribe or any other inducement prevents or attempts to prevent an officer of the Commission or other person from performing his functions under this Act; or 12/2001
- (e) contravenes any provision of this Act for which no punishment is specifically provided,

is guilty of an offence and is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 12 months or both.

26. An appeal lies to the Financial Services Appeals Board (established under the Financial Services Commission Act, 2001) from any decision of the Commission Appeals. 12/2001 No. 12 of 2001

(a) *(Repealed)* 14/2006

(b) withdrawing any approval under subsection (4) of section 16; or

(c) *(Repealed)* 12/ 2001 14/2006

27. *(Repealed)* 12/2001

28. The Cabinet may, on the advice of the Commission, make regulations generally for carrying the purpose and provisions of this Act into effect. Regulations. 12/2001 14/2006 2007 No. 1678

28A. Without limiting section 41 of the Financial Services Commission Act, 2001, the Commission shall issue Regulatory Codes under that section of the Act with respect to banking business and trust business. Regulatory Codes. 14/2006 No. 12 of 2001 2007 No. 1678

29. *(Repealed)* No.12 of 2001

30. The Banking Ordinance, 1972 is repealed. Repeal. No. 17 of 1972

31. This Act comes into operation on such date as the Governor by Proclamation published in the *Gazette* appoints. Commencement.

12/2001
14/2006

FIRST SCHEDULE
(Repealed)

14/2006

SECOND SCHEDULE
(Repealed)

Passed by the Legislative Council this 10th day of September, 1990.

K.L. Flax,
Speaker.

Hugh A. Hodge,
Clerk of the Legislative Council.