



TURKS AND CAICOS ISLANDS

CHAPTER 16.01
FINANCIAL SERVICES
COMMISSION ORDINANCE
and Subsidiary Legislation

Revised Edition
showing the law as at 31 December 2014

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance.

This edition contains a consolidation of the following laws—

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CHAPTER 16.01

FINANCIAL SERVICES COMMISSION ORDINANCE

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CHAPTER 16.01

FINANCIAL SERVICES COMMISSION ORDINANCE

(Ordinances 16 of 2007, 32 of 2012, 5 of 2013 and 5 of 2014)

AN ORDINANCE TO CONTINUE AND PRESERVE THE TURKS AND CAICOS ISLANDS FINANCIAL SERVICES COMMISSION ESTABLISHED UNDER THE FINANCIAL SERVICES COMMISSION ORDINANCE 2001, TO PROVIDE FOR THE FUNCTIONS AND POWERS OF THE COMMISSION AND TO PROVIDE FOR THE SUPERVISION AND REGULATION BY THE COMMISSION OF FINANCIAL SERVICES BUSINESS.

Commencement

[8 October 2007]

PART I

PRELIMINARY

Short title

1. This Ordinance may be cited as the Financial Services Commission Ordinance.

Interpretation

2. (1) In this Ordinance, unless the context otherwise requires—
- “administered Ordinance” means an Ordinance prescribed as an administered Ordinance together with any subsidiary legislation made under that Ordinance;
- “Anti-Money Laundering Regulations” means the Anti-Money Laundering Regulations made under the Proceeds of Crime Ordinance;
- “Board” means the Board of Directors established under section 5;
- “Chairman” means the chairman of the Board appointed under section 5(2) and includes any director acting as Chairman;
- “Code” means the Code issued by the Commission under section 42;
- “Commission” means the Turks and Caicos Islands Financial Services Commission established under section 2 of the former Ordinance and preserved and continued under this Ordinance in accordance with section 3;
- “competent authority” means a competent authority designated under an enactment for purposes of enforcing provisions relating to exchange of information for tax purposes or as may be required for a function exercised by the Commission; *(Inserted by Ord. 5 of 2014)*
- “connected person” has the meaning specified in subsection (3);

“Court” means the Supreme Court;

“director” means the Managing Director or an individual appointed to be a director under section 5;

“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 application to, or order of, the Supreme Court, the Magistrate’s Court or any other court or tribunal, any other legal process and any notice;

“financial crime”, includes an offence involving—

- (a) money laundering;
- (b) the financing of terrorism; or
- (c) misconduct in, or misuse of information relating to, a financial market,

and for the purposes of this definition, “offence” includes an act or omission that would be an offence if it had taken place in the Islands;

“financial services business” means—

- (a) a business or activity for which a licence is required; or
- (b) a business or activity that is prescribed as a financial services business;

“Financial Services Ordinance” means an administered Ordinance or a regulatory Ordinance;

“foreign regulatory authority” means an authority in a jurisdiction outside the Islands which exercises—

- (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 companies or to the supervision or regulation of financial services business;

“former Ordinance” means the Financial Services Commission Ordinance¹;

“Islands” means the Turks and Caicos Islands;

¹ Ordinance 6 of 2001.

“licence” means a licence or an authorisation, by whatever name called, issued or granted under a regulatory Ordinance;

“licensee” means a person holding a licence;

“Managing Director” means the person appointed as Managing Director under section 11;

“Minister” means the Minister of Finance;

“prescribed” means prescribed by regulations;

“Regulations” means Regulations made under section 55;

“Regulatory Ordinance” means an Ordinance specified in the Regulations as a Regulatory Ordinance together with any subsidiary legislation made under that Ordinance;

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

(2) A person carries on unauthorised financial services business if he carries on financial services business without having the appropriate licence.

(3) For the purposes of this Ordinance, the criteria set out in the Regulations shall be used to determine whether a person is connected with another person.

PART II

THE FINANCIAL SERVICES COMMISSION

Continuation of Financial Services Commission as body corporate

3. (1) The Financial Services Commission established under the former Ordinance is preserved and continues to be a body corporate for the purposes of this Ordinance.

(2) The repeal of the former Ordinance does not prejudice or affect—

- (a) the corporate identity of the Commission;
- (b) any decisions made or actions taken by the Commission prior to the commencement of this Ordinance;
- (c) the assets, rights or obligations of the Commission;
- (d) the transfer of any functions to the Commission under section 10 of the former Ordinance; or
- (e) the commencement or continuation of proceedings by or against the Commission.

(3) The Commission has perpetual succession and a common seal and may sue and be sued in its corporate name.

(4) The Regulations may make provision for the administration of the Commission.

Functions of the Commission

4. (1) The functions of the Commission are—

- (a) to supervise and regulate licensees in accordance with this Ordinance, the regulatory Ordinances and the Code and to administer the administered Ordinances;
- (b) to monitor financial services business carried on in and from within the Islands and to take action against persons carrying on unauthorised financial services business;
- (c) to consider and determine applications for licences;
- (d) to monitor compliance by licensees with the Anti-Money Laundering Regulations and such other Ordinances, regulations, codes or guidance relating to money laundering or the financing of terrorism as may be prescribed;
- (e) to monitor the effectiveness of the regulatory Ordinances in providing for the supervision and regulation of financial services business carried on in or from within the Islands to internationally accepted standards;
- (f) to advise and make such recommendations to the Governor and the Governor in Council as it considers appropriate on matters relating to financial services business, including concerning—
 - (i) the amendment or revision of the Financial Services Ordinances or any other Ordinance relating to financial services business, companies or partnerships; and
 - (ii) the enactment of new legislation relating to financial services business, companies or partnerships;
- (g) to promote the continuing development of high professional standards within the financial services industry in the Islands;
- (h) to develop relations with foreign regulatory authorities, international associations of regulatory authorities and other international associations or groups relevant to its functions;
- (i) to provide such information and advice to licensees and the public, or any section of the public, concerning financial services business as it considers appropriate; and
- (j) to discharge such other functions as may be assigned to it under this or any other Ordinance.

(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 the Islands, against financial loss arising out of the dishonesty, incompetence, malpractice or insolvency of persons engaged in financial services business in the Islands;
- (b) the protection and enhancement of the reputation of the Islands as a financial services centre; and
- (c) the reduction of financial crime and of other unlawful activities relating to financial services.

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

The Board and the appointment of directors

5. (1) The Commission has a Board of directors which consists of the Permanent Secretary, Finance and the managing director, as *ex officio* directors, and between five and seven other individuals appointed by the Governor—

- (a) at least one of whom shall be appointed following consultation with the Minister;
- (b) at least one of whom shall be appointed following consultation with the Leader of the Opposition; and
- (c) no more than one of whom shall be a Public Officer.

(2) The Governor shall appoint one of the directors to be the Chairman of the Board.

(3) The following are disqualified from being appointed, or holding office, as a director of the Commission—

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

(4) A previous appointment as a director does not affect a person’s eligibility for appointment under subsection (2) unless he would have been removed under that section but for his resignation.

(5) In making appointments to the Board, the Governor shall use his best endeavours to 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) The appointment of a director shall be published in the *Gazette*.

Functions of the Board

6. (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 Managing 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 approve the financial estimates of the Commission for submission to Governor in Cabinet, to approve the Commission's financial statements and to appoint a suitably qualified person to audit the Commission's financial statements; and
 - (d) to appoint the Commission's senior officers, except for the managing director, including the Registrar of Companies.

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

Terms of appointment of directors

7. (1) Subject to this section, the terms of appointment of a director shall be determined by the Governor.

(2) The appointment of a director shall be for a term of not less than three or more than five years.

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

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

(5) Except as provided in subsection (6), an *ex officio* director, or his designate, shall not be paid any remuneration or allowances for attending Board meetings, but may be paid any reasonable expenses that he incurs in attending a Board meeting.

(6) An *ex officio* director, or his designate, may be paid a reasonable allowance for attending any Board meetings held outside the Islands.

Resignation and removal of directors

8. (1) A director may at any time resign by giving written notice to the Governor and his resignation is effective upon receipt of the notice by the Governor.

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

- (a) the director has, without the consent of the Chairman, been absent from three or more consecutive Board meetings;
- (b) the director's estate has been sequestrated or that he has made an arrangement with, or granted a trust deed in favour of, his creditors;
- (c) the director has, or is about to have, an interest that is likely to prejudicially affect the exercise and performance by him of his functions as a director on an on-going basis, or that is contrary to the interests of the Commission or to the interests of the Islands;
- (d) the director is in material breach of any term or condition of his appointment or is in breach of any obligation imposed on him under this Ordinance; or
- (e) the director is liable to be removed as a director under section 10(7).

(3) The Governor shall, by written notice, remove a director from office if he is satisfied that the director—

- (a) is disqualified from being appointed, or holding office, as a director under section 5(3);
- (b) is not fit and proper to hold office as a director; or
- (c) is unable to discharge his functions as a director.

(4) A majority of the directors may recommend to the Governor that one of the directors should be removed on one of the grounds specified in subsection (2) or (3).

(5) A decision to make a recommendation to the Governor under subsection (4) may only be made at a meeting called for the purpose of making such a recommendation, or for purposes including making such a recommendation.

(6) The notice of a meeting called under subsection (5) shall state that the purpose of the meeting is, or the purposes of the meeting include, the making of a recommendation to the Governor for the removal of a director and the ground on which it is recommended that the director be removed.

(7) The resignation of a director under subsection (1) and the removal of a director under subsection (2) or (3) shall be advertised in the *Gazette*.

(8) If a director dies, resigns, is removed from or otherwise vacates his office prior to the expiry of the term for which he has been appointed—

- (a) if five or six directors remain in office, the Governor may appoint a new director to replace him; or
- (b) if less than five directors remain in office, the Governor shall appoint a new director to replace him,

and, in either case, section 5(1) shall apply to the appointment.

(9) An appointment of a director under subsection (8) may be for the unexpired period of the term of office of the director in whose place he is appointed or for a new term of not less than three or more than five years.

(10) This section does not apply to the Managing Director whose resignation and removal from office shall be governed by his contract of employment with the Commission.

Proceedings of Board

9. (1) The Schedule provides for the proceedings of the Board.

(2) The Board shall establish rules of procedure for its conduct and proceedings that are not inconsistent with this Ordinance or the Schedule.

(3) The Board may appoint an employee of the Commission, other than the Managing Director, to act as secretary to the Board.

Disclosure of interest

10. (1) A director who has any direct or indirect personal, professional, business or pecuniary interest in any matter to be considered by the Board shall, after the commencement of a meeting at which the matter is to be discussed and before that matter is considered by the Board, disclose the nature of his interest to the Board.

(2) Subject to subsection (4), a director who has disclosed an interest under subsection (1) shall withdraw from any meeting whilst the matter in respect of which he has disclosed 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 Board may permit a director who has disclosed an interest under subsection (1) to participate in the meeting and to express his views and the Board may permit the director to vote on any resolution concerning the matter.

(4) The director concerned shall withdraw from the meeting whilst the Board considers and determines whether to exercise its power under subsection (3).

(5) A disclosure of interest under subsection (1), and any decision of the Board made under subsection (3), shall be recorded in the minutes of the meeting of the Board.

(6) In this section—

- (a) “Board” includes a committee of the Board; and
- (b) “director” includes an individual who, not being a director, is appointed to a committee of the Board.

(7) A director, or individual appointed to a committee of the Board, who fails to make a disclosure of interest as required under subsection (1) or who makes a false or misleading statement in such a disclosure—

- (a) commits an offence; and
- (b) is liable to be removed as a director,

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 disclosure was false or misleading.

Appointment of Managing Director

11. (1) The Governor, after consultation with the Board, shall appoint a Managing Director of the Commission on such terms and conditions as he considers appropriate.

(2) The Governor shall not appoint a person as Managing Director unless he is satisfied that the person is fit and proper and has the appropriate qualifications and experience to undertake the duties of Managing Director.

(3) The Managing Director is an employee of the Commission.

(4) The Managing Director is the Chief Executive Officer of the Commission and, subject to the general direction of the Board, is responsible for—

- (a) the administration and operation of the Commission;
- (b) the discharge of the Commission's functions and the exercise of its powers;
- (c) the appointment of the Commission's employees, except those employees designated by the Board as senior employees, who shall be appointed by the Board;
- (d) the management and supervision of the Commission's employees;
- (e) exercising the Commission's powers under this Ordinance to cooperate with foreign regulatory authorities;
- (f) the discharge of such functions and the exercise of such powers as may be assigned to, or conferred on him, by this or any other Ordinance or that may be delegated to him by the Board.

(5) In discharging his functions and exercising his powers, the Managing Director shall use his best endeavours to ensure that—

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

(6) Where, due to the illness or temporary incapacity of the Managing Director, he is unable to discharge his functions under this Ordinance, or where the Managing Director is absent from the Islands, the Board may appoint another employee of the Commission to act in his place during such illness, incapacity or absence from the Islands.

General powers

12. Subject to this and any other Ordinance, the Commission may do all things necessary for, or reasonably ancillary or incidental to, the discharging of its functions, the carrying out of its duties and the exercise of its powers under this or any other Ordinance, 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, consultants and agents, 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) drawing up and implementing codes for regulating the terms of service, discipline, benefits and training of the Commission's employees;
- (f) paying expenses properly incurred by the Commission;
- (g) opening and maintaining bank accounts with banks in the Islands which hold a National Banking Licence granted under the Banking Ordinance;
- (h) opening and maintaining bank accounts with banks outside the Islands;
- (i) entering into such contracts of insurance as it considers appropriate;
- (j) investing any of its funds that are not immediately required for the discharge of its functions;
- (k) publishing, in such manner as it considers appropriate, such information relating to its functions and its activities as it thinks fit;
- (l) entering into memoranda of understanding with regulatory authorities and agencies within and outside the Islands for the purposes of discharging its functions; and

(m) making rules for its administration and the conduct of its proceedings that are not inconsistent with this Ordinance.

Governor

13. (1) The Commission shall, on the request of the Governor, provide him with such advice, recommendations and information as he may require.

(2) The Commission shall, within three months of the end of its financial year, report to the Governor on the discharge of its functions during that financial year.

Immunity

14. (1) No person to whom this section applies shall be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any function or duty or the exercise or purported exercise of any power under this Ordinance or any other Ordinance unless it is shown that the act or omission was in bad faith.

(2) This section applies to—

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

General provisions

15. (1) Subject to subsection (2), anything permitted or required to be done by the Commission may be done by any director or any employee of the Commission who is authorised for that purpose by the Commission either generally or specifically.

(2) Subsection (1) does not apply to the issue of the Code or to any notice to amend, add to or replace the Code.

(3) The Board may adopt procedures for the administration and proceedings of the Commission that are not inconsistent with this Ordinance.

(4) Service of any process or notice on the Commission under this Ordinance or any other Ordinance may be effected by leaving it with the Managing Director, Deputy Managing Director or a director at, or sending it by registered post addressed to, the principal office of the Commission.

PART III

FINANCIAL AND REPORTING PROVISIONS

Funds and resources of the Commission

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

- (a) fees, charges and penalties payable under this Ordinance and the Financial Services Ordinances, but excluding fines or penalties imposed by a court;
- (b) such fees, charges or penalties payable under any other Ordinance that may be assigned to the Commission;
- (c) such sums of money as may, from time to time, 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 any 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 Ordinance; and
- (g) any money or other property not specified in paragraphs (a) to (f) that is 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 Ordinance.

Reserve fund

17. (1) The Commission shall establish a reserve fund into which, subject to subsection (3), it shall pay moneys—

- (a) representing the Commission's operating surplus, calculated in accordance with the Regulations; and
- (b) that are otherwise required by the Regulations to be paid into the reserve fund.

(2) The Commission shall expend money from the reserve fund only for such purposes as may be permitted by the Regulations.

(3) If, on the last working day of any quarter within a financial year, the monies standing to the credit of the reserve fund exceed the expected recurrent expenditure of the Commission for that financial year, the Commission shall, within 14 days of the last working day of the quarter, pay a sum equal to the excess to the Government for payment into the Consolidated Fund:

Provided always that the monies standing to the credit of the revenue fund shall not fall below \$5 million as a result of any payment to the Government pursuant to this subsection. (*Substituted by Ord. 32 of 2012*)

- (4) The Regulations may—
- (a) specify circumstances in which the Commission may expend money from the reserve fund only with the prior approval of the Governor in Cabinet;
 - (b) provide for the investment by the Commission of monies in the reserve fund; and
 - (c) otherwise provide for the operation of the reserve fund.

Borrowing powers

18. (1) The Commission may, with the approval of the Governor and to the extent that it considers it necessary to discharge its functions—

- (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 \$25,000.

(3) The Commission may, with the approval of the Governor, grant 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

19. The financial year of the Commission ends on 31 March in each year.

Preparation of estimates

20. (1) The Commission shall, not less than three months prior to the commencement of each financial year, prepare and furnish to the Governor in respect of that financial year estimates of—

- (a) its expected recurrent and capital expenditure;
- (b) its expected revenue arising from any source; and
- (c) the revenues it expects to collect on behalf of the Government.

(2) The Commission shall furnish the Governor with such further information and explanations in relation to the estimates as he may require.

Financial records and financial statements

21. (1) The Commission shall—

- (a) keep proper records of—

- (i) its income and other receipts and expenditure; and
 - (ii) moneys which it has received on behalf of the government;
- (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 financial records kept under subsection (1) shall—
- (a) be sufficient to show and explain the Commission's transactions, including all moneys received on behalf of the Government;
 - (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 three months after the end of each financial year, the Commission shall prepare—
- (a) financial statements containing—
 - (i) a statement of the assets and liabilities of the Commission at the end of the financial year; and
 - (ii) a statement of the revenue and expenditure of the Commission during the financial year;
 - (b) a financial statement of moneys received by the Commission on behalf of, and paid to, the government;
 - (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 prepared under paragraphs (a), (b) and (c).

Audit of financial statements and annual report

22. (1) The Commission shall cause the financial statements prepared under section 21 to be audited and certified by an auditor to be appointed annually by the Commission within five months after the end of the financial year.

(2) The auditor of the Commission shall be a person or firm qualified under the Regulations to act as the auditor of the Commission.

(3) The auditor shall prepare a report of his audit of the Commission's financial statements which shall include statements as to whether, in his opinion—

- (a) he has obtained all the information and explanations necessary for the purposes of the audit;

- (b) the Commission has complied with its obligations under section 21;
- (c) the financial statements prepared under section 21 are in agreement with its financial records;
- (d) to the best of his information and according to the explanations given to him, the Commission's financial statements give a true and fair view—
 - (i) in the case of the statement of assets and liabilities, of the Commission's financial position as at the end of the financial year;
 - (ii) in the case of the statement of revenue and expenditure, of the surplus or deficit for that financial year;
 - (iii) in the case of the financial statement prepared under section 21(3)(b), of the monies received by the Commission on behalf of, and paid to, the Government;
- (e) whether, in his opinion the Commission has discharged with diligence its obligations in relation to the collection of its revenues and the government's revenues.

(4) Within six months after the end of each financial year, the Commission shall prepare and submit to the Minister, the Governor and the Chief Auditor a report containing in respect of that financial year—

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

(5) The Minister shall, as soon as reasonably practicable after their receipt, lay a copy of the annual report and the audited financial statements, together with the auditor's report, before the House of Assembly.

(6) As soon as reasonably practicable after they have been tabled before the House of Assembly, the Commission shall cause its annual report and financial statements to be published in the prescribed manner.

(7) After their publication, the Commission shall make copies of its annual report and financial statements available to any member of the public who requests a copy upon payment of a reasonable charge to be determined by the Commission.

PART IV

INFORMATION GATHERING AND COOPERATION WITH
FOREIGN REGULATORY AUTHORITIES

Power to require information and production of documents

23. (1) Where reasonably required by the Commission for the discharge of its functions under this or any other Ordinance or for ensuring compliance with a request from a competent authority acting pursuant to an enactment, 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.

(Amended by Ord. 5 of 2013)

(2) A notice under subsection (1)—

- (a) may be issued to—
 - (i) a licensee;
 - (ii) a former licensee;
 - (iii) a person whom the Commission reasonably believes to be carrying on, or to have at any time carried on, unauthorised financial services business;
 - (iv) a person connected with a person specified in subparagraph (i), (ii) or (iii); or
 - (v) in the case of a notice requiring the production of documents, any person that the Commission reasonably believes is in possession of the documents;
- (b) may require that the information is to be provided to, or the documents are to be produced to, such person as may be specified in the notice; and
- (c) 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; and
- (b) any information provided or document 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.

Application to Court to set notice aside

24. (1) A person who receives a notice issued by the Commission under section 23 may apply to the Court to have the notice set aside.

(2) An application under subsection (1) must be made within a period of three business days commencing on the day that the person receives the notice issued by the Commission.

(3) On the hearing of an application under subsection (1), the Court may confirm, set aside or modify the notice issued by the Commission and make any interim or other order that it thinks fit.

(4) The Commission shall be entitled to appear and be heard on the hearing of an application made under subsection (1).

Effect of application under section 24

25. (1) An application to the Court under section 24 does not relieve a person from compliance with the notice issued by the Commission under section 23.

(2) Subsection (3) applies where—

(a) the person who has received a notice issued under section 23 gives written notice to the Commission that he intends to apply to the Court to have the notice set aside; or

(b) written notice is not given under section 23(1) and an application is served on the Commission,

provided that the notice is given, or the application is served, within the specified time period.

(3) Where this subsection applies, notwithstanding section 51, the Commission shall not disclose to any other person any information provided, or documentation produced, to it in compliance with the notice to which the application or intended application relates—

(a) unless required or permitted to do so by the Court, whether on the application of the Commission or otherwise; or

(b) as permitted by subsection (4).

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

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

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

(5) For the purposes of subsection (4), “offence” includes an act or omission which would be an indictable offence if it had taken place in the Islands.

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

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

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

Examination under oath

26. (1) Where, in connection with a notice given under section 23, the Commission considers it necessary to examine a person on oath, the Commission may apply to a Magistrate to have that person examined before the Magistrate and to have the results of that examination transmitted to the Commission.

(2) Subject to subsections (3) and (4), 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.

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

(4) An application to a Magistrate under subsection (1) shall be processed by the Magistrate within seven days of the application and the results of the examination shall be transmitted to the Commission within a reasonable period, not exceeding fourteen days, from the date of the examination.

Search warrant

27. (1) A 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 23(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 23(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 23(1) could be issued; and
- (iii) if a notice under section 23(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 Ordinance or a financial services Ordinance 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 23(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 one 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 three months; or
- (b) if within that period proceedings for a criminal offence, to which the document is relevant, are commenced against any person, until the conclusion of those proceedings.

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

Duty to cooperate

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

- (a) foreign regulatory authorities;
- (b) a competent authority acting pursuant to an enactment; or
- (c) other persons, in or outside the Islands, who have functions in relation to the prevention or detection of financial crime.

(Inserted by Ord. 5 of 2014)

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

Provision of assistance to foreign regulatory authorities

29. (1) Subject to subsection (2), the Commission may, on the written request of a foreign regulatory authority, and subject to such conditions as it considers appropriate—

- (a) exercise the power conferred on it by section 23;
- (b) apply to the Magistrate under section 26 for the examination of a person under oath;
- (c) appoint one or more competent persons as examiners to investigate any matter; or
- (d) disclose information, or provide documentation, in its possession or obtained under paragraph (a), (b) or (c) to the foreign regulatory authority.

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

(3) Notwithstanding this Ordinance, where the Commission considers it appropriate in any case to do so, and without request from a foreign regulatory authority, the Commission may provide a foreign regulatory authority with information in its control or possession, in securing compliance with the Laws and Regulations applicable to its jurisdiction. *(Inserted by Ord. 5 of 2014)*

(4) An examiner appointed under subsection (1)(c) shall have the powers of an examiner appointed under section 35.

(5) In deciding whether or not to exercise the power conferred on it by 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 the Islands or involves the assertion of a jurisdiction not recognised by the Islands;
- (c) the seriousness of the case;
- (d) whether the information or documentation is relevant to the enquiries to which the request relates;
- (e) whether the foreign regulatory authority is willing and able to—
 - (i) comply with any conditions imposed by the Commission under subsection (1), and
 - (ii) make such contribution towards the cost of exercising the Commission's powers as the Commission considers appropriate;
- (f) whether the information is otherwise available to the foreign regulatory authority or whether it may be obtained by other means;
- (g) whether it is otherwise appropriate in the public interest to provide the assistance sought.

(6) For the purposes of subsection (5)(a), the Commission may require the foreign overseas 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.

(7) The Commission may decide that it will not, on the request of a foreign regulatory authority, exercise its powers under this section 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 of perjury or any equivalent offence;
- (b) 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.

Offences

30. (1) A person commits an offence if, without reasonable excuse he fails to comply with a notice issued under section 23(1).

(2) A person who in purported compliance with a notice issued by the Commission under section 23(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 23(1) destroys, mutilates, defaces, hides or removes a document commits an offence.

PART V**COMPLIANCE AND ENFORCEMENT****Compliance**

31. (1) A licensee shall establish and maintain adequate systems and controls for ensuring its compliance with the requirements of and its obligations under—

- (a) this Ordinance and the Financial Services Ordinances;
- (b) the Code, or any guidance issued by the Commission, that applies to the licensee;
- (c) any directives issued by the Commission that apply to the licensee.

(2) A licensee shall appoint an individual approved by the Commission as its compliance officer to have responsibility for—

- (a) overseeing the licensee's compliance function as specified in subsection (1);
- (b) reporting to the directors of the licensee with respect to the licensee's compliance function;
- (c) acting as the liaison between the licensee and the Commission with respect to the licensee's compliance function; and
- (d) discharging such other duties as may be specified in the Code.

(3) The Commission shall not approve an individual as a licensee's compliance officer unless it is of the opinion that he satisfies the Commission's fit and proper criteria.

(4) The Code may include provisions with respect to the compliance function and with respect to the duties of compliance officers.

(5) Without limiting subsection (4), the Code may specify or provide for—

- (a) requirements for the systems and controls to be established and maintained by a licensee under subsection (1), including requirements for the establishment and maintenance of one or more compliance procedures manuals;
- (b) persons who may, or who may not, be appointed by a licensee to oversee its compliance function under subsection (2);
- (c) the requirements for the individual appointed under subsection (2) to report to the directors of the licensee; and
- (d) the requirements for the person appointed under subsection (2) to report to, and liaise with, the Commission.

(6) A person appointed by a licensee to serve as its compliance officer for the purposes of any regulations or code relating to the prevention of money laundering or terrorist financing may, with the approval of the Commission, be appointed to oversee the licensee's compliance function under subsection (2).

Compliance visits

32. (1) This section applies to—

- (a) a licensee;
- (b) a former licensee; and
- (c) a subsidiary or holding company of a licensee or 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 the Islands, including the procedures, systems and controls, of a person to whom this section applies;
- (b) inspect the assets, including cash, belonging to or in the possession or control of a person to whom this section applies;
- (c) examine and make copies of documents belonging to or in the possession or control of a person to whom this section applies that, in the opinion of the Commission, relate to the carrying on of financial services business by that person; and
- (d) seek information and explanations from the officers, employees, agents and representatives of a person to whom this section applies, whether verbally or in writing, and whether in preparation for, during or after a compliance visit.

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

- (a) the supervision of financial services business carried on in or from within the Islands; and

(b) monitoring and assessing the person's compliance (or in the case of a person specified in subsection (1)(c), the subsidiary's or holding company's compliance) with his obligations under the Anti-Money Laundering Regulations and such other Ordinances, regulations, codes or guidance relating to money laundering or the financing of terrorism as may be prescribed for the purposes of section 4(1)(d).

(4) Subject to subsection (5), the Commission shall give reasonable notice of its intention to exercise its powers under subsection (2).

(5) Where it appears to the Commission that the circumstances so justify, the Commission may exercise its powers under subsection (2) without giving notice to the person concerned.

(6) Subject to subsection (7), the Commission may, upon the request of a foreign regulatory authority, permit the authority to take part in a compliance visit undertaken by the Commission under this section.

(7) In deciding whether or not to permit a foreign regulatory authority to take part in a compliance visit under this section, the Commission may take into account, in particular, whether in its opinion—

(a) the participation of the foreign regulatory authority—

(i) is necessary for the effective supervision of the person to be subject to the compliance visit, or its subsidiary or holding company; and

(ii) is not contrary to the public interest; and

(b) the foreign regulatory authority is subject to adequate legal restrictions on further disclosure and that it will not, without the written permission of the Commission—

(i) disclose information obtained or documents examined or obtained during the compliance visit to any person other than an officer or employee of the authority engaged in supervision; or

(ii) take any action on information obtained or documents examined or obtained during the compliance visit.

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

Enforcement action

33. (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 Ordinance, a Financial Services Ordinance or the Code;

- (ii) has contravened or is in contravention of the Anti-Money Laundering Regulations or of such Ordinances or codes relating to money laundering or the financing of terrorism as may be prescribed for the purposes of section 4(1)(d);
 - (iii) is carrying on, or is likely to carry 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) does not satisfy the Commission's fit and proper criteria; 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 does not satisfy the Commission's fit and proper criteria; or
 - (ii) the licensee, or its subsidiary or holding company, has refused or failed to co-operate with the Commission on a compliance visit conducted by the Commission under section 32;
- (e) the Commission is entitled to take enforcement under a provision in a financial services Ordinance; or
- (f) the licensee fails to pay a financial penalty imposed by the Commission under Part VII on or before the date on which the penalty is due to be paid.
- (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 34;
 - (b) issue a directive under section 37;
 - (c) appoint an examiner to conduct an investigation under section 35;
 - (d) require the licensee to appoint a qualified person under section 36;

- (e) apply for a protection order under section 38;
- (f) where the licensee is a company, petition the Court for the winding up of the licensee under section 92 of the Companies Ordinance;
- (g) impose a financial penalty on the licensee in accordance with Part VII.

Revocation or suspension of licence

34. (1) The Commission may revoke or suspend a licensee's licence if—

- (a) it is entitled to take enforcement action against the licensee under section 33;
- (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 ninety 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 ninety days each.

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

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

(5) 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 (b) of that subsection should be reduced, it may so order.

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

Appointment of examiner

35. (1) The Commission may appoint one or more competent persons as examiners to conduct an investigation on its behalf where it appears to the Commission on reasonable grounds that—

- (a) there are, or may be, grounds for taking enforcement action against a licensee;
- (b) any person is carrying on, or has carried on, unauthorised financial services business.

(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 financial condition of his business;
- (b) a particular aspect of his business of the person under investigation;
- (c) the ownership or control of the person under investigation;
- (d) in the case of a licensee, whether there are grounds for taking enforcement action against the licensee; and
- (e) in the case of any other person, whether that person is carrying on, or has carried on, unauthorised financial services business.

(3) An examiner shall submit a report of his investigation to the Commission.

(4) Subject to subsection (5), an examiner appointed under this section shall have the powers of the Commission under sections 23, 26 and 27.

(5) The Commission may give directions to the examiner concerning any one or more of the following—

- (a) the scope of the investigation;
- (b) the period for the conduct of the investigation; and
- (c) the manner in which the examiner shall report to the Commission.

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

(7) Where a person appointed as an examiner under this section is not an employee or officer of the Commission he shall, unless otherwise agreed between him and the Commission, be remunerated on such terms as the Commission may determine.

(8) The Regulations may provide for—

- (a) the notice to be given to a person to be investigated under this section;
- (b) the conduct of an investigation; and
- (c) the powers of an examiner appointed under this section.

Appointment of qualified person

36. (1) Where it appears to the Commission that there are or may be grounds for taking enforcement action against a licensee, it may, by notice in writing, require the licensee to appoint a qualified person, at the cost of the licensee—

- (a) to advise the licensee on the proper conduct of his business and affairs; and
- (b) to provide the Commission with a report on, or on any aspect of, the licensee's business and affairs.

(2) The Commission may require the report provided under subsection (1) to be in such form as may be specified in the notice.

(3) The person appointed under subsection (1) shall be a person—

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

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

Directives

37. (1) 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 that may be undertaken by the licensee, including—
 - (i) that the licensee shall cease to engage in any class or type of business; or
 - (ii) that the licensee shall not enter into any new contracts for any class or type of business;
- (b) 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.

(2) A directive issued under subsection (1) may include one or more of the matters set out in paragraphs (a) and (b).

(3) Where it appears to the Commission that a person is carrying on unauthorised financial services business, the Commission may issue a directive to that person—

- (a) requiring him to cease carrying on that business; or

- (b) requiring him to take such other action as the Commission considers may be necessary to protect his property, or property in his custody, possession or control, or to protect his customers or creditors or potential customers or creditors of him.

Protection order

38. (1) The Commission may apply to the Court for a protection order under this section with respect to—

- (a) a licensee where his licence is about to be revoked or where the Commission is entitled to take enforcement action against him under section 33;
- (b) a former licensee; or
- (c) a person carrying on unauthorised financial services business.

(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 person with respect to whom the application is made, or the interests of its customers, investors, creditors or the public including—

- (a) an order preventing the person concerned 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 person concerned or carried on by him immediately before the granting of the protection order;
- (c) where the person concerned is in contravention of this Ordinance, the Financial Services Ordinances, or the Code, an order requiring the person concerned to take such action, or to refrain from taking such action, as is necessary to bring him back into compliance with this Ordinance, the Financial Services Ordinances or the Code.

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

- (a) give directions to the administrator concerning the exercise of his powers;
 - (b) vary the powers of the administrator; or
 - (c) terminate the appointment of the administrator.
- (6) An application under subsection (1) may be made—

- (a) on an *ex parte* basis or upon such notice as the Court may require; and
- (b) before the Commission has given notice of intention to revoke a licence under section 34(4).

Public statements

39. (1) Where the Commission is entitled to take enforcement action against a licensee, or former 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 or former 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 with respect to—

- (a) any person who, in the opinion of the Commission, is carrying on, intends to carry on or is likely to carry on, unauthorised financial services business including as to any action that the Commission intends to take or has taken against that person;
- (b) any person who, not being a licensee, is holding himself out as a licensee;
- (c) any matter relating to financial services business where the Commission considers that the statement is desirable for—
 - (i) the protection of the public, whether within or outside the Islands, against financial loss arising out of the dishonesty, incompetence, malpractice or insolvency of persons engaged in financial services business in the Islands;
 - (ii) the protection and enhancement of the reputation of the Islands as a financial services centre; and
 - (iii) the reduction of crime and other unlawful activities relating to financial services business.

(3) Subject to subsection (4), where a public statement is to be issued under this section in relation to a licensee, the Commission shall give that person seven 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 VI

GENERAL SUPERVISORY POWERS

Exemptions

40. (1) Unless otherwise provided by this Ordinance or a regulatory Ordinance, the Regulations may—

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

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

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

(3) An exemption or modification under subsection (2) may be given subject to such conditions as the Commission considers appropriate.

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

Power to require licensee to remove directors and other persons

41. (1) Where the Commission is of the opinion that a person to which this section applies does not satisfy its fit and proper criteria, it may require the licensee to remove that person and, if it considers it appropriate, to replace him with another person acceptable to the Commission.

(2) This section applies to—

- (a) a director of a licensee;
- (b) a key employee of a licensee;
- (c) the compliance officer of a licensee; or

- (d) a person undertaking any function that may be specified by the Regulations for the purpose of this subsection.

Power to issue Code

- 42.** (1) The Board may issue a Code with respect to—
- (a) the conduct required of licensees and officers; and
 - (b) such other matters as may be required or permitted by this Ordinance or any Financial Services Ordinances to be provided for in the Code.
- (2) The Board may amend the Code in such manner and to such extent as it may determine.
- (3) The Code—
- (a) may make different provision in relation to persons, cases or circumstances of different descriptions;
 - (b) shall be published in such manner as may be prescribed.
- (4) Before publishing the Code or a notice under subsection (2) the Commission shall—
- (a) ensure that a draft of the Code or 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 the Islands 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 Code or 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.

Guidelines

- 43.** (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 and with respect to any other matter concerning this Ordinance.
- (2) The Guidelines may make different provision in relation to different persons, circumstances or cases.
- (3) The Commission shall publish the Guidelines and any amendments thereto in such manner as may be specified in the Regulations.
- (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 Ordinance, any Financial Services Ordinances or the Code.

(5) Without limiting subsection (1) the Regulations may prescribe matters that shall be, or may be, provided for in Guidelines.

Approved forms

44. (1) The Commission may, by publication in such manner as may be specified in the Regulations, approve forms for the purposes of the Regulatory Ordinances.

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

- (a) be in the form of, and contained the information specified in, the approved form; and
- (b) have attached to it such documents as may be specified in the approved form.

PART VII

DISCIPLINARY ACTION

Commission may take disciplinary action

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

- (a) a provision of this Ordinance, or of a Financial Services Ordinance, specified in the Regulations; or
- (b) a provision of the Code for which a penalty is provided.

(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 it.

(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 subsection (1)(a), in the Regulations; or
- (b) in the case of a contravention referred to in subsection (1)(b), in the Code.

(5) The Commission shall not take disciplinary action against a licensee in respect of a disciplinary offence committed more than two years prior to the date upon which it sends a notice to the licensee under section 46.

Notice of intention to take disciplinary action

46. (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 that receives a notice under subsection (1) may, within twenty-eight 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

47. (1) After the expiration of twenty-eight days from the date that it sent a notice under section 46 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 fourteen 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 46.

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

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

Payment of financial penalty

48. (1) A licensee that receives a penalty notice under section 47(1) shall pay the penalty stated to the Commission on or before the date specified in the notice.

- (2) A licensee that contravenes subsection (1) commits an offence.

Recovery of financial penalty

49. (1) A financial penalty constitutes a debt to the Commission and may be recovered in the court.

(2) The Commission may, after the imposition of a penalty has become final, issue a certificate certifying the unpaid amount of any debt referred to in subsection (1) and the registration of the certificate in the court has the same effect as a judgment of the court for a debt of the amount specified in the certificate together with the costs of registration. (*Inserted by Ord. 5 of 2013*)

PART VIII

GENERAL

Restrictions on disclosure of information

50. (1) Subject to section 51 for the purposes of this section, “protected information” means information which—

- (a) relates to the business or other affairs of any person; and
- (b) is acquired by a person falling within subsection (2), for the purposes of, or in the discharge of, its or his functions under this Ordinance or a Financial Services Ordinance, and includes any information that is obtained from a foreign regulatory authority or a law enforcement authority.

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

- (a) the Commission;
- (b) a director, including the Managing Director;
- (c) an employee of the Commission;
- (d) a person appointed as an examiner under section 35;
- (e) a person appointed as a qualified person under section 36;
- (f) any other person acting under the authority of the Commission;
- (g) an employee of a person specified in paragraphs (d) to (f).

(3) Information is not protected information—

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

(4) Subject to subsection (5), protected information shall not be disclosed by a recipient of that information, without the consent of—

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

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

Gateways for the disclosure of information

51. Section 50 does not apply to a disclosure—

- (a) required or permitted by any court of competent jurisdiction in the Islands;
- (b) required or permitted by this or any other Ordinance;
- (c) to the Governor;
- (d) to a law enforcement agency in the Islands;
- (e) to any person for the purpose of discharging any function or exercising any power under this Ordinance or a Financial Services Ordinance, 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 Proceeds of Crime Ordinance; or
- (g) made by the Commission to a foreign regulatory authority upon the written request of that authority in accordance with section 29.

Privileged documents and information

52. (1) A person shall not be required to disclose information or produce, or permit the inspection of, a document under section 23 if he would be entitled to refuse to disclose the information or to produce, or permit the inspection of, the document on the grounds of legal professional privilege in legal proceedings.

(2) For the purposes of this section, information or a document comes to an attorney in privileged circumstances if it is communicated or given to him—

- (a) by, or by a representative of, a client of his in connection with the giving by the 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, pursuant to a power under this Part, to provide the name and address of his client.

Advertising

53. (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 the 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 that 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 that 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 the Code, provide for the issue, form and content of advertisements issued by or on behalf of licensees.

Appeals

54. (1) Subject to subsection (2), a person who is aggrieved by a decision of the Commission made under this Ordinance or a Financial Services Ordinance may, within twenty-eight days of the date of the decision, apply to the Court for leave to appeal against the decision.

(2) No appeal lies against the refusal of the Commission to grant a licence or against a decision of the Commission to grant a licence subject to conditions.

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

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

- (a) dismiss the appeal; or
- (b) remit the matter back to the Commission for further consideration with such directions as it may consider fit.

Regulations

55. (1) The Governor may, after consultation with the Commission, make Regulations generally for giving effect to the provisions of this Ordinance and specifically for prescribing any thing required or permitted to be prescribed by this Ordinance.

(2) Regulations made under this section may make different provision in relation to persons, cases or circumstances of different descriptions.

Offence provisions

56. A person who, with intent to deceive or for any purpose of this Ordinance or a Financial Services Ordinance, 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

57. (1) Where an offence under this Ordinance 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 to the same financial fine as an individual would be liable for.

(2) Where an offence under this Ordinance is committed by a body corporate and its affairs are managed by its members, subsection (1) applies to a member of that body corporate as if he was a director of the body corporate.

SCHEDULE

(Section 9)

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. If unable to attend a meeting of the Board, an *ex officio* director may be represented at the meeting by his designate.
2. The Board shall elect one of the directors, other than the Managing Director, as Deputy Chairman.
3. The Chairman, or in his absence the Deputy Chairman, shall call a special Board meeting upon receiving a written request to do so signed by any three directors. A special meeting must be called for a date no later than fourteen days after the date of receipt of the written request.
4. The Chairman shall preside at every Board meeting at which he is present. If the Chairman is absent, the Deputy Chairman shall act as Chairman. If both the Chairman and the Deputy Chairman are absent, the directors shall elect one of the directors present, other than the Managing Director, to act as Chairman.
5. Four directors constitute a quorum, one of which must be the Managing Director or his designate.
6. Decisions at Board meetings are determined by a majority of the directors present. In the event of an equality of votes, the Chairman has a casting vote.
7. Notwithstanding anything in this Ordinance or this Schedule, the 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 individuals who are not directors but—
 - (a) the Chairman of each committee shall be a director; and
 - (b) the majority of the members of each committee shall be directors.
10. Subject to paragraph 11 the members of a committee of the Board may be paid an attendance allowance if the Board considers it appropriate.
11. An employee of the Commission may, if the Board considers it appropriate, be paid a reasonable allowance for attending a meeting of a committee of the Board held outside the Islands but shall not otherwise be paid any allowance for attending a meeting of a committee of the Board.
12. The Board may act notwithstanding that one or more vacancies exists among its members and no act or proceeding of the Board is invalid by reason only of any such vacancy or by reason of any defect in the appointment of any of the directors.

FINANCIAL SERVICES (FINANCIAL PENALTIES) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Short title
 2. Interpretation
 3. Power of Commission to impose financial penalties
 4. Determination of appropriate penalty
 5. Late payment penalty
 6. Miscellaneous provisions concerning financial penalties
-

FINANCIAL SERVICES (FINANCIAL PENALTIES) REGULATIONS

– SECTIONS 45 AND 55

(Legal Notice 24/2010)

Commencement

[29 October 2010]

Short title

1. These Regulations may be cited as the Financial Services (Financial Penalties) Regulations.

Interpretation

2. (1) In these Regulations—

“late payment penalty” means a financial penalty imposed by the Commission under regulation 5;

“Ordinance” means the Financial Services Commission Ordinance.

(2) Any reference in these Regulations and the Schedules to a “contravention”, means a contravention of the Ordinance, any financial services Ordinance or the Code, and references to failures, requirements and obligations shall be construed accordingly.

(3) Where the Commission, in accordance with a power granted under the Ordinance, any financial services Ordinance or the Code, extends the time for the filing of any document or the notifying of any matter, the last day of the final extension given by the Commission shall be regarded as the last date for the filing of the document or the making of the notification.

(4) For the purposes of Schedule 1, “filing” includes “submitting”, “delivering”, “giving” or any similar word describing the provision of a document to the Commission.

(5) In determining whether a late payment penalty is payable by a licensee, a fee, charge or penalty is deemed not to have been paid until it is paid in full.

Power of Commission to impose financial penalty

3. (1) This regulation and regulation 4 apply to any contravention, other than a contravention for which a late payment penalty is payable.

(2) If the Commission considers that a licensee has committed a contravention to which this regulation applies, it may impose a financial penalty on the licensee, with respect to the contravention, as provided for in this regulation.

(3) Where the Commission decides to impose a financial penalty on a licensee under subregulation (2), it shall, after taking into account the matters specified in regulation 4, fix the amount of the financial penalty within the range specified for the contravention as provided in Schedule 1.

(4) The Commission may at any time prior to the issuing of a penalty notice under section 47 of the Ordinance withdraw a notice of intention and substitute a new notice of proposed penalty for a lower penalty.

Determination of appropriate penalty

4. In determining the financial penalty to be imposed on a licensee under regulation 3(2), the Commission—

- (a) shall take into account the following matters—
 - (i) the nature and seriousness of the contravention;
 - (ii) whether the licensee has previously contravened the Ordinance or any financial services Ordinance;
 - (iii) whether the contravention was deliberate or reckless or caused by the negligence of the licensee;
 - (iv) whether any loss or damage has been sustained by third parties as a result of the contravention; and
 - (v) the ability of the licensee to pay the penalty, including any gain resulting to the licensee as a result of the contravention; and
- (b) may take into account such other matters as it considers appropriate.

Late payment penalty

5. (1) The Commission may impose a financial penalty on a licensee in accordance with Schedule 2 where the licensee fails to pay—

- (a) any fee or charge payable under the Ordinance or any financial services Ordinance; or
- (b) any penalty payable under these Regulations, on or before the date upon which the fee, charge or penalty is due for payment.

(2) Where the Commission decides to impose a late payment penalty on a licensee under subregulation (1), it shall send a penalty notice under section 47 of the Ordinance to the licensee stating—

- (a) the fee, charge or penalty in respect of which the penalty is imposed; and
- (b) the amount of the proposed penalty calculated in accordance with Schedule 2.

Miscellaneous provisions concerning financial penalties

6. (1) Where a contravention committed by a licensee falls into more than one of the categories specified in Schedule I, the Commission—

- (a) may, in its discretion, determine into which category the contravention will fall; but
- (b) shall not impose a financial penalty under more than one category.

(2) Where a licensee has, by reason of committing more than one contravention, become liable to more than one penalty, the Commission may compound the penalties.

(3) The Commission may agree to the payment of a financial penalty in instalments over such period of time, as it considers appropriate.

SCHEDULE 1
(Regulation 3)

FINANCIAL PENALTIES

Categories of contravention and description	Penalty range
<p>1. Licensing contravention</p> <p>Licensee:</p> <ul style="list-style-type: none">(a) carrying on financial services business not authorised by its licence; or(b) carrying on business in breach of a condition of its licence or contrary to a directive issued by the Commission.	<p>\$2,000 to \$200,000</p>
<p>2. Contravention of financial resource requirement</p> <p>Licensee failing to comply with any financial resource requirement, including, where applicable to the licensee, any failure:</p> <ul style="list-style-type: none">(a) to maintain the required level of capital;(b) to maintain the required solvency margin;(c) to comply with any reserving requirements;(d) to maintain any deposit required to be maintained.	<p>\$2,000 to \$200,000</p>

<p>3. Late filing /notification</p> <p>Licensee filing any document required to be filed or notifying the Commission of any matter required to be notified after last date on which the document is to be filed or the matter is to be notified to the Commission—</p> <p>1 to 30 business days late 31 to 60 business days late 61 to 90 business days late 91 to 120 business days late 121 to 150 business days late 151 or more business days late</p>	<p>\$100 to \$500 \$500 to \$2,000 \$750 to \$3,000 \$1,000 to \$4,000 \$2,500 to \$6,000 \$3,000 to \$10,000</p>
<p>4. Failure to obtain approval</p> <p>Licensee taking any action for which the approval of the Commission is required without having obtained the necessary approval.</p>	<p>\$1,000 to \$5,000</p>
<p>5. Record keeping contravention</p> <p>Licensee failing to maintain any records required to be maintained or failing to maintain records in the manner or at the place required.</p>	<p>\$500 to \$5,000</p>
<p>6. Compliance contravention</p> <p>Licensee failing to establish or maintain adequate systems and controls for ensuring compliance with the requirements of, and its obligations under, the Ordinance, the financial services Ordinance, the Code or directives issued by the Commission as required by section 31 of the Ordinance, including—</p> <p>(a) failure to appoint a compliance officer;</p> <p>(b) failure to establish and maintain a compliance procedures manual;</p> <p>(c) failure to comply with any requirement of a regulatory code with respect to compliance.</p>	<p>\$2,000 to \$10,000</p>

<p>7. Late payment of fee or penalty</p> <p>Licensee—</p> <p>(a) paying any fee or penalty required to be paid under any financial services Ordinance or any penalty required to be paid under these Regulations more than 360 days after the date when fee or penalty is due; or</p> <p>(b) persistently paying fees or penalties required to be paid under any financial services Ordinance or any penalty required to be paid under these Regulations after the date when fee or penalty is due.</p>	<p>\$500 to \$5,000</p> <p>In addition to any penalty payable in accordance with Schedule 2</p>
<p>8. Other contravention</p> <p>Licensee committing any other contravention not falling within any category specified above.</p>	<p>\$100 to \$50,000</p>

SCHEDULE 2

(Regulation 5)

LATE PAYMENT PENALTIES

The following penalties are payable for the late payment of any fee or penalty payable under any financial services Ordinance or for the late payment of any penalty payable under these Regulations:

Description of Fee/penalty	Penalty payable
<p>1. Penalties for late payment of fee or charge payable under any financial services Ordinance</p> <p>For the late payment of a fee or charge payable under any financial services Ordinance—</p> <p>(a) <i>Where the fee or charge is paid 1-30 days after due date</i></p> <p>(b) <i>For each additional period of 30 days, or any part thereof, during which fee or charge remains unpaid</i></p>	<p>20% of fee or charge payable, subject to a minimum of \$80.00</p> <p>10% of fee or charge payable, subject to a minimum of \$20.00</p> <p>The maximum penalty payable under paragraphs (a) and (b) shall be 100% of the fee or charge payable</p>
<p>2. Penalty for late payment of financial penalty, other than late payment penalty</p> <p>For the late payment of a financial penalty imposed under Schedule 1—</p> <p>(a) <i>Penalty paid 1-30 days after due date</i></p> <p>(b) <i>For each additional period of 30 days, or any part thereof, during which penalty remains unpaid</i></p>	<p>10% of penalty payable</p> <p>10% of penalty payable</p> <p>The maximum penalty payable under paragraphs (a) and (b) shall be 100% of the financial penalty payable</p>

**FINANCIAL SERVICES COMMISSION
(PRESCRIBED INSTRUMENTS) REGULATIONS - SECTION 55**

(Legal Notice 39/2007)

Commencement

[3 December 2007]

Short title

1. These Regulations may be cited as the Financial Services Commission (Prescribed Instruments) Regulations.

Interpretation

2. In these Regulations—

“Anti-money Laundering and Prevention of Terrorist Financing Code” means the Anti-money Laundering and Prevention of Terrorist Financing Code issued by the Reporting Authority under section 118(1) of the Proceeds of Crime Ordinance;

“Anti-terrorism Order” means the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002; and

“Reporting Authority” means the Reporting Authority established under section 115(1) of the Proceeds of Crime Ordinance.

Prescribed instruments

3. The following are prescribed as Ordinances, Regulations, Codes or guidance relating to money laundering or the financing of terrorism for the purposes of section 4(1)(d) of the Ordinance—

- (a) the Anti-terrorism Order;
- (b) the Anti-money Laundering and Prevention of Terrorist Financing Code;
- (c) guidance contained in the Anti-money Laundering and Prevention of Terrorist Financing Code.

**FINANCIAL SERVICES COMMISSION (PRESCRIBED FINANCIAL SERVICES
ORDINANCES) REGULATIONS - SECTION 55**

(Legal Notice 20/2010)

Commencement

[15 October 2010]

Short title

1. These Regulations may be cited as the Financial Services Commission (Prescribed Financial Services Ordinances) Regulations.

Administered Ordinances

2. An Ordinance specified in Part I of the Schedule is prescribed as an administered Ordinance for the purposes of section 2 of the Financial Services Ordinance.

Regulatory Ordinance

3. An Ordinance specified in Part II of the Schedule is prescribed as a regulatory Ordinance for the purposes of section 2 of the Financial Services Ordinance.

SCHEDULE

(Regulations 2 and 3)

FINANCIAL SERVICES ORDINANCES

PART I – ADMINISTERED ORDINANCES

Business Names (Registration) Ordinance
Companies Ordinance
International Financial Institutions Ordinance
Limited Partnerships Ordinance
Patents Ordinance
Trade Marks Ordinance

PART II – REGULATORY ORDINANCES

Banking Ordinance
Banking (Special Provisions) Ordinance
Company Management (Licensing) Ordinance
Insurance Ordinance
Investment Dealers (Licensing) Ordinance
Money Transmitters Ordinance
Mutual Funds Ordinance
Trustees Licensing Ordinance
