



ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER F28

FINANCIAL SERVICES COMMISSION ACT

Showing the Law as at 15 December 2010

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises and consolidates—

Act 12/2003, in force 1 January 2004

Act 3/2008, in force 27 February 2008

Act 6/2009, in force 27 March 2009

Act 13/2009, in force 16 July 2009

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FINANCIAL SERVICES COMMISSION ACT

PART 1

PRELIMINARY

Interpretation

1. (1) In this Act—

“Board” means the Board of the Commission established under section 4;

“Board member” means the Director or an individual appointed to be a Board member under section 4;

“Chairman” means the Chairman of the Board appointed under section 4(2) and includes any Board member acting as Chairman;

“Chief Auditor” has the same meaning as in the Financial Administration and Audit Act;

“Commission” means the Financial Services Commission established under section 2;

“Court” means the High Court;

“Director” means the Director of the Commission appointed under section 8;

“document” means a document in any form and includes—

- (a) any writing or printing on any material,
- (b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium, including discs and tapes,
- (c) books and drawings, and
- (d) a photograph, film, tape, negative or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced,

and without limiting the generality of the foregoing, includes any Court application, order and other legal process and any notice;

“financial services business” means—

- (a) a business or activity for which a licence is required, or
- (b) a business or activity that the Governor, on the advice of the Commission, prescribes as a financial services business;

“financial services enactment” means an Act prescribed as a financial services enactment;

“foreign regulatory authority” means an authority in a jurisdiction outside Anguilla which exercises a regulatory function;

“Governor” means the Governor in Council;

“licence” means a licence, registration or recognition issued or granted under a financial services enactment;

“licensee” means a person having a licence;

“prescribed” means prescribed by regulations made under section 47;

“Registrar” means the Registrar of Companies appointed under the Companies Act;

“Registry Act” has the meaning specified in the Companies Registry Act;

“regulated person” has the meaning specified in the Anti-Money Laundering and Terrorist Financing Regulations;

(Act 13/2009, s. 167(3)(a)(ii) as am. in L.R.15/12/2010)

“Regulatory Code” means a Code issued by the Commission under section 48;

“regulatory function” means—

- (a) a function corresponding or similar to a function exercised by the Commission, or
- (b) a function that, in the opinion of the Commission, relates to the regulation of companies or financial services business;

“unlicensed financial services business” has the meaning specified in subsection (2).

(2) A person carries on unlicensed financial services business if he carries on an activity for which a licence is required without having a licence authorising him to carry on the activity.

PART 2

THE FINANCIAL SERVICES COMMISSION

Establishment of the Financial Services Commission

2. (1) The Financial Services Commission is established.

(2) The Commission is a body corporate with perpetual succession and a common seal which may sue and be sued in its corporate name.

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

Functions of the Commission

3. (1) The principal functions of the Commission are—

- (a) to supervise licensees in accordance with this Act, the financial services enactments and the Regulatory Codes;
- (b) to consider and determine applications for licences;
- (c) to monitor compliance by regulated persons with the Anti-money Laundering and Terrorist Financing Regulations and such other Acts, Regulations, Guidelines or Codes relating to money laundering or the financing of terrorism as may be prescribed;
(Act 13/2009, s. 167(3)(b) as am. in L.R.15/12/2010)
- (d) to monitor financial services business carried on in or from Anguilla and to take action against persons carrying on unlicensed financial services business;
- (e) to administer the financial services enactments, including the granting and revoking of licences;
(Act 6/2009, s. 2)
- (f) to supervise the administration of the Registry Acts by the Registrar;
- (g) to monitor the effectiveness of the financial services enactments in providing for the regulation of financial services business in Anguilla to internationally accepted standards;
- (h) to advise the Governor on matters relating to financial services business;
- (i) to make such recommendations to the Governor as it considers appropriate concerning—
 - (i) the amendment or revision of the financial services enactments, the Registry Acts or any other Act relating to financial services business, companies or partnerships,
 - (ii) the enactment of new legislation relating to financial services business, companies or partnerships,
 - (iii) proposals made otherwise than by the Commission in respect of matters specified in subparagraphs (i) and (ii), and
 - (iv) the administration of the Registry Acts by the Registrar;
- (j) to maintain contact and forge relations with persons engaged in financial services business in or from within Anguilla with a view to—
 - (i) encouraging the development of high professional standards within the financial services industry, and
 - (ii) promoting industry codes of conduct;
- (k) to maintain contact and forge relations with foreign regulatory authorities, international associations of regulatory authorities and other international associations

or groups relevant to its functions and to provide regulatory assistance to foreign regulatory authorities in accordance with this or any other Act;

- (l) to provide such information and advice to licensees and the public, or any section of the public, concerning financial services as it considers appropriate;
- (m) to discharge such other functions as may be assigned to it under this or any other Act; and
- (n) to take such measures as it considers appropriate to develop the financial services industry in Anguilla.

(2) In discharging its functions, the Commission may take into account any matter which it considers to be appropriate but shall, in particular, have regard to—

- (a) 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 in Anguilla;
- (b) the protection and enhancement of the reputation of Anguilla as a financial services centre; and
- (c) the deterrence of financial crime.

(3) For the purposes of paragraph (2)(a), “the public” includes customers and potential customers of persons engaged in financial services business in or from within Anguilla.

(4) Where any function referred to in subsection (1) has been assigned to any person or authority in respect of any financial institution under a financial services enactment, that function shall, for the purposes of this Act, stand re-assigned, with effect from 27 March 2009, to the Commission and the financial services enactment shall be construed accordingly.

(5) The enactments specified in the Financial Services Enactments Regulations shall, where it is appropriate, be applicable to the Commission in performing its functions under the Act, with such changes as the circumstances require.

(Act 6/2009, s. 3)

The Board and the appointment of Board members

4. (1) The Commission has a Board which consists of the Director, as an *ex officio* member, and not less than 4 or more than 5 individuals appointed by the Governor—

- (a) one of whom may be an individual from outside Anguilla who has knowledge of or experience in financial services business; and
- (b) no more than one of whom may be a public officer.

(2) The Governor shall appoint one of the Board members to be the Chairman of the Board and another to be the Deputy Chairman.

(3) A person is disqualified for appointment as a Board member if he—

- (a) is a member of the House of Assembly;
- (b) is an undischarged bankrupt; or
- (c) has been convicted of an indictable offence or an offence involving dishonesty.

(4) A previous appointment as a Board member does not affect a person's eligibility for appointment under this section.

(5) In making appointments to the Board, the Governor shall ensure that the individuals appointed—

- (a) are fit and proper; and
 - (b) have knowledge, experience or expertise that is relevant to the functions of the Commission.
- (6) In this section, "Governor" means the Governor acting in his discretion.
- (7) The appointment of a Board member shall be published in the *Gazette*.

Functions of the Board

5. (1) The Board is the governing body of the Commission.
- (2) The principal functions of the Board are—
- (a) to establish the policy of the Commission and monitor and oversee its implementation;
 - (b) to monitor and oversee the management of the Commission by the Director with the objective of ensuring that—
 - (i) the resources of the Commission are utilised economically and efficiently,
 - (ii) adequate internal financial and management controls are in place,
 - (iii) the Commission is operated in accordance with principles of good governance, and
 - (iv) the Commission fulfils its statutory obligations and properly discharges its functions;
 - (c) to set the budget and annual work plan of the Commission for submission to the Governor and to appoint a suitably qualified person to audit the Commission's accounts; and
 - (d) to identify and classify senior management positions in the Commission and to identify suitably qualified persons for appointment to those positions.

(3) In establishing the policy of the Commission, the Board shall have regard to such directions as may be given to the Commission by the Governor.

(4) Schedule 2 has effect with respect to the proceedings of the Board.

Terms of appointment of Board members

6. (1) Subject to this section, the terms of appointment of a Board member shall be determined by the Governor.

(2) The appointment of a Board member shall be for a term of not less than 3 or more than 5 years.

(3) Subject to subsection (5), Board members shall be paid such remuneration, allowances and expenses by the Commission as may be determined by the Governor.

(4) A Board member does not act as a delegate of any Government, commercial, financial or other interest with whom he may be connected and shall not accept directions from any person or authority in respect of his duties as a Board member.

(5) The Director shall not be paid any remuneration or allowances for attending meetings of the Board.

(6) In this section, “Governor” means the Governor acting in his discretion.

Resignation and removal of Board members

7. (1) A Board member may at any time resign by giving written notice to the Governor and such resignation is effective upon receipt of the notice by the Governor.

(2) The Governor may, by written notice, remove a Board member from office if he is satisfied that the member—

- (a) has, without the consent of the other Board members, been absent from 3 or more consecutive meetings of the Board;
- (b) has become bankrupt, that his estate has been sequestrated or that he has made an arrangement with, or granted a trust deed in favour of, his creditors;
- (c) is or becomes disqualified from being appointed as a Board member under section 4;
- (d) has an interest that is likely to prejudicially affect the exercise and performance by him of his functions as a Board member on an on-going basis;
- (e) is liable to be removed as a Board member under section 43(4);
- (f) is unable or unfit to discharge his functions as a Board member; or
- (g) is in breach of any condition imposed upon his appointment.

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

(4) An appointment of a Board member under subsection (3) may be for the unexpired period of the term of office of the member in whose place he is appointed or for a new term of not less than 3 or more than 5 years.

(5) In this section, "Governor" means the Governor acting in his discretion.

Appointment of Director

8. (1) The Governor acting in his discretion shall, after consultation with the Board, appoint a Director of the Commission on such terms and conditions as he considers appropriate.

(2) A person shall not be appointed as Director under subsection (1) unless the Governor is satisfied that he is fit and proper and has the appropriate qualifications and experience to undertake the duties of Director.

(3) The Director is an employee of the Commission and its chief executive officer and is responsible for the management of the Commission.

General powers

9. Subject to this and any other Act, the Commission may do all things necessary for, or reasonably ancillary or incidental to, the pursuance of the carrying out of its duties, functions or powers under this or any other Act, including—

- (a) acquiring, holding, dealing with and disposing of real and personal property or any interest therein;
- (b) contracting with any person for the supply to, or by, the Commission of any goods, services or personnel;
- (c) employing such persons, including advisors and consultants, as the Commission considers necessary on such terms as to remuneration, expenses, pensions, and other conditions of service as it considers appropriate;
- (d) establishing and maintaining such schemes or making such other arrangements as it considers appropriate for the payment of pensions and other benefits in respect of its officers and employees;
- (e) opening and maintaining bank accounts within or outside Anguilla;
- (f) entering into such contracts of insurance as it considers appropriate;
- (g) investing any of its funds that are not immediately required for the discharge of its functions;
- (h) publishing, in such manner as it considers appropriate, such information relating to its functions and its activities as it thinks fit;
- (i) entering into memoranda of understanding with regulatory agencies within and outside Anguilla for the purposes of better undertaking its functions; and

- (j) making rules for its administration and the conduct of its proceedings that are not inconsistent with this Act.

Companies Registry

10. (1) The Commission shall at all times have access to and the right to inspect—

- (a) all documents filed with the Registrar under a Registry Act; and
- (b) all records relating to the administration by the Registrar of the Registry Acts.

(2) The Commission shall, at least once every 12 months, undertake an inspection of the administration by the Registrar of the Registry Acts and, within 4 weeks of the inspection, provide the Governor and the Minister of Finance with a written report of its inspection.

(Act 3/2008, s. 1)

(3) The Governor may, by regulation, provide for the manner of and the fees to be paid by Government for an inspection under subsection (2).

PART 3

FINANCIAL AND REPORTING PROVISIONS APPLICABLE TO THE COMMISSION

Funds and resources of the Commission

11. (1) The funds and resources of the Commission are—

- (a) all fees, charges and penalties, excluding penalties imposed by a court, payable under this Act and the financial services enactments;
- (b) such fees, charges or penalties payable under any other Act that may be assigned to the Commission;
- (c) money that may be appropriated by the House of Assembly for the purposes of the Commission;
- (d) money paid and property provided to the Commission by way of grants, fees, charges, rent, interest and other income derived from the investment of the Commission's funds;
- (e) money derived from the disposal of or dealing with real or personal property held by the Commission;
- (f) money borrowed by the Commission in accordance with this Act; and
- (g) any money or other property not specified in paragraphs (a) to (f) or in subsection (2) lawfully received or made available to the Commission.

(2) The Commission may charge a fee in respect of costs reasonably incurred in the performance of its duties under this or any other Act.

(3) Any money or other property referred to in paragraph (1)(g) that is received or made available to the Commission in a financial year shall be noted in the Commission's annual report for that financial year.

Borrowing powers

12. (1) The Commission may, with the approval of the Governor and to the extent that it considers it necessary to carry out its objects—

- (a) borrow money by way of loan, advance or overdraft; and
- (b) obtain goods and services on credit.

(2) Notwithstanding subsection (1), the approval of the Governor is not required provided that the total value of—

- (a) all money borrowed by the Commission by way of loan, advance or overdraft; and
- (b) all goods and services obtained by the Commission on credit;

does not exceed \$50,000.

(3) The Commission may, with the approval of the Governor, give security over the whole or any part of its assets for the repayment of money borrowed or credit obtained under this section and the Government may act as guarantor in respect of any such transaction.

Financial year

13. (1) Subject to subsection (2), the financial year of the Commission shall be the period 1 January to 31 December in each year.

(2) The period beginning 1 September, 2007 and ending 31 December, 2008 shall be deemed a financial year of the Commission.

(Act 3/2008, s. 2)

Budget and annual work plan

14. (1) The Commission shall, not later than 2 months before the commencement of each financial year, prepare in respect of that financial year, and submit to the Governor—

- (a) estimates of its expected—
 - (i) recurrent and capital expenditure, and
 - (ii) revenue arising from any source other than the charge specified in section 18; and
- (b) a work program containing a general description of the work and activities that it plans to undertake in the year, excluding routine activities.

(2) The estimated expenditure of the Commission may include an amount for the reserves of the Commission.

(3) The Commission shall furnish the Governor with such further information in relation to its estimates of recurrent and capital expenditure and its estimates of revenue as the Governor may direct.

(4) The Governor shall, as soon as practicable, consider the estimates and work programme submitted by the Commission with a view to—

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

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

(6) Where the Governor remits the estimates or the work plan back to the Commission, he shall provide the Commission with the reasons for his non-approval of the estimates or work plan together with any specific recommendations for modification.

(7) Subject to subsection (5), where the estimates and work plan are approved, the Governor shall, as soon as reasonably practicable, cause them to be tabled in the House of Assembly.

Accounts and audit

15. (1) The Commission shall—

- (a) keep proper books of account of its income and other receipts and expenditure; and
- (b) ensure that—
 - (i) all money received is properly brought to account,
 - (ii) all payments are correctly made and properly authorised, and
 - (iii) adequate control is maintained over its property and over the incurring of liabilities by the Commission.

(2) The books of account kept under subsection (1) shall—

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

(3) Within 3 months after the end of each financial year, the Commission shall prepare accounts containing—

- (a) a statement of the assets and liabilities of the Commission at the end of the financial year;

- (b) a statement of the revenue and expenditure of the Commission during the financial year;
- (c) such other financial statements for the financial year as may be specified by the Governor; and
- (d) proper and adequate explanatory notes to the financial statements.

(4) The accounts shall, within 6 months after the end of the financial year, be audited by the auditor appointed by the Board for that year under the direction of the Chief Auditor.

Audited accounts and annual report

16. (1) Within 1 month of the completion of the audit of the Commission's accounts, the Commission shall submit to the Governor—

- (a) a copy of its audited accounts, which shall include the report of the auditor on the accounts; and
- (b) a written report of its operations and activities for that financial year (the annual report).

(2) The annual report shall contain such matters as the Governor may prescribe.

(3) On receipt of the annual report and audited accounts of the Commission, the Governor shall, as soon as reasonably practicable, cause them to be tabled in the House of Assembly.

(4) As soon as reasonably practicable after they have been tabled before the House of Assembly, the Commission shall cause its annual report and accounts to be published in the *Gazette*.

(5) After publication in the *Gazette*, the Commission shall make copies of its annual report and accounts available to any member of the public who requests a copy upon payment of a reasonable charge to be determined by the Commission.

Taxation

17. The Commission is exempt from the payment of all taxes, levies and licence fees on its income and operations and from the payment of all taxes, duties and rates on its property and documents.

Charge against company registration fees

18. (1) On the approval by the Governor of the Commission's estimates and work programme in respect of a financial year, the Commission shall, in accordance with subsection (2), calculate a charge to be made against company registration fees for that financial year.

(2) The charge to be made against company registration fees in a financial year equals the estimated expenditure of the Commission for that financial year less its estimated income as set out in the estimates approved by the Governor, adjusted by—

- (a) the addition of the deficit, if any, shown in the audited accounts for the previous financial year; or

(b) the subtraction of the surplus, if any, shown in the audited accounts for the previous financial year.

(3) In estimating the Commission's income for the purposes of subsection (2), the charge itself shall be ignored.

(4) The resulting charge shall be paid by the Government from the company registration fees paid to it in equal quarterly instalments.

Payment of surplus to Government

19. The Commission shall pay all surpluses, after adequately funding all reserves provided for in section 14(2), to the Government of Anguilla for the development of the financial services industry.

(Act 3/2008, s. 3)

PART 4

INFORMATION GATHERING

Power of Commission to gather information

20. (1) Where reasonably required by the Commission for the discharge of its functions under this or any other Act or, subject to section 23, on the written request of a foreign regulatory authority, the Commission may, by notice in writing given to a person specified in subsection (2), require him—

(a) to provide specified information or information of a specified description; or

(b) to produce specified documents or documents of a specified description.

(2) A notice under subsection (1)—

(a) may be issued to a—

(i) licensee,

(ii) person connected with a licensee,

(iii) person carrying on unlicensed financial services business, or

(iv) person reasonably believed to have the information or documents to which the notice relates; and

(b) shall specify the place where and the period within which the information or documents shall be provided or produced.

(3) The Commission may require—

(a) any information provided under this section to be provided in such form as the Commission may specify; and

(b) any information provided or documents produced under this section to be verified or authenticated in such manner as it may reasonably specify.

(4) The Commission may take copies or extracts of any document produced under this section.

(5) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.

(6) For the purposes of this section—

(a) the criteria set out in Schedule 3 shall be used to determine whether a person is connected with a licensee; and

(b) “licensee” includes a person who has at any time been a licensee but who has ceased to be a licensee.

(7) A person who receives a notice issued by the Commission under subsection (1) may apply to the Court to have the notice set aside.

(8) An application under subsection (7) must be made within 3 days of the receipt of the notice, or before the expiration of the time period specified by the Commission for compliance, if earlier.

(9) On the hearing of an application under subsection (7), the Court may confirm, set aside or modify the notice issued by the Commission.

(10) The Commission shall be entitled to appear and be heard on the hearing of an application made under subsection (7).

Privileged documents and information

21. (1) A person shall not be required to disclose information or produce a document under section 20 if he would be entitled to refuse to disclose the information or to produce 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 adviser of legal advice to the client;

(b) by, or by the representative of, a person seeking legal advice from the adviser; 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 under section 20(1) to provide the name and address of his client.

Examination under oath

22. (1) Where, in connection with a direction given under section 20, the Commission considers it necessary to examine a person on oath, the Commission may apply to the Magistrate to have that person examined before the Magistrate and to have the results of that examination transmitted to the Commission.

(2) On an application under subsection (1), the Magistrate may order the examination of a person under oath on such terms and conditions as he considers fit.

Provision of assistance to foreign regulatory authorities

23. (1) Where a foreign regulatory authority requests the Commission, in writing, to provide it with assistance in connection with the exercise of its regulatory functions, the Commission may disclose information, or provide documentation, in its possession to the foreign regulatory authority in accordance with this section.

(2) The Commission shall not—

- (a) issue a notice under section 20 on the request of a foreign regulatory authority; or
- (b) disclose information or provide documentation to a foreign regulatory authority under subsection (1);

unless it is satisfied that the information or documentation to which the request relates is reasonably required by the foreign regulatory authority for the purposes of its regulatory functions.

(3) In deciding whether or not to 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), the Commission may take into account, in particular—

- (a) whether corresponding assistance would be given to the Commission in the country or territory of the foreign regulatory authority concerned;
- (b) whether the request relates to the breach of a law, or other requirement, which has no close parallel in Anguilla or involves the assertion of a jurisdiction not recognised by Anguilla;
- (c) the seriousness of the case and its importance to persons in Anguilla;
- (d) whether the information or documentation is relevant to the enquiries to which the request relates; and
- (e) whether it is otherwise appropriate in the public interest to provide the assistance sought.

(4) For the purposes of paragraph (3)(a), the Commission may require the foreign regulatory authority making the request to give a written undertaking, in such form as the Commission may require, to provide corresponding assistance to the Commission.

(5) If a foreign regulatory authority fails to comply with a requirement of the Commission made under subsection (4), the Commission may refuse to provide the assistance sought by the foreign regulatory authority.

(6) The Commission may decide that it will not, on the request of a foreign regulatory authority, exercise its powers under section 20 or under subsection (1) unless—

- (a) it is satisfied that any information provided to the foreign regulatory authority will not be used in any criminal proceedings against the person furnishing it, other than proceedings for an offence under section 26 or for an offence of perjury or any like offence;
- (b) the foreign regulatory authority undertakes to make such contribution towards the cost of exercising its powers as the Commission considers appropriate; and
- (c) it is satisfied that the foreign regulatory authority is subject to adequate legal restrictions on further disclosure of the information and documents and that it will not, without the written permission of the Commission—
 - (i) disclose information or documents provided to it to any person other than an officer or employee of the authority engaged in prudential supervision, or
 - (ii) take any action on information or documents provided to it.

Restrictions on disclosure of information

24. (1) For the purposes of this section—

- (a) “protected information” means—
 - (i) information concerning a protected person or his affairs that is acquired by the Commission in the discharge of its functions under this Act or a financial services enactment and includes any such information that is acquired by a Board member, an employee of the Commission or any person acting under the authority of the Commission, and
 - (ii) any information that is obtained from a foreign regulatory or law enforcement authority;
- (b) “protected person” means a—
 - (i) person who has applied for a licence under a financial services enactment,
 - (ii) licensee,
 - (iii) customer or a former customer of a licensee,
 - (iv) company managed or formerly managed by a licensee, and
 - (v) settlor or beneficiary or former beneficiary of a trust of which the licensee is or has been a trustee.

(2) Subject to subsection (3), no Board member, Commission employee or other person acting under the authority of the Commission shall disclose protected information to any other person.

(3) Subsection (2) does not apply to a disclosure—

- (a) required or permitted by any court of competent jurisdiction in Anguilla;
- (b) required or permitted by any other Act;
- (c) to the Governor;
- (d) to a law enforcement agency in Anguilla;
- (e) to any person for the purpose of discharging any function or exercising any power under this Act or a financial services enactment, in either case whether the function or power is of the person disclosing the information or of the Commission or the Board;
- (f) to the Money Laundering Reporting Authority established under the Money Laundering Reporting Authority Act and preserved and continued under the Proceeds of Crime Act;
(Act 13/2009, s. 167(3)(c))
- (g) in respect of the affairs of a protected person made with the consent of that person;
- (h) if the information disclosed is or has been available to the public from any other source;
- (i) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of a protected person to which the information relates to be determined; or
- (j) made by the Commission to a foreign regulatory authority upon the written request of that authority in accordance with section 23.

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

(5) For the purposes of this section, “licensee” includes a person who has at any time been a licensee but who has ceased to be a licensee.

Search warrant

25. (1) The Magistrate may issue a search warrant under this section if he is satisfied on information on oath or affirmation given on behalf of the Commission that there are reasonable grounds for believing that one or more of the conditions specified in subsection (2) have been satisfied.

(2) The conditions referred to in subsection (1) are—

- (a) that a person has failed to fully comply with a notice of the Commission issued under section 20(1) within the time period specified in the notice and that on the premises specified in the warrant—

- (i) there are documents that have been required to be produced, or
 - (ii) there is information that has been required to be provided; or
 - (b) that—
 - (i) a notice could be issued by the Commission under section 20(1) against a person, and
 - (ii) there are documents, or there is information, on the premises specified in the warrant in respect of which a notice under section 20(1) could be issued, and
 - (iii) if a notice under section 20(1) was to be issued, it would not be fully complied with or the documents or information to which the notice related would be removed, tampered with or destroyed; or
 - (c) that—
 - (i) an offence under this Act or a financial services enactment has been, is being or may be committed by a person, and
 - (ii) there are documents, or there is information, on the premises specified in the warrant that evidence the commission of the offence, and
 - (iii) if a notice under section 20(1) was to be issued, it would not be complied with or the documents or information to which the notice related would be removed, tampered with or destroyed.
- (3) A warrant issued under this section shall authorise a named representative of the Commission, together with a police officer and any other person named in the warrant—
- (a) to enter the premises specified in the warrant at any time within 1 week from the date of the warrant;
 - (b) to search the premises and take possession of any documents or information appearing to be documents or information of a type in respect of which the warrant was issued or to take, in relation to such documents or information, any other steps which appear to be necessary for preserving or preventing interference with them;
 - (c) to take copies of, or extracts from, any documents or information appearing to be documents or information of a type in respect of which the warrant was issued;
 - (d) to require any person on the premises to provide an explanation of any document or information appearing to be documents or information of a type in respect of which the warrant was issued or to state where such documents or information may be found; and
 - (e) to use such force as may be reasonably necessary to execute the warrant.
- (4) Unless the Court, on the application of the Commission, otherwise orders, any document of which possession is taken under this section may be retained—

- (a) for a period of 3 months; or
- (b) if within a period of 3 months proceedings for a criminal offence, to which the document is relevant, are commenced against any person, until the conclusion of those proceedings.

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

Offences

26. (1) A person commits an offence if, without reasonable excuse he fails to comply with a notice issued under section 20(1) that has not been set aside by the Court under section 20(9).

(2) A person who in purported compliance with a notice issued by the Commission under section 20(1)—

- (a) provides information which he knows to be false or misleading in a material respect;
or
- (b) recklessly provides information which is false or misleading in a material respect;

commits an offence.

(3) A person who, for the purpose of obstructing or frustrating compliance with a notice issued by the Commission under section 20(1) destroys, mutilates, defaces, hides or removes a document commits an offence.

PART 5

ENFORCEMENT

Compliance officers

27. (1) A licensee shall appoint a fit and proper individual approved by the Commission as its compliance officer.

(2) Without limiting section 48, a Regulatory Code may provide for the—

- (a) standards of compliance expected of licensees;
- (b) individuals who may act as the compliance officer for a licensee;
- (c) factors that the Commission will take into account in considering the suitability of a person as a compliance officer;
- (d) functions and responsibilities of a compliance officer; and
- (e) preparation by licensees of a compliance manual and the matters to be included in such a manual.

(3) The Commission may, by notice in writing to a licensee, revoke its approval of an individual as the licensee's compliance officer.

(4) Where the Commission issues a notice under subsection (3), the licensee shall appoint another individual as its compliance officer in accordance with this section.

Compliance inspections

28. (1) In this section "relevant person" means a—

- (a) licensee;
- (b) former licensee;
- (c) subsidiary or holding company of a licensee or of a former licensee; and
- (d) regulated person who is not a licensee or a former licensee.

(2) The Commission may, for a purpose or purposes specified in subsection (3)—

- (a) inspect the premises and the business, whether in or outside Anguilla, including the systems and controls, of a relevant person;
- (b) inspect the assets, including cash, belonging to or in the possession or control of a relevant person; and
- (c) examine and make copies of documents belonging to or in the possession or control of a relevant person that, in the opinion of the Commission, relate to the carrying on of financial services business by the relevant person.

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

- (a) in the case of a person specified in paragraphs (1)(a) to (c)—
 - (i) the prudential supervision of financial services business carried on in or from within Anguilla, and
 - (ii) monitoring and assessing the licensee's or former licensee's compliance with his obligations under the Anti-Money Laundering and Terrorist Financing Regulations and such other Acts, Regulations, Guidelines or Codes relating to money laundering or the financing of terrorism as may be prescribed;
(Act 13/2009, s. 167(3)(d) as am. in L.R.15/12/2010)
- (b) in the case of a person specified in paragraph (1)(d), monitoring and assessing the person's compliance with his obligations under the Anti-Money Laundering and Terrorist Financing and such other Acts, Regulations, Guidelines or Codes relating to money laundering or the financing of terrorism as may be prescribed.
(Act 13/2009, s. 167(3)(d) as am. in L.R.15/12/2010)

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

(5) Subject to subsection (6), the Commission may, upon the request of a foreign regulatory authority, permit that authority to take part in a compliance inspection undertaken by the Commission under this section.

(6) The Commission shall not permit a foreign regulatory authority to take part in a compliance visit under subsection (4) unless it is satisfied that—

- (a) the participation of the foreign regulatory authority—
 - (i) is necessary for the effective prudential supervision of a licensee or former licensee, 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) Where the Commission carries out a compliance inspection in respect of a regulated person who is not a licensee or former licensee, the regulated person shall be regarded as a protected person under section 24 in respect only of the information that the Commission acquires during the course of its compliance inspection.

Enforcement action

29. (1) The Commission may take enforcement action against a licensee if—

- (a) in the opinion of the Commission, the licensee—
 - (i) has contravened or is in contravention of this Act, a financial services enactment or a Regulatory Code,
 - (ii) has contravened or is in contravention of the Anti-Money Laundering and Terrorist Financing Regulations or of such Acts, Guidelines or Codes relating to money laundering or the financing of terrorism as may prescribed,
(Act 13/2009, s. 167(3)(e) as am. in L.R.15/12/2010)
 - (iii) is carrying on business in a manner detrimental to the public interest or to the interest of any of its customers or creditors,
 - (iv) is or is likely to become insolvent,
 - (v) has failed to comply with a directive given to it by the Commission,
 - (vi) is in breach of any term or condition of its licence,

- (vii) is not a fit and proper person to hold a licence, or
 - (viii) has provided the Commission with any false, inaccurate or misleading information, whether on making application for a licence or subsequent to the issue of the licence;
 - (b) the licensee is compulsorily wound up, passes a resolution for voluntary winding up or is dissolved;
 - (c) a receiver has been appointed in respect of the financial services business carried on by the licensee or possession has been taken of any of its property by or on behalf of the holder of a debenture secured by a registered charge;
 - (d) in the opinion of the Commission—
 - (i) a person having a share or interest in the licensee, whether equitable or legal, or any director, officer or key employee of the licensee is not a fit and proper person to have an interest in or be concerned with the management of a licensee, as the case may be, or
 - (ii) the licensee or another relevant person has refused or failed to co-operate with the Commission on a compliance inspection conducted by the Commission under section 28; or
 - (e) the Commission is entitled to take enforcement under a provision in a financial services enactment.
- (2) If the Commission is entitled to take enforcement action under subsection (1) it may exercise one or more of the following powers—
- (a) revoke or suspend the licensee's licence under section 30;
 - (b) appoint an examiner to conduct an investigation under section 33;
 - (c) appoint a qualified person at the cost of the licensee to advise the licensee on the proper conduct of its business;
 - (d) issue a directive under section 32.

Revocation or suspension of licence

- 30.** (1) The Commission may at any time revoke or suspend a licensee's licence if—
- (a) it is entitled to take enforcement action against the licensee under section 29;
 - (b) the licensee has failed to commence or ceased to carry on the financial services business for which it was licensed; or
 - (c) the licensee applies to the Commission for its licence to be revoked.

(2) Subject to subsection (3), the period of suspension of a licence under subsection (1) shall not exceed 90 days.

(3) If it is satisfied that it is in the public interest to do so, the Court may, on the application of the Commission, extend the period of suspension of a licence under this section for one or more further periods not exceeding 90 days each.

(4) Subject to subsection (6), before revoking or suspending a licence under paragraph (1)(a) or (b), the Commission shall give written notice to the licensee stating—

- (a) the grounds upon which it intends to revoke or suspend the licence; and
- (b) that unless the licensee, by written notice filed with the Commission, shows good reason why its licence should not be revoked or suspended, the licence will be revoked or suspended on a date not less than 14 days after the date of the notice.

(Act 3/2008, s. 4 as am. in L.R. 15/12/2008)

(5) The Commission shall revoke a licence forthwith if the licensee concerned fails to pay the prescribed annual fee for renewing the licence within 6 months of the date by which the annual fee was due.

(Act 3/2008, s. 4)

(6) If, on the application of the Commission, the Court is satisfied that it is in the public interest or to the interests of any of the customers or creditors of a licensee that subsection (4) should not have effect or that the period referred to in paragraph (4)(b) should be reduced, it may so order.

(7) An application under subsection (6) may be made on an *ex parte* basis or upon such notice as the Court may require.

Protection order

31. (1) The Commission may apply to the Court for a protection order under this section in respect of a licensee or former licensee, where—

- (a) it is entitled to take enforcement action against a licensee;
- (b) it is otherwise entitled to revoke or suspend a licensee's licence under section 30; or
- (c) in the case of a former licensee, its licence has been revoked, suspended or surrendered.

(2) On an application made under subsection (1), the Court may make such order as it considers necessary to protect or preserve the business or property of the licensee, or the interests of its customers, creditors or the public including—

- (a) an order preventing the licensee or any other person from transferring, disposing of or otherwise dealing with property belonging to him or in his custody or control;
- (b) an order appointing an administrator to take over and manage the financial services business then carried on by the licensee or carried on by him immediately before the revocation or suspension of the licence, as the case may be;
- (c) in the case of a company, an order that the licensee be wound up by the Court or subject to the supervision of the Court under the Companies Act; and

(d) an order granting the Commission a search warrant.

(3) Without limiting paragraph (2)(b), an order made under that paragraph shall specify the powers of an administrator, which may include the powers of a licensee under this Act or of a liquidator under the Companies Act and may—

- (a) require an administrator to provide security to the satisfaction of the Court;
- (b) fix and provide for the remuneration of the administrator;
- (c) require such persons as it considers necessary to appear before the Court for the purposes of giving information or producing records concerning the licensee or the business carried on by the licensee.

(4) An order made under paragraph (2)(b) shall make provision for reports to be submitted by the administrator to the Court and to the Commission.

(5) The Court may, on its own motion or on the application of the Commission or the administrator, make any one or more of the following orders—

- (a) an order giving directions to the administrator concerning the exercise of his powers;
- (b) an order varying the powers of the administrator; or
- (c) an order terminating the appointment of the administrator;
- (d) an order that the licensee or former licensee in respect of whom the protection order is applied for or made, pay the costs, in whole or in part, of or in connection with—
 - (i) the Commission's application under this section, whether or not a protection order is made, and
 - (ii) giving effect to any protection order made.

(6) An application under subsection (1) may be made—

- (a) on an *ex parte* basis or upon such notice as the Court may require; and
- (b) before the Commission has given notice of intention to revoke a licence under section 30(4).

(7) References in this section to a licensee include a former licensee.

Directives

32. Where the Commission is entitled to take enforcement action against a licensee, the Commission may issue a directive—

- (a) imposing a prohibition, restriction or limitation on the financial services business undertaken by the licensee, including—
 - (i) that the licensee shall cease to engage in any type of business, or

- (ii) that the licensee shall not enter into any new contracts for any type of business;
- (b) requiring that any director, key employee or person having functions in relation to a licensee be removed and replaced by another person acceptable to the Commission; or
- (c) requiring the licensee to take such other action as the Commission considers may be necessary to protect the property of, or in the custody, possession or control of, the licensee or to protect customers or creditors or potential customers or creditors of the licensee.

Appointment of examiner

33. (1) The Commission may appoint one or more competent persons as examiners to conduct an investigation on its behalf where—

- (a) is entitled to take enforcement action against a licensee under section 29;
- (b) it has revoked or suspended the licence of a licensee.

(Am. in L.R. 15/12/2008)

(2) The matters investigated by an examiner appointed under subsection (1) may include one or more of the following in respect of the person being investigated—

- (a) the nature, conduct or state of his business;
- (b) a particular aspect of the business of the licensee; and
- (c) the ownership or control of the person being investigated.

(3) An examiner appointed under subsection (1) may, if he considers it necessary for the purposes of his investigation, also investigate the business of any person who is, or at any relevant time has been—

- (a) a member of the group of which the person under investigation is a part; or
- (b) a partnership of which the person under investigation is a member.

(4) The Commission may direct that the licensee pay the costs, or such part of the costs as it may specify, of an investigation conducted under this section.

Public statements

34. (1) Where the Commission is entitled to take enforcement action against a licensee, the Commission may issue a public statement in such manner as it considers fit setting out the reasons for the enforcement action and the enforcement action that it intends to take, or has taken, against the licensee.

(2) Where it considers it in the public interest to do so, the Commission may issue a public statement in such manner as it considers fit relating to a person who is carrying on, or who in the opinion of the Commission is likely to carry on, unlicensed financial services business.

(3) 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.

(4) If, on the application of the Commission, the Court is satisfied that it is in the public interest or to the interests of any of the customers or creditors of a licensee or former licensee that subsection (3) should not have effect or that the period referred to in that subsection should be reduced, it may so order.

(5) An application under subsection (4) may be made on an *ex parte* basis or upon such notice as the Court may require.

PART 6

DISCIPLINARY ACTION

Commission may take disciplinary action

35. (1) For the purposes of this Part, “disciplinary offence” means a contravention of—

- (a) a provision of this Act, or of a financial services enactment, specified in the regulations;
- (b) a provision of a Regulatory Code for which a penalty is provided;
- (c) the Anti-money Laundering and Terrorist Financing Regulations; or
- (d) a provision of a Code relating to money laundering or the financing of terrorism that is prescribed for the purposes of section 3(1)(c).

(Act 13/2009, s. 167(3)(f) as am. in L.R.15/12/2010)

(2) The Commission may take disciplinary action against a licensee under this section where it is satisfied that the licensee has committed a disciplinary offence.

(3) The Commission takes disciplinary action against a licensee by imposing a financial penalty on that person.

(4) The penalty imposed on a licensee in respect of a disciplinary offence shall not exceed the sum specified—

- (a) in the case of a contravention referred to in paragraph (1)(a), in the regulations;
- (b) in the case of a contravention referred to in paragraph (1)(b), in the Regulatory Code; or
- (c) in the case of a contravention referred to in paragraph (1)(c) or (d), in the Anti-money Laundering and Terrorist Financing Regulations.

(Act 13/2009, s. 167(3)(g) as am. in L.R.15/12/2010)

(5) The Commission shall not take disciplinary action against a licensee in respect of a disciplinary offence committed more than 2 years prior to the date upon which it sends a notice to the licensee under section 36.

Notice of intention to take disciplinary action

36. (1) Where it intends to take disciplinary action against a licensee, the Commission shall send a notice of its intention to the licensee—

- (a) specifying—
 - (i) the alleged disciplinary offence, and
 - (ii) the amount of the penalty that it intends to impose; and
- (b) advising the licensee of his right to make written representations to the Commission in accordance with subsection (2).

(2) A licensee who receives a notice under subsection (1) may, within 28 days of the date upon which he receives the notice, send written representations to the Commission—

- (a) denying that he has committed the alleged disciplinary offence; or
- (b) providing reasons that he considers justify the imposition of a lower penalty.

Disciplinary action

37. (1) After the expiration of 28 days from the date that it sent a notice under section 36 to a licensee, the Commission may take disciplinary action against that licensee by sending him a penalty notice stating—

- (a) the disciplinary offence in respect of which the notice is issued;
- (b) the date on which notice of intention to take disciplinary action in respect of that offence was sent to the licensee;
- (c) the amount of the penalty imposed; and
- (d) a date, not less than 14 days after the date of the penalty notice, by which the penalty shall be paid to the Commission.

(2) The penalty imposed in a penalty notice shall not exceed the amount specified in the notice of intention sent under section 36.

(3) Before taking disciplinary action against a licensee under subsection (1), the Commission shall consider any written representations that it has received from the licensee and, where it receives such representations, it must provide reasons for the action that it takes.

(4) A licensee who receives a penalty notice under subsection (1) shall pay the penalty stated to the Commission on or before the date specified in the notice.

(5) A licensee who contravenes subsection (4) commits an offence.

(6) Where the Commission takes disciplinary action against a licensee, it may advertise the disciplinary action taken by publication in the *Gazette*.

(Act 3/2008, s. 5)

(7) The regulations may provide for the procedures to be adopted by the Commission when taking disciplinary action against a licensee.

PART 7

APPEALS

Establishment of Appeals Board

38. (1) The Governor, after consultation with the Board, shall appoint an Appeals Board comprising 3 suitably qualified and experienced persons.

(2) The following persons are disqualified from being appointed as members of the Appeals Board—

(a) a Board member;

(b) a person who is, or who at any time in the previous year has been—

(i) engaged in financial services business in Anguilla,

(ii) a significant shareholder, a director, partner, senior officer or guarantor of a licensee of the Commission, or

(Act 3/2008, s. 6)

(iii) an employee of the Commission;

(c) a person who is disqualified for appointment as a Board Member under section 4(3).

(3) The Commission shall pay the members of the Appeals Board such expenses as the Board may determine.

(4) The reference to “significant shareholder” in subparagraph (2)(b)(ii) shall be construed to mean a shareholder who is entitled to exercise or control 10% or more of the voting rights of a licensee of the Commission at any general meeting of that licensee.

(Act 3/2008, s. 6)

Secretary to Appeals Board

39. (1) The Appeals Board shall have a secretary who shall—

(a) be responsible for preparing and keeping the records of the Appeals Board, including records of, and the reasons for, its decisions; and

(b) perform such other duties as the Appeals Board may direct.

(2) The secretary, who may be an employee of the Commission, shall be appointed by the Commission after consultation with the Appeals Board.

(3) Where the secretary to the Appeals Board is not an employee of the Commission, the Commission shall pay him such remuneration as may be agreed by the Board and the Appeals Board.

(4) An employee of the Commission is not entitled to any additional remuneration for acting as secretary to the Appeals Board.

Appeals

40. (1) Subject to subsection (4), a person who is aggrieved by a decision of the Commission made under this Act or a financial service enactment may, within 14 days of the date of the decision, submit a notice of appeal to the Appeals Board.

(2) The notice of appeal shall be in such form and contain such information as the Appeals Board shall determine.

(3) Unless the Appeals Board otherwise determines, an appeal does not operate as a stay of the decision of the Commission in respect of which the appeal is made.

(4) No appeal shall lie against a decision of the Commission to refuse to issue a licence.

Procedures of the Appeals Board

41. (1) The Governor may, by regulation, specify Rules of Procedures for the Appeals Board.

(2) The Appeals Board shall, with the approval of the Board, adopt procedures for its administration and proceedings that are not inconsistent with this Part and the regulations made under subsection (1).

(3) In hearing and determining an appeal, the Appeals Board shall—

- (a) have regard to the written decision of the Commission; and
- (b) allow any party to the appeal, including the Commission, to be heard and, if it or he so wishes, to be represented by an attorney.

Decisions of the Appeals Board

42. (1) Upon hearing an appeal under this Part, the Appeals Board may—

- (a) dismiss the appeal;
- (b) allow the appeal in whole or in part and—
 - (i) make any determination that the Commission could have made on considering the matter, or
 - (ii) make an order remitting the case back to the Commission for further consideration with such directions as it may consider fit.

(2) Where the Appeals Board makes a determination under subparagraph (1)(b)(i), its determination shall be substituted for and take effect as the decision of the Commission.

(3) An appeal against a decision of the Appeals Board may be made to the Court on a point of law.

(4) Except as provided in subsection (3), a decision of the Appeals Board is final and shall not be appealed to any court.

PART 8

ADMINISTRATIVE PROVISIONS

Disclosure of interest

43. (1) A Board member who has any direct or indirect personal, professional, business or pecuniary interest in any matter which falls to be considered by the Board shall, as soon as reasonably practicable, complete a declaration of interest in the prescribed form and submit it to the Governor and to the Chairman.

(2) A Board member who has declared an interest under subsection (1) shall withdraw from any meeting whilst the matter in respect of which he has declared an interest is being considered by the Board and shall not express any view or take part in any vote concerning the matter.

(3) The Chairman shall draw any declaration of interest that he may receive under subsection (1) to the attention of the meeting of the Board prior to its consideration of the matter in respect of which the declaration was made.

(4) A Board member who fails to make a declaration of interest as required under subsection (1) or who makes a false or misleading statement in such a declaration—

(a) commits an offence; and

(b) is liable to be removed as a Board member;

unless he proves that he was not aware of the interest or, as the case may be, that he did not know, or with the exercise of reasonable diligence could not have discovered, that the statement was false or misleading.

Immunity

44. (1) No person to whom this subsection applies shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions or duties or the exercise or purported exercise of any powers under this Act or a financial services enactment unless it is shown that the act or omission was in bad faith.

(2) Subsection (1) applies to—

(a) the Commission;

(b) a Board member or a member of a committee of the Board;

- (c) an employee of the Commission;
- (d) a person authorised by the Commission to perform any duty or exercise any power on behalf of the Commission; and
- (e) a member of the Appeals Board.

(3) Subsection (1) does not limit any liability of a person specified in paragraph (2)(d) to the Commission.

(4) No civil, criminal or disciplinary proceedings may be taken against a person by reason solely of the fact that he has provided information or produced documents to the Commission pursuant to a notice issued by the Commission under section 20(1).

Exemption from work permit requirement

45. A person who is employed by the Commission, whether on a permanent or contractual basis, who would be required to obtain a work permit pursuant to the Control of Employment Act is exempted from applying for and holding a work permit for the purpose of his employment with the Commission.

PART 9

GENERAL

Advertising

46. (1) A licensee shall not issue, or cause or permit to be issued, any advertisement, statement, brochure or other similar document which is misleading or which contains an incorrect statement of fact.

(2) If the Commission is of the opinion that any advertisement, statement, brochure or other similar document issued, or to be issued, by or on behalf of a licensee is misleading, contains an incorrect statement of fact, breaches a Regulatory Code or is contrary to the public interest, it may—

- (a) direct the licensee in writing not to issue the document or to withdraw it; or
- (b) authorise the licensee in writing to issue the document with such changes as the Commission may specify.

(3) A licensee who issues or causes or permits to be issued an advertisement, statement, brochure or other similar document intending it to mislead or knowing that it contains an incorrect statement of fact, commits an offence.

(4) A licensee who issues or causes or permits to be issued an advertisement, statement, brochure or other similar document contrary to a direction or authorisation of the Commission under subsection (2) commits an offence.

(5) The Commission may, in a Regulatory Code, provide for the issue, form and content of advertisements issued by or on behalf of licensees.

Regulations

47. (1) The Governor may make regulations generally for giving effect to the provisions of this Act and specifically for prescribing any thing required or permitted to be prescribed by this Act.

(2) The Governor may, by regulation, amend Schedule 1, 2 or 3.

Commission may issue Regulatory Codes

48. (1) The Commission may issue a Regulatory Code or Codes for the purpose of establishing sound principles for the conduct of financial services business by publication in the *Gazette*.

(2) A Regulatory Code may make different provision in relation to persons, cases or circumstances of different descriptions.

(3) The Commission may amend, add to or replace a Regulatory Code by notice published in the *Gazette*.

(4) Before publishing a notice under subsection (3), the Commission shall—

(a) ensure that a draft of the proposed amendment, addition to or replacement of the Code is sent to, or can reasonably be expected to come to the notice of, every licensee affected by the notice specifying the period within which written representations are to be provided to the Commission; and

(b) consider such written representations as it may receive.

(5) The Commission complies with its obligations under subsection (4)(a) in respect of a licensee by sending a copy of the notice to any professional or trade association in Anguilla of which the licensee is a member.

(6) The failure of the Commission to comply with its obligations under subsection (4) shall not invalidate the amendment of, the addition to or the replacement of the Code, whether in respect of a licensee that did not receive the required notice or generally.

(7) Without limiting subsection (1)—

(a) a Regulatory Code may provide for penalties not exceeding \$5,000 for the breach of a provision of the Code; and

(b) the Governor may make regulations prescribing matters that shall be, or may be, provided for in the Regulatory Codes.

Guidelines

49. (1) The Commission may issue Guidelines with respect to the procedures to be followed by and the conduct expected of licensees in the operation of their licensed businesses.

(2) The Guidelines may make different provision in relation to different persons, circumstances or cases.

(3) The Commission must publish the Guidelines and any amendments thereto in the *Gazette*.

(4) Failure to follow Guidelines issued under this section shall not, of itself, render a person liable to proceedings of any kind but such failure may be taken into account by the Court or the Commission, as the case may be, in determining whether there has been a contravention of this Act, a financial services enactment or a Regulatory Code.

(5) Without limiting subsection (1), the Governor may make regulations prescribing matters that shall be, or may be, provided for in Guidelines.

Offence provisions

50. A person who, with intent to deceive or for any purpose of this Act or a financial services enactment provides any information, makes any representation or submits any return that he knows to be false or materially misleading or does not believe to be true commits an offence.

Punishment of offences

51. (1) A person who commits an offence under this Act is liable on summary conviction—

- (a) if an individual, to the penalty stated against the relevant offence in Column 4 of Schedule 4; or
- (b) if not an individual, to the penalty stated against the relevant offence in Column 3 of Schedule 4;

and, in either case, to the daily default fine (if any) stated in Column 5 of Schedule 4 for each day during which the default continues.

(2) Where an offence under this Act is committed by a body corporate, a director or officer who authorized, permitted or acquiesced in the commission of the offence also commits an offence and is liable on summary conviction—

- (a) if an individual, to the penalty stated against the relevant offence in Column 4 of Schedule 4; or
- (b) if not an individual, to the penalty stated against the relevant offence in Column 3 of Schedule 4;

and, in either case, to the daily default fine (if any) stated in Column 5 of Schedule 4 for each day during which the default continues.

(3) Where an offence under this Act is committed by a body corporate and its affairs are managed by its members, subsection (2) applies to a member of that body corporate as if he was a director of the body corporate.

(4) Notwithstanding subsection (1), where the words “triable either way” appear in Column 2 of Schedule 4 after the general description of an offence, notwithstanding the Criminal Code, that offence may be proceeded with summarily or by indictment.

PART 10
MISCELLANEOUS

Transitional provisions

52. The transitional provisions set out in Schedule 5 have effect.

Citation

53. This Act may be cited as the Financial Services Commission Act, Revised Statutes of Anguilla, Chapter F28.

SCHEDULE 1

(Section 2)

ADMINISTRATION OF COMMISSION

1. The Commission shall have an official seal for the authentication of documents issued by the Commission and the application of the seal of the Commission shall be authenticated by the signature of a person so authorised by the Commission.
 2. Every Regulatory Code and any notice to amend, add to or replace a Regulatory Code shall bear the Commission's seal and, notwithstanding section 1, the application of the seal shall be authenticated by the signature of the Chairman.
 3. A document purported to be executed under the seal of the Commission, or signed on its behalf, shall be received in evidence and, unless the contrary is proved, shall be taken to be so executed or signed.
 4. Subject to section 5, anything permitted or required to be done by the Commission may be done by any Board member or any employee of the Commission who is authorised for that purpose by the Commission either generally or specifically.
 5. Section 4 does not apply to the issue of the Regulatory Code or to any notice to amend, add to or replace the Code.
 6. The Board may adopt procedures for the administration and proceedings of the Commission that are not inconsistent with this Act.
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SCHEDULE 2

(Section 5)

PROCEEDINGS OF BOARD

1. The Board shall meet at least once each quarter at such time and place as may be designated by the Chairman.
2. The Chairman, or in his absence the Deputy Chairman, shall call a special meeting of the Board upon receiving a written request to do so signed by any 3 members of the Board. A special meeting must be called for a date no later than 14 days after the date of receipt of the written request.
3. The Chairman shall preside at every meeting of the Board at which he is present and, in his absence, the Deputy Chairman shall preside. If the Chairman and the Deputy Chairman are both absent, the Board members shall elect one of the members present, other than the Director, to act as Chairman.
4. Three members of the Board constitute a quorum.
(Act 3/2008, s. 7)
5. Decisions at meetings of the Board are determined by a majority of the members present. In the event of an equality of votes, the Chairman has a casting vote.
6. The Board may appoint one of its members or a senior officer of the Commission to act as its secretary.
7. Notwithstanding anything in this Schedule, the Chairman, or in his absence the Deputy Chairman, may in respect of any matter that he considers urgent or otherwise exceptional, make arrangements for a decision of the Board to be taken on the matter through a process of consultation without the need for an actual meeting.
8. The Board may establish such committees as it considers appropriate to assist in the discharge of the functions of the Commission and may assign to the committees such functions as it may determine.
9. A committee of the Board may include persons who are not Board members but—
 - (a) the Chairman of each committee shall be a Board member; and
 - (b) the majority of the members of each committee shall be Board members.
10. The members of a committee of the Board may be paid an attendance allowance if the Board considers it appropriate.
11. No act or proceeding of the Board is invalid by reason only of any vacancy amongst its members or by any defect in the appointment of any of them.
12. The Board shall establish rules of procedure for its conduct and proceedings that are not inconsistent with this Schedule.

SCHEDULE 3

(Section 20)

MEANING OF CONNECTED PERSON

1. In relation to a company, “connected person” means any one or more of the following—
 - (a) a promoter of the company;
 - (b) a director or member of the company or of a related company;
 - (c) a beneficiary under a trust of which the company is or has been a trustee;
 - (d) a related company;
 - (e) another company one of whose directors is also a director of the company;
 - (f) a nominee, relative, spouse or relative of a spouse of a person referred to in paragraphs (a) to (c);
 - (g) a person in partnership with a person referred to in paragraphs (a) to (c);
 - (h) a trustee of a trust having as a beneficiary a person who is, apart from this section, a connected person.
2. A company is related to another company if—
 - (a) it is a subsidiary or holding company of that other company;
 - (b) the same person has control of both companies; and
 - (c) the company and that other company are both subsidiaries of the same holding company.
3. In relation to an individual, “connected person” means any one or more of the following—
 - (a) a relative, spouse or relative of a spouse of the individual;
 - (b) a person in partnership with the individual;
 - (c) a relative or spouse of a person in partnership with the individual;
 - (d) a company in respect of which he is a connected person under section 1;
 - (e) a trustee of a trust having as a beneficiary a person who is, apart from this section, a connected person.
4. In relation to an individual, “relative” means any person who can be expected to influence or be influenced by that individual and includes—
 - (a) a spouse, domestic partner or child of the individual;

- (b) any person living in a common household with the individual;
- (c) a grandparent, parent, brother or sister of the individual; and
- (d) the spouse or domestic partner of a child, parent, brother or sister of the individual.

(Act 3/2008, s. 8)

SCHEDULE 4

(Section 51)

OFFENCES UNDER THIS ACT

COLUMN 1 Section of Act creating offence	COLUMN 2 General nature of offence	COLUMN 3 Penalty (corporate body)	COLUMN 4 Penalty (individual)	COLUMN 5 Daily default fine
24(4)	Board member, Commission employee or other person acting under the authority of the Commission disclosing protected information to any other person. Triable either way	\$50,000	\$10,000, imprisonment for 12 months or both	
26(1)	Person failing to comply with a notice issued under section 20(1) Triable either way	\$25,000	\$25,000, imprisonment for 12 months or both	\$250
26(2)	Person in purported compliance with a notice issued by the Commission under section 20(1)(a) providing information which he knows to be false or misleading in a material respect Triable either way	\$25,000	\$25,000, imprisonment for 12 months or both	

COLUMN 1 Section of Act creating offence	COLUMN 2 General nature of offence	COLUMN 3 Penalty (corporate body)	COLUMN 4 Penalty (individual)	COLUMN 5 Daily default fine
26(2)	<p>Person in purported compliance with a notice issued by the Commission under section 20(1) be recklessly providing information which is false or misleading in a material respect.</p> <p>Triable either way</p>	\$25,000	\$25,000, imprisonment for 12 months or both	
26(3)	<p>Person, for the purpose of obstructing or frustrating compliance with a notice issued by the Commission under section 20(1), destroying, mutilating, defacing, hiding or removing a document.</p> <p>Triable either way</p>	\$25,000	\$25,000, imprisonment for 12 months or both	
43(4)	Board member failing to make a declaration of interest or making a false or misleading statement in a declaration of interest		\$10,000	
46(3)	Licensee issuing or causing or permitting to be issued an advertisement, statement, brochure or other similar document intending it to mislead or knowing that it contains an incorrect statement of fact.	\$10,000	\$10,000	

COLUMN 1 Section of Act creating offence	COLUMN 2 General nature of offence	COLUMN 3 Penalty (corporate body)	COLUMN 4 Penalty (individual)	COLUMN 5 Daily default fine
46(4)	Licensee issuing or causing or permitting to be issued an advertisement, statement, brochure or other similar document contrary to a direction or authorisation of the Commission.	\$10,000	\$10,000	
50	Person providing information, making a representation or submitting a return that he knows to be false or materially misleading or does not believe to be true.	\$25,000	\$25,000, imprisonment for 12 months or both	

SCHEDULE 5

(Section 52)

TRANSITIONAL PROVISIONS**Officers and employees**

1. Subject to section 2, on or after 1 January 2004, those public servants designated in section 7 are deemed to be transferred from the service of Government to the service of the Commission as employees of the Commission upon terms and conditions not less favourable in aggregate than those which were attached to the appointments held by such officers with the Government.
2. Every officer who is deemed to have been transferred to the service of the Commission as an employee under section 1 shall, within 6 months from 1 January 2004, have the option of electing—
 - (a) to continue working as an employee of the Commission, in which case such service shall be retrospective from the date of his transfer and he shall be entitled to such pension, gratuity and other allowances and rights, if any, as he would have received had he been retired from the service of the Government on the abolition of his office on the date of his transfer to the Commission;
 - (b) to be transferred to another department of the Government, subject to a suitable vacancy existing with his service with the Commission counting as service with the Government in respect of his pension, gratuity and other allowance and rights, if any; or
 - (c) to cease to be an employee of the Commission and to be deemed to have retired from the service of the Government on the abolition of his office on the date he ceases to be in the service of the Commission.
3. Where any officer fails to make an election as provided in section 2, he shall be deemed to have made an election under section 2(a) and he shall be treated accordingly.
4. The Commission shall reimburse the Government with the cost of any pension, gratuity and other allowance and rights, if any, arising from the period which any such officers who elect not to continue as employees of the Commission served with the Commission.
5. Nothing in sections 1 to 4 shall affect the right of the Commission—
 - (a) to terminate the employment of any officer transferred to the service of the Commission as an employee; or
 - (b) to vary the rate of pay or conditions of service of such an officer;in the manner and to the extent that the Government could have done had he continued in the service of the Government.
6. Where any officer has elected to continue working as an employee of the Commission under section 2(a) or has been deemed to so continue under section 3, he shall not be entitled to be paid any pension, gratuity or other allowance that may have accrued to him whilst in the service of the Commission until the time when he would have been entitled for a pension, gratuity or other allowance under the Pensions Act had he continued in the service of the Government.

7. For the purposes of section 1, a designated public servant is a public servant designated by the Governor for the purpose by notice published in the *Gazette*.

Contracts

8. Where prior to 1 January 2004, the Government through the Financial Services Department had a contract with any person, other than a contract of employment with a designated public servant, which is not discharged on that date, then on 1 January 2004—
- (a) the contract continues to have effect as if it was originally made with the Commission; and
 - (b) all the rights, powers, duties and liabilities which accrued under or in connection with the contract shall be enforceable by or against the Commission as if the contract was originally made between that person and the Commission.

Registry Guidelines

9. The Registry Guidelines, and any amendments to the Registry Guidelines issued by the Registrar under section 15 of the Companies Registry Act prior to 1 January 2004 take effect as if issued by the Commission.

Validation of acts and things done under the Act

10. Notwithstanding any law to the contrary—
- (a) all acts and things done, or purported to be done by the Commission or any person authorized by it before 27 March 2009 for the proper administration of the financial services enactments shall be deemed to have been lawfully and validly done under the Act and no legal proceeding or other action of any kind shall be commenced or continued in any court in respect of such acts or things; and
 - (b) any licences issued or revoked by the Commission under the Act and in pursuance of the financial services enactments shall be deemed to have been validly issued or revoked, as if this Act were in operation at the time of the issue or revocation of such licence.

(Act 6/2009, s. 4)
