



ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER F28

FINANCIAL SERVICES COMMISSION ACT

Showing the Law as at 15 December 2014

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

This Edition consolidates—

Act 12/2003, in force 1 January 2004

Act 3/2008, in force 27 February 2008

Act 6/2009, in force 27 March 2009

Act 13/2009, in force 16 July 2009

Act 4/2013, in force 25 September 2013

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FINANCIAL SERVICES COMMISSION ACT

PART 1

PRELIMINARY

Interpretation

1. (1) In this Act—

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

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

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

“Anti-money Laundering and Terrorist Financing Code” means a Code issued under section 169 of the Proceeds of Crime Act;

(Act 4/2013, s. 2(a)(i))

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

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

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

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

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

“Court” means the High Court;

“Director”, in relation to the Commission, means the Director of the Commission appointed under section 8;

(Act 4/2013, s. 2(a)(ii))

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

(a) a person who is a member of the governing body of the undertaking; and

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

(Act 4/2013, s. 2(a)(i))

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

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

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

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

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

“financial crime” includes an offence involving—

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

(Act 4/2013, s. 2(a)(i))

“financial services business” means—

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

“financial services enactment” means an Act prescribed as a financial services enactment together with any subsidiary legislation made under that enactment;

(Act 4/2013, s. 2(a)(iii))

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

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

(Act 4/2013, s. 2(a)(i))

“Governor” means the Governor in Council;

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

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

(Act 4/2013, s. 2(a)(i))

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

“licensee” means a person who holds a licence;

(Act 4/2013, s. 2(a)(iv))

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

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

(Act 4/2013, s. 2(a)(i))

“prescribed” means prescribed by regulations made under section 57;

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

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

“Regulatory Code” means a Code issued by the Commission under section 59;

“regulatory function” means—

- (a) a function corresponding or similar to a function exercised by the Commission, or
- (b) a function that, in the opinion of the Commission, relates to the regulation or supervision of companies or financial services business;
(Act 4/2013, s. 2(a)(vi))

“subsidiary”, in relation to an undertaking (the first undertaking), means another undertaking of which the first undertaking is a parent;
(Act 4/2013, s. 2(a)(i))

“undertaking” means—

- (a) a company;
- (b) a partnership; or
- (c) an unincorporated association;
(Act 4/2013, s. 2(a)(i))

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

(2) A person carries on unlicensed financial services business if the person carries on a business or activity for which a licence is required without having either—

- (a) a licence authorising him to carry on that business or activity; or
- (b) the benefit of an exemption provided for in a financial services enactment or any other enactment, exempting him from the requirement for a licence to carry on that business or activity.

(3) For the purposes of the definition of “financial crime”, “offence” includes an act or omission that—

- (a) takes place outside Anguilla; and
- (b) would constitute an offence if it had occurred in Anguilla.
(Act 4/2013, s. 2(b))

PART 2

THE FINANCIAL SERVICES COMMISSION

Establishment of the Financial Services Commission

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

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

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

Functions of the Commission

3. (1) The principal functions of the Commission are—
- (a) to supervise licensees in accordance with, and enforce, this Act, the financial services enactments and the Regulatory Codes;
(Act 4/2013, s. 3(a)(i))
 - (b) to consider and determine applications for licences;
 - (c) to monitor and enforce compliance by licensees and externally regulated service providers with their AML/CFT obligations;
(Act 4/2013, s. 3(a)(ii))
 - (d) to monitor the financial services industry in Anguilla and to take action against persons carrying on unlicensed financial services business;
(Act 4/2013, s. 3(a)(iii))
 - (e) to administer the financial services enactments, including the granting and revoking of licences;
(Act 6/2009, s. 2)
 - (f) to supervise the administration of the Registry Acts by the Registrar;
 - (g) to monitor the effectiveness of the financial services enactments and the Regulatory Codes in providing for the regulation and supervision of financial services business to internationally accepted standards;
(Act 4/2013, s. 3(a)(iv))
 - (h) to monitor the effectiveness of the AML/CFT regime in preventing and detecting money laundering and terrorist financing and in implementing the standards, recommendations and guidance, relating to the prevention and detection of money laundering and terrorist financing, issued by the FATF;
(Act 4/2013, s. 3(a)(v))
 - (i) to advise the Governor on matters relating to or connected with, financial services business;
(Act 4/2013, s. 3(a)(vi))
 - (j) to make recommendations to the Governor on—
 - (i) the amendment, revision or replacement of the financial services enactments or of any legislation connected with financial services business, companies, partnerships, trusts, foundations or any other business structures or arrangements;
 - (ii) the amendment, revision or replacement of any legislation connected with the AML/CFT regime;

- (iii) the introduction of any new legislation connected with financial services business, companies, partnerships, trusts, foundations or any other business structures or arrangements or the AML/CFT regime; and
- (iv) the administration of the Registry Acts by the Registrar;
(Act 4/2013, s. 3(a)(vii))
- (k) to maintain contact and develop relations with persons carrying on financial services business with a view to—
 - (i) encouraging the development of high professional standards within the financial services industry, and
 - (ii) promoting industry codes of conduct;
(Act 4/2013, s. 3(a)(viii))
- (l) to maintain contact and develop relations with foreign regulatory authorities, international associations of regulatory authorities and other international associations or groups relevant to its functions and to provide regulatory and supervisory assistance to foreign regulatory authorities in accordance with this or any other Act;
(Act 4/2013, s. 3(a)(ix))
- (m) to provide such information and advice to licensees and the public, or any section of the public, concerning financial services and the AML/CFT regime as it considers appropriate;
(Act 4/2013, s. 3(a)(x))
- (n) to discharge such other functions as may be assigned to it under this or any other Act; and
- (o) to take such measures as it considers appropriate to develop the financial services industry in Anguilla.

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

- (a) the protection of the public, whether within or outside Anguilla, against financial loss arising out of the dishonesty, incompetence, malpractice or insolvency of persons engaged in financial services business;
(Act 4/2013, s. 3(b)(i))
- (b) the protection and enhancement of the reputation of Anguilla as a financial services centre; and
- (c) the deterrence of financial crime and other unlawful activities relating to financial services business.
(Act 4/2013, s. 3(b)(ii))

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

(Act 4/2013, s. 3(c))

The Board and the appointment of Board members

4. (1) The Commission has a Board which consists of the Director, as an *ex officio* member, and not less than 4 or more than 8 individuals appointed by the Governor—

(a) one of whom may be an individual from outside Anguilla who has knowledge of or experience in financial services business; and

(b) no more than one of whom may be a public officer.

(Act 4/2013, s. 4(a))

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

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

(a) is a member of the House of Assembly;

(b) is an undischarged bankrupt; or

(c) has been convicted of an indictable offence or an offence involving dishonesty.

(4) A previous appointment as a Board member does not affect a person's eligibility for appointment under this section unless the person is removed as a Board member under section 7(2) or would have been removed under that section but for his resignation.

(Act 4/2013, s. 4(b))

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

(a) are fit and proper; and

(b) have knowledge, experience or expertise that is relevant to the functions of the Commission.

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

(7) The appointment of a Board member shall be published in the *Gazette*.

Functions of the Board

5. (1) The Board is the governing body of the Commission.

(2) The principal functions of the Board are—

(a) to establish the policy of the Commission and monitor and oversee its implementation;

(b) to monitor and oversee the management of the Commission by the Director with the objective of ensuring that—

(i) the resources of the Commission are utilised economically and efficiently,

- (ii) adequate internal financial and management controls are in place,
 - (iii) the Commission is operated in accordance with principles of good governance, and
 - (iv) the Commission fulfils its statutory obligations and properly discharges its functions;
- (c) to set the budget and annual work programme of the Commission for submission to the Governor and to appoint a suitably qualified person to audit the Commission's accounts; and

(Act 4/2013, s. 5)

- (d) to identify and classify senior management positions in the Commission and to identify suitably qualified persons for appointment to those positions.

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

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

Terms of appointment of Board members

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

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

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

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

(Act 4/2013, s. 6)

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

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

Resignation and removal of Board members

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

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

- (a) has, without the consent of the other Board members, been absent from 3 or more consecutive meetings of the Board or from more than one third of the Board meetings held in any 12 month period;
(Act 4/2013, s. 7(a)(i))
- (b) has become bankrupt, that his estate has been sequestrated or that he has made an arrangement with, or granted a trust deed in favour of, his creditors;
- (c) is or becomes disqualified from being appointed as a Board member under section 4;
- (d) has an interest that is likely to prejudicially affect the exercise and performance by him of his functions as a Board member on an on-going basis, or that is contrary to the interests of the Commission or of Anguilla;
(Act 4/2013, s. 7(a)(ii))
- (e) is liable to be removed as a Board member under section 50(7);
- (f) is unable or unfit to discharge his functions as a Board member; or
- (g) is in breach of any condition imposed upon his appointment.

(3) A written notice of the removal of a Board member shall specify the reasons for the removal.

(Act 4/2013, s. 7(b))

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

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

(Act 4/2013, s. 7(c))

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

(Act 4/2013, s. 7(d))

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

Appointment of Director

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

(2) A person shall not be appointed as Director under subsection (1) or subsection (5) unless the Governor is satisfied that he is fit and proper and has the appropriate qualifications and experience to undertake the duties of Director.

(Act 4/2013, s. 8(a))

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

- (a) the administration and operation of the Commission;
 - (b) the discharge of the Commission's functions and the exercise of its powers;
 - (c) the appointment of employees not classified by the Board as senior management;
 - (d) the management and supervision of the Commission's employees; and
 - (e) the discharge of such functions and the exercise of such powers as may be assigned to, or conferred on, the Director by this or any other Act or that may be delegated to the Director by the Board.
- (4) In discharging his functions and powers, the Director shall endeavour to ensure that—
- (a) the resources of the Commission are utilised economically and efficiently;
 - (b) adequate internal financial and management controls are in place;
 - (c) the Commission is operated in accordance with principles of good governance; and
 - (d) the Commission fulfils its obligations and properly discharges its functions.

(5) Where, due to illness or temporary incapacity, the Director is unable to discharge his functions under this Act, or where the Director is absent from Anguilla for a period exceeding 2 weeks, the Governor acting in his discretion may, after consulting with the Board, appoint a person to act in the Director's place during such illness, incapacity or absence.

(Act 4/2013, s. 8(b))

General powers

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

- (a) acquiring, holding, dealing with and disposing of real and personal property or any interest therein;
- (b) contracting with any person for the supply to, or by, the Commission of any goods, services or personnel and paying fees and expenses properly incurred by the Commission;

(Act 4/2013, s. 9(a))

- (c) employing such persons, including advisors and consultants, as the Commission considers necessary on such terms as to remuneration, expenses, pensions, and other conditions of service as it considers appropriate;
- (d) establishing and maintaining such schemes or making such other arrangements as it considers appropriate for the payment of pensions and other benefits in respect of its officers and employees;

- (e) establishing and implementing codes, procedures and manuals for regulating the terms of service, discipline, benefits and training of the Commission's employees;
(Act 4/2013, s. 9(b))
- (f) opening and maintaining bank accounts within or outside Anguilla;
- (g) entering into such contracts of insurance as it considers appropriate;
- (h) investing any of its funds that are not immediately required for the discharge of its functions;
- (i) publishing, in such manner as it considers appropriate, such information relating to its functions and its activities as it thinks fit;
- (j) entering into memoranda of understanding with regulatory agencies within and outside Anguilla for the purposes of discharging its functions; and
(Act 4/2013, s. 9(c))
- (k) making rules for its administration and the conduct of its proceedings that are not inconsistent with this Act.

General provisions

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

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

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

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

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

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

(Act 4/2013, s. 10)

Companies Registry

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

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

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

(Act 3/2008, s. 1)

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

PART 3**FINANCIAL AND REPORTING PROVISIONS
APPLICABLE TO THE COMMISSION****Funds and resources of the Commission**

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

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

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

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

Borrowing powers

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

(a) borrow money by way of loan, advance or overdraft; and

(b) obtain goods and services on credit.

(Act 4/2013, s. 11)

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

(a) all money borrowed by the Commission by way of loan, advance or overdraft; and

(b) all goods and services obtained by the Commission on credit;

does not exceed \$50,000.

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

Financial year

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

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

(Act 3/2008, s. 2)

Budget and annual work programme

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

(a) estimates of its expected—

(i) recurrent and capital expenditure, and

(ii) revenue arising from any source other than the charge specified in section 19; and

(b) a work programme containing a general description of the work and activities that it plans to undertake in the year, excluding routine activities.

(Act 4/2013, s. 12(b))

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

(3) The Commission shall furnish the Governor with such further information in relation to the estimates and work programme as the Governor may direct.

(Act 4/2013, s. 12(c))

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

(a) approving them, or either of them, with or without modification; or

(b) remitting them, or either of them, back to the Commission without approval.

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

(Act 4/2013, s. 12(a))

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

(Act 4/2013, s. 12(a))

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

(Act 4/2013, s. 12(a))

Accounts and audit

16. (1) The Commission shall—

(a) keep proper records of its income and other receipts and expenditure; and

(Act 4/2013, s. 13(a))

(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 records kept under subsection (1) shall—

(a) be sufficient to show and explain the Commission's transactions;

(Act 4/2013, s. 13(a), (b))

(b) enable the Commission's financial position to be determined with reasonable accuracy at any time; and

(c) be sufficient to enable financial statements to be prepared and audited in accordance with this section.

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

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

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

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

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

(Act 4/2013, s. 13(c))

Audited accounts and annual report

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

- (a) a copy of its audited accounts, which shall include the auditor's report; and
(Act 4/2013, s. 14)
- (b) a written report of its operations and activities for that financial year (the annual report).

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

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

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

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

Taxation

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

Charge against company registration fees

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

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

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

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

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

Payment of surplus to Government

20. The Commission shall pay all surpluses, after adequately funding all reserves provided for in section 15(2), to the Government of Anguilla for the development of the financial services industry.

(Act 3/2008, s. 3)

PART 4

INFORMATION GATHERING AND CO-OPERATION WITH REGULATORY AUTHORITIES

Power of Commission to gather information

21. (1) Where reasonably required by the Commission for the discharge of its functions under this or any other Act, 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.

(Act 4/2013, s. 16(a))

(2) A notice under subsection (1)—

(a) may be issued to a—

(i) licensee,

(ii) person the Commission reasonably believes to be carrying on, or to have at any time carried on, unlicensed financial services business,

(iii) person connected with a person specified in subparagraph (i) or (ii), or

(iv) in the case of a notice requiring the production of documents, any person who the Commission reasonably believes is in possession, or has control, of the documents; and

(Act 4/2013, s. 16(b))

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

(3) The Commission may require—

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

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

(c) that the information is to be provided to, or the documents are to be produced to, a person specified in the notice.

(Act 4/2013, s. 16(c))

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

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

(6) For the purposes of this section—

- (a) the criteria set out in Schedule 3 shall be used to determine whether a person is connected with a licensee; and
- (b) “licensee” includes a person who has at any time been a licensee but who has ceased to be a licensee.

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

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

(9) On the hearing of an application under subsection (7), the Court may confirm, set aside or modify the notice issued by the Commission and make any interim or other order that it thinks fit.

(Act 4/2013, s. 16(d))

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

Effect of application to set notice aside

22. (1) An application to the Court under section 21(7) does not relieve a person from compliance with the notice issued by the Commission.

(2) Subsection (3) applies where—

- (a) the person who has received a notice issued under section 21(1) gives written notice to the Commission that he intends to apply to the Court to have the notice set aside; or
- (b) if written notice is not given under paragraph (a), an application made under section 21(7) is served on the Commission;

provided that the notice is given, or the application is served, within the time period specified in section 21(8).

(3) Where this subsection applies, notwithstanding section 27(3), the Commission shall not disclose to any other person any information provided, or documentation produced, to it in compliance with the notice to which the application or intended application relates—

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

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

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

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

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

(6) Where a person gives the Commission written notice under paragraph (2)(a), subsection (3) ceases to have effect if that person does not serve the application to which the notice relates on the Commission within the time period specified in section 21(8).

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

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

(Act 4/2013, s. 17)

Examination under oath

23. (1) Where the Commission on reasonable grounds believes that a person can provide information that it reasonably requires for the purposes of discharging its functions, the Commission may apply to the Magistrate to have that person examined under oath before the Magistrate and to have the results of that examination transmitted to the Commission.

(Act 4/2013, s. 19(a))

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

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

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

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

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

(Act 4/2013, s. 19(b))

Search warrant

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

(Act 4/2013, s. 20)

- (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 21(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 21(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 21(1) could be issued, and
 - (iii) if a notice under section 21(1) was to be issued, it would not be fully complied with or the documents or information to which the notice related would be removed, tampered with or destroyed; or
 - (c) that—
 - (i) an offence under this Act or a financial services enactment has been, is being or may be committed by a person, and
 - (ii) there are documents, or there is information, on the premises specified in the warrant that evidence the commission of the offence, and
 - (iii) if a notice under section 21(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 3 months; or

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

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

Duty to cooperate

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

(a) foreign regulatory authorities; and

(b) law enforcement agencies in Anguilla.

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

(Act 4/2013, s. 21)

Provision of assistance to foreign regulatory authorities

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

(a) exercise the powers conferred on it by section 21;

(b) make an application under section 23 for the examination of a person under oath by the Magistrate;

(c) appoint one or more competent persons as investigators to investigate any matter; or

(d) disclose information or provide documentation to a foreign regulatory authority whether the information or documentation—

(i) was obtained by the exercise of a power specified in paragraph (a), or

(ii) is otherwise in the possession of the Commission.

(Act 4/2013, s. 22(a))

(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.

(Act 4/2013, s. 22(a))

(3) An investigator appointed under paragraph (1)(c) shall have the powers of an investigator appointed under section 39.

(Act 4/2013, s. 22(a))

(4) 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 Anguilla or involves the assertion of a jurisdiction not recognised by Anguilla;
- (c) the nature and seriousness of the matter to which the request for assistance relates, the importance of the matter to persons in Anguilla and whether the assistance can be obtained by other means;
- (d) the relevance of the information or documentation to the enquiries to which the request relates; and
- (e) whether it is otherwise appropriate in the public interest to provide the assistance sought.

(Act 4/2013, s. 22(b))

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

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

(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 has received satisfactory assurances from the foreign regulatory authority that any information provided to it will not be used in any criminal proceedings against the person furnishing it, other than proceedings for an offence equivalent to section 32 or for an offence of perjury or any equivalent offence;
- (b) the foreign regulatory authority undertakes to make such contribution towards the cost of exercising its powers as the Commission considers appropriate; and

(Act 4/2013, s. 22(c))

- (c) it is satisfied that the foreign regulatory authority is subject to adequate legal restrictions on further disclosure of the information and documents and that it will not, without the written permission of the Commission—
 - (i) disclose information or documents provided to it to any person other than an officer or employee of the authority engaged in the exercise of any of its supervisory functions, or
 - (ii) take any action on information or documents provided to it.
(Act 4/2013, s. 22(c))

(8) Where, in accordance with this section, the Commission would, on the written request of a foreign regulatory authority, be entitled to disclose information or provide documentation in its possession to that foreign regulatory authority, the Commission may disclose such information or documentation to the foreign regulatory authority without having received a written request from the authority.

(Act 4/2013, s. 22(d))

Restrictions on disclosure of information

27. (1) Subject to subsection (3), for the purposes of this section, “protected information” means information which—

- (a) relates to the business or other affairs of any person; and
 - (b) is acquired by a person falling within subsection (2), for the purposes of, or in the discharge of, his or its functions under this Act or a financial services enactment, and includes any information that is obtained from a foreign regulatory authority or a law enforcement authority.
- (2) Paragraph (1)(b) applies to the following persons—
- (a) the Commission;
 - (b) a Board member;
 - (c) an employee of the Commission;
 - (d) a person appointed as an investigator under section 39;
 - (e) a person appointed as a skilled person under section 40;
 - (f) any other person acting under the authority of the Commission;
 - (g) an employee of a person specified in paragraphs (d) to (f).
- (3) Information is not protected information—
- (a) if the information is or has been available to the public from any other source; or

- (b) where the information is disclosed in a summary or in statistics expressed in a manner that does not enable the identity of particular persons to whom the information relates to be determined.

(4) Subject to section 24, protected information shall not be disclosed by a recipient of that information, whether the recipient of the information is a person specified in subsection (2) or a person who has directly or indirectly received the protected information from a person specified in subsection (2), without the consent of—

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

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

- (6) Any person who contravenes this section commits an offence.
(Act 4/2013, s. 23)

Gateways for the disclosure of information

28. Section 27 does not apply to a disclosure by—

- (a) any person where the disclosure is—
 - (i) required or permitted by, and made in accordance with, an order of a court of competent jurisdiction in Anguilla,
 - (ii) required or permitted by this or any other Act,
 - (iii) made to the Governor,
 - (iv) made to a law enforcement agency in Anguilla, or
 - (v) made to the Reporting Authority established under the Proceeds of Crime Act;
- (b) a person specified in section 27(2), where the disclosure is made to any person for the purpose of discharging any function or exercising any power under this Act or a financial services enactment, whether the function or power is of the person disclosing the information or of the Commission or the Board;
- (c) the Commission—
 - (i) to a foreign regulatory authority in accordance with section 25 or 26,
 - (ii) to help protect the public, whether within or outside Anguilla, or any section of it, against financial loss arising from any financial crime;
- (d) a person, other than the Commission, where the disclosure—
 - (i) is made with the written consent of the Commission, and

- (ii) could lawfully have been made by the Commission.
(Act 4/2013, s. 23)

Privileged documents and information

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

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

- (a) by, or by a representative of, a client of his in connection with the giving by the attorney of legal advice to the client;
- (b) by, or by the representative of, a person seeking legal advice from the attorney; or
- (c) by any person—
 - (i) in contemplation of, or in connection with, legal proceedings, and
 - (ii) for the purposes of those proceedings.

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

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

(Act 4/2013, s. 23)

Admissibility of statements

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

- (a) in compliance with a request made by the Commission under section 21;
- (b) to the Magistrate under section 23; or
- (c) in compliance with a request made by the examiner, to an investigator appointed under section 26(1)(d) or section 39;

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

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

- (a) that person has himself introduced the statement in evidence; or
- (b) the prosecution of that person relates to—

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

Protection for disclosure

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

(Act 4/2013, s. 24)

Offences

32. (1) A person commits an offence if, without reasonable excuse he fails to comply with a notice issued under section 21(1) that has not been set aside by the Court under section 21(9).

(2) A person who in purported compliance with a notice issued by the Commission under section 21(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 21(1) destroys, mutilates, defaces, hides or removes a document commits an offence.

PART 5

COMPLIANCE AND ENFORCEMENT

Compliance

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

(Act 4/2013, s. 24, 25(a), (b))

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

(Act 4/2013, s. 25(c))

- (3) Without limiting section 59, a Regulatory Code may provide for the—
- (a) standards of compliance expected of licensees;
 - (b) individuals who may act as the compliance officer for a licensee;
 - (c) factors that the Commission will take into account in considering the suitability of a person as a compliance officer;
 - (d) functions and responsibilities of a compliance officer;
 - (e) preparation by licensees of a compliance manual and the matters to be included in such a manual; and
 - (f) requirements with respect to the compliance policies, systems and controls of a licensee.

(Act 4/2013, s. 25(d))

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

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

(Act 4/2013, s. 25(b))

Compliance visits

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

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

(Act 4/2013, s. 26(a), (b))

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

- (a) inspect the premises and the business, whether in or outside Anguilla, including the procedures, systems and controls, of a relevant person;
(Act 4/2013, s. 26(c)(i))
- (b) inspect the assets, including cash, belonging to or in the possession or control of a relevant person;
- (c) examine and make copies of documents belonging to or in the possession or control of a relevant person that, in the opinion of the Commission, relate to the carrying on of financial services business by the relevant person; and

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

(Act 4/2013, s. 26(c)(ii)(iii)(iv))

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

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

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

- (ii) the Regulatory Codes, or any Guidelines or other guidance issued by the Commission; and

- (b) monitoring and assessing a relevant person's compliance with his AML/CFT obligations.

(Act 4/2013, s. 26(d))

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

(Act 4/2013, s. 26(e))

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

(Act 4/2013, s. 26(f))

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

(Act 4/2013, s. 26(g))

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

- (a) the participation of the foreign regulatory authority—

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

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

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

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

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

(8) Subject to subsection (5), a relevant person shall permit any employee of the Commission or person appointed by the Commission for the purpose to have access during reasonable business hours to any of its business premises to enable that person to undertake a compliance visit.

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

(Act 4/2013, s. 26(h))

Enforcement action

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

- (a) in the opinion of the Commission, the licensee—
 - (i) has contravened or is in contravention of this Act, a financial services enactment or a Regulatory Code,
 - (ii) is failing to comply or has failed to comply with an AML/CFT obligation,
(Act 4/2013, s. 27(a)(i))
 - (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,
(Act 4/2013, s. 27(a)(ii))
 - (iv) is or is likely to become insolvent,
 - (v) has failed to comply with a directive given to it by the Commission,
 - (vi) is in breach of any term or condition of its licence,
 - (vii) is not a fit and proper person to hold a licence, or
 - (viii) has provided the Commission with any false, inaccurate or misleading information, whether on making application for a licence or subsequent to the issue of the licence;
- (b) the licensee is compulsorily wound up, passes a resolution for voluntary winding up or is dissolved;
- (c) a receiver has been appointed in respect of the financial services business carried on by the licensee or possession has been taken of any of its property by or on behalf of the holder of a debenture secured by a registered charge;
- (d) in the opinion of the Commission—
 - (i) a person having a share or interest in the licensee, whether equitable or legal, or any director, officer or key employee of the licensee is not a fit and proper person to have an interest in or be concerned with the management of a licensee, as the case may be, or

- (ii) the licensee or a subsidiary or holding company of the licensee has refused or failed to co-operate with the Commission on a compliance visit conducted by the Commission under section 34; or

(Act 4/2013, s. 27(b))

- (e) the Commission is entitled to take enforcement under a provision in a financial services enactment.

(2) If the Commission is entitled to take enforcement action under subsection (1) it may exercise such of the following powers as it considers appropriate—

- (a) revoke or suspend the licensee's licence under section 36;
- (b) appoint an investigator to conduct an investigation under section 39;
- (c) issue a directive under section 38;
- (d) apply for a protection order under section 37;
- (e) take disciplinary action against the licensee under Part 7;
- (f) where the licensee is a company incorporated or continued under the Companies Act, apply to the Court for the liquidation and dissolution of the company under section 217(1)(b) of that Act¹.

(Act 4/2013, s. 27(c) and am. in L.R. 15/12/2014)

Revocation or suspension of licence

36. (1) The Commission may at any time revoke or suspend a licensee's licence if—

- (a) it is entitled to take enforcement action against the licensee under section 35; or
- (b) the licensee has failed to commence or ceased to carry on the financial services business for which it was licensed.

(Act 4/2013, s. 28(a))

(2) The Commission may, on the application of a licensee, cancel the licensee's licence, subject to such conditions as the Commission considers appropriate.

(Act 4/2013, s. 28(b))

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

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

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

¹ This section has been renumbered to reflect the renumbering of the Companies Act, R.S.A. c. C65 (15/12/2014).

- (a) the grounds upon which it intends to revoke or suspend the licence; and
- (b) that unless the licensee, by written notice filed with the Commission, shows good reason why its licence should not be revoked or suspended, the licence will be revoked or suspended on a date not less than 14 days after the date of the notice.
(Act 3/2008, s. 4 as am. in L.R. 15/12/2008, Act 4/2013, s. 28(c))

(6) If, on the application of the Commission, the Court is satisfied that it is in the public interest or to the interests of any of the customers or creditors of a licensee that subsection (5) should not have effect or that the period referred to in paragraph (5)(b) should be reduced, it may so order.

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

Protection order

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

- (a) a licensee, where the licence of the licensee has been or is about to be revoked or where the Commission is entitled to take enforcement action against the licensee;
- (b) a former licensee; or
- (c) a person that is carrying on, or has carried on, unlicensed financial services business.
(Act 4/2013, s. 29(a))

(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 the person's customers, creditors or the public, including one or more of the following orders—

- (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;
(Act 4/2013, s. 29(b)(ii))
- (b) an order appointing an administrator to take over and manage the person's business, or any part of that business;
(Act 4/2013, s. 29(b)(iii))
- (c) an order granting the Commission a search warrant;
- (d) where the person concerned is in contravention of this Act, a financial services enactment or a Regulatory Code, an order requiring the person concerned to take such action, or to refrain from taking such action, as is necessary to bring that person into compliance with this Act, the financial services enactments legislation or the Regulatory Codes.
(Act 4/2013, s. 29(b)(i) and 29(b)(vii))

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

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

(Act 4/2013, s. 29(c))

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

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

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

(Act 4/2013, s. 29(d))

(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) where the Commission intends to revoke the licence of a licensee under section 36(1), before or after the Commission has given notice of intention to revoke the licence.

(Act 4/2013, s. 29(e))

Directives

38. (1) Where the Commission is entitled to take enforcement action against a licensee, the Commission may issue a directive—

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

- (ii) that the licensee shall not enter into any new contracts for any type of business; and

(Act 4/2013, s. 30(a), (b), (c))

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

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

(Act 4/2013, s. 30(d))

Appointment of investigator

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

- (a) with respect to a licensee—
 - (i) if it appears to the Commission on reasonable grounds that there are, or may be, grounds for taking enforcement action against the licensee under section 35, or
 - (ii) the Commission is of the opinion that it is desirable to appoint an investigator in the interests of the customers or potential customers of the licensee or in the public interest or in order to safeguard the reputation of Anguilla as a financial services centre;
- (b) with respect to a former licensee, if the Commission would have been entitled to appoint an investigator under paragraph (a), but for the revocation or cancellation of the licensee's licence; and
- (c) with respect to any person if it appears to the Commission on reasonable grounds that the person is carrying on, or has carried on, unlicensed financial services business.

(Act 4/2013, s. 31(a), (b))

(2) The matters investigated by an investigator 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 the person's business;

(Act 4/2013, s. 31(c)(i),(ii))

- (b) a particular aspect of the person's business;

(Act 4/2013, s. 31(c)(iii))

- (c) the ownership or control of the person being investigated;
- (d) in the case of a licensee, whether there are grounds for taking enforcement action against the licensee;
- (e) whether the person is carrying on, or has carried on, unlicensed financial services business.

(Act 4/2013, s. 31(c)(v))

(3) Where an investigator is appointed with respect to a person that was formerly a licensee, an investigation under subsection (2) shall extend only to—

- (a) in the case of paragraphs (a) and (b), the person's business carried on at any time when the person was a licensee; and
- (b) in the case of paragraph (c), to the ownership or control of the person at any time when the person was a licensee.

(4) Subject to subsection (5), an investigator appointed under this section shall have the powers of the Commission—

- (a) to require the provision of information or documents under section 21;
- (b) to apply to the Magistrate under section 23 for the examination of a person under oath; and
- (c) to apply to the Magistrate under section 24 for a search warrant.

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

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

(Act 4/2013, s. 31(c))

(6) An investigator appointed under subsection (1) may, if he considers it necessary for the purposes of his investigation, on giving written notice to the person concerned, also investigate the business of any person who is, or at any relevant time has been—

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

(Act 4/2013, s. 31(d))

(7) An investigator shall submit a report of his investigation to the Commission.

(Act 4/2013, s. 31(e))

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

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

(Act 4/2013, s. 31(f))

PART 6

GENERAL SUPERVISORY POWERS

Appointment of skilled person

40. (1) This section applies to—

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

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

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

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

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

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

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

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

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

(Act 4/2013, s. 33)

Public statements

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

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

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

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

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

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

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

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

(6) The Commission shall not issue a public statement in relation to the imposition of an administrative penalty until after the imposition of the administrative penalty has become final in accordance with section 44(3).

(Act 4/2013, s. 34)

Conditions

42. (1) In this section—

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

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

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

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

(a) the Commission shall, together with the licence or approval, issue a written notice specifying the condition or conditions; and

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

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

(a) vary or revoke a condition; or

(b) impose new conditions on the licence or approval.

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

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

(Act 4/2013, s. 35)

Power to require licensee to remove directors and other persons

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

(a) remove that person and, if it considers it appropriate, to replace him with another person acceptable to the Commission; or

(b) ensure that the person ceases to undertake certain specified functions in relation to the licensee.

(2) This section applies to—

(a) a director of a licensee;

(b) a senior officer of a licensee;

- (c) the compliance officer of a licensee; or
 - (d) a person undertaking any function that may be prescribed for the purpose of this paragraph.
- (3) A notice issued under subsection (1)—
- (a) shall state whether the specified requirements have immediate effect or the time period within which they must be complied with; and
 - (b) may include directions consequential upon, or ancillary to, the requirements specified in the notice.

(Act 4/2013, s. 35)

PART 7

DISCIPLINARY ACTION

Interpretation for this Part

44. (1) For the purposes of this Part—

“disciplinary violation” means—

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

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

- (2) For the purposes of determining whether a disciplinary violation has been committed—
- (a) a fee or charge payable under this Act or any financial services enactment is deemed not to have been paid until it has been paid in full; and
 - (b) where the Commission extends the time for submitting any document to the Commission, or notifying the Commission of any matter, the last day of the final extension given by the Commission shall be regarded as the last date for the submission of the document or the making of the notification.
- (3) The imposition of an administrative penalty becomes final on the earliest of—
- (a) the payment by the licensee of the penalty;
 - (b) the date when, in accordance with section 49, the licensee is considered to have committed the disciplinary violation;

- (c) the date when the time for any appeal has expired and no appeal has been filed; or
- (d) the dismissal of any appeal of the licensee, provided that the time for any further appeal has expired.

(Act 4/2013, s. 36)

Commission may take disciplinary action

45. (1) The Commission may take disciplinary action against a licensee under this Part where it is satisfied that the licensee has committed a disciplinary violation.

(Act 4/2013, s. 37(a), (b))

(2) The Commission takes disciplinary action against a licensee by imposing an administrative penalty on that person.

(Act 4/2013, s. 37(c))

(3) The administrative penalty imposed on a licensee in respect of a disciplinary violation shall not exceed the sum prescribed in relation to the disciplinary violation.

(Act 4/2013, s. 37(b)(d)(i), (ii), (iii))

(4) The Commission shall not take disciplinary action against a licensee in respect of a disciplinary violation committed more than 2 years prior to the date upon which it sends a notice to the licensee under section 46 or 48.

(Act 4/2013, s. 37(e))

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

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

(Act 4/2013, s. 37(f))

Notice of intention to take disciplinary action

46. (1) Where it intends to take disciplinary action against a licensee, other than by imposing a late payment penalty on the licensee, the Commission shall send a notice of its intention to the licensee—

- (a) specifying—
 - (i) the alleged disciplinary violation and the relevant facts surrounding the violation, and
 - (ii) the amount of the penalty that it intends to impose; and

(Act 4/2013, s. 38(a))

- (b) advising the licensee of his right to make written representations to the Commission in accordance with subsection (2).

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

- (a) denying that he has committed the alleged disciplinary violation or disputing the facts of the alleged disciplinary violation; or
(Act 4/2013, s. 38(b))
- (b) providing reasons that he considers justify the imposition of a lower penalty.

Disciplinary action

47. (1) After the expiration of 28 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 violation in respect of which the notice is issued;
(Act 4/2013, s. 39(a), (b)(i))
- (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 administrative penalty imposed;
(Act 4/2013, s. 39(b)(ii))
- (d) a date, not less than 14 days after the date of the penalty notice, by which the administrative penalty shall be paid to the Commission; and
(Act 4/2013, s. 39(iii))
- (e) that if the licensee does not pay the administrative penalty or exercise his rights of appeal under section 60, on or before the date referred to in paragraph (d), the licensee will be considered to have committed the violation and be liable for the penalty set out in the notice.
(Act 4/2013, s. 39(iv))

(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) A licensee who receives a penalty notice under subsection (1) shall pay the penalty stated to the Commission, or appeal the imposition of the penalty under section 60, on or before the date specified in the notice.

(Act 4/2013, s. 39(b), (c))

Late payment penalties

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

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

(b) the amount of the penalty.

(2) A licensee who receives a penalty notice under subsection (1) shall pay the late payment penalty stated in the notice to the Commission, or appeal the imposition of the penalty under section 60, within 21 days of the date of the penalty notice.

Date licensee considered to commit disciplinary violation

49. (1) If a licensee pays an administrative penalty imposed on him under section 47 or 48 on or before the last date for payment of the penalty, the licensee is considered to have committed the violation and the disciplinary action is over.

(2) A licensee who neither pays an administrative penalty imposed on him under section 47 or 48 nor appeals the imposition of the administrative penalty, on or before the last date for payment of the penalty, is considered to have committed the disciplinary violation and is liable for the administrative penalty.

(Act 4/2013, s. 40)

PART 8

ADMINISTRATIVE PROVISIONS

Disclosure of interest

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

(Act 4/2013, s. 42(a))

(2) Subject to subsections (3), (4) and (5), a Board member who has declared an interest under subsection (1) shall withdraw from any meeting whilst the matter in respect of which he has declared an interest is being considered by the Board and shall not express any view or take part in any vote concerning the matter.

(Act 4/2013, s. 42(b))

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

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

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

(Act 4/2013, s. 42(c))

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

- (a) any declaration of interest that he may receive under subsection (1); and
- (b) any decision he has made under subsection (3).
(Act 4/2013, s. 42(d))

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

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

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

Immunity

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

(Act 4/2013, s. 43(a))

(2) Subsection (1) applies to—

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

(Act 4/2013, s. 43(b))

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

(4) No civil, criminal or disciplinary proceedings may be taken against a person by reason solely of the fact that he has provided information or produced documents to the Commission pursuant to a notice issued by the Commission under section 21(1).

Exemption from work permit requirement

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

Unpaid fees, charges and penalties

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

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

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

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

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

(Act 4/2013, s. 44)

PART 9**GENERAL****Advertising**

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

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

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

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

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

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

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

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

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

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

(3) This section applies to an agreement—

- (a) made after this section comes into force; and
- (b) the making or performance of which constitutes, or is part of, the unlicensed financial services business being carried on.

(Act 4/2013, s. 45)

Unenforceable agreements

56. (1) Where an agreement is unenforceable by reason of section 55, the amount of compensation recoverable as a result of that section is—

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

(2) Notwithstanding section 55, if the Court is satisfied that it is just and equitable in the circumstances of the case, it may allow—

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

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

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

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

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

(5) If property transferred under the agreement has passed to a third party, a reference in section 55 or this section to that property is to be read as a reference to its value at the time of its transfer under the agreement.

(6) The commission of an offence under this Act or any financial services enactment does not make the agreement concerned illegal or invalid to any greater extent than is provided by section 55.

(Act 4/2013, s. 45)

Regulations

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

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

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

(a) in relation to an investigation under section 39—

(i) the notice to be given to a person to be investigated,

(ii) the conduct of an investigation,

(iii) the powers of an investigator appointed under that section, and

(iv) the payment of remuneration to the investigator;

(b) in relation to disciplinary action under Part 6—

(i) the procedures to be adopted by the Commission when taking disciplinary action against a licensee,

(ii) penalties for late payment in an amount not exceeding 100% of the amount payable,

(iii) administrative penalties not exceeding \$100,000 in respect of any single disciplinary violation, and

(iv) the determination of, or the method for determining, the amount of the administrative penalty that may be imposed for a disciplinary violation;

(c) exemptions referred to in section 58(1);

(d) matters that shall be, or may be, provided for in the Regulatory Codes.

(Act 4/2013, s. 46)

Exemptions

58. (1) Unless otherwise provided by this Act or a financial services enactment, regulations made under section 57 may—

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

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

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

(3) An exemption or modification under subsection (2) may be given subject to such conditions as the Commission considers appropriate, and section 42 applies to such conditions as if they were conditions attached to a licence.

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

(Act 4/2013, s. 47)

Commission may issue Regulatory Codes

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

(Act 4/2013, s. 48)

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

- (a) policies, systems and controls, including internal controls, to be maintained by licensees;
- (b) policies and procedures to be maintained by licensees with respect to the assessment and management of risk;
- (c) principles and rules of corporate governance to be adhered to by licenses;
- (d) the duties and responsibilities of the directors and senior managers of a licensee;
- (e) prudential requirements applicable to licensees;

- (f) business conduct rules to be followed by licensees;
 - (g) the preparation of, and requirements relating to, business plans;
 - (h) measures for the detection and prevention of financial crime; and
 - (i) such other matters as may be required or permitted by this Act or any financial services enactment or by regulations made under section 57.
(Act 4/2013, s. 48)
- (3) A Regulatory Code may—
- (a) make different provision in relation to persons, cases or circumstances of different descriptions; and
 - (b) include such transitional provisions as the Commission considers necessary or expedient.
(Act 4/2013, s. 48)
- (4) The Commission may amend, add to or replace a Regulatory Code by notice published in the *Gazette*.
- (5) Before publishing a notice under subsection (3), the Commission shall—
- (a) ensure that a draft of the proposed amendment, addition to or replacement of the Code is sent to, or can reasonably be expected to come to the notice of, every licensee affected by the notice specifying the period within which written representations are to be provided to the Commission; and
 - (b) consider such written representations as it may receive.
- (6) The Commission complies with its obligations under subsection (4)(a) in respect of a licensee by sending a copy of the notice to any professional or trade association in Anguilla of which the licensee is a member.
- (7) The failure of the Commission to comply with its obligations under subsection (4) shall not invalidate the amendment of, the addition to or the replacement of the Code, whether in respect of a licensee that did not receive the required notice or generally.
- (8) Without limiting subsection (1)—
- (a) a Regulatory Code may provide for penalties not exceeding \$5,000 for the breach of a provision of the Code; and
 - (b) the Governor may make regulations prescribing matters that shall be, or may be, provided for in the Regulatory Codes.

Appeals

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

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

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

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

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

(Act 4/2013, s. 49)

Guidelines

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

- (a) compliance by licensees with this Act, the financial services enactments and the Regulatory Codes;
- (b) any matter required or permitted to be specified or provided for in a Regulatory Code; and
- (c) such matters as it considers relevant to its functions.

(Act 4/2013, s. 50)

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

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

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

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

Approved forms

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

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

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

- (b) have attached to it such documents as may be specified in the approved form.
(Act 4/2013, s. 51)

Offence provisions

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

Punishment of offences

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

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

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

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

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

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

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

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

PART 10
MISCELLANEOUS

Transitional provisions

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

Citation

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

SCHEDULE 1

(Section 2)

ADMINISTRATION OF COMMISSION

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

SCHEDULE 2

(Section 5)

PROCEEDINGS OF BOARD

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

SCHEDULE 3

(Section 21)

MEANING OF CONNECTED PERSON

1. In relation to a company, “connected person” means any one or more of the following—
 - (a) a promoter of the company;
 - (b) a director or member of the company or of a related company;
 - (c) a beneficiary under a trust of which the company is or has been a trustee;
 - (d) a related company;
 - (e) another company one of whose directors is also a director of the company;
 - (f) a nominee, relative, spouse or relative of a spouse of a person referred to in paragraphs (a) to (c);
 - (g) a person in partnership with a person referred to in paragraphs (a) to (c);
 - (h) a trustee of a trust having as a beneficiary a person who is, apart from this section, a connected person.

2. A company is related to another company if—
 - (a) it is a subsidiary or holding company of that other company;
 - (b) the same person has control of both companies; and
 - (c) the company and that other company are both subsidiaries of the same holding company.

3. In relation to an individual, “connected person” means any one or more of the following—
 - (a) a relative, spouse or relative of a spouse of the individual;
 - (b) a person in partnership with the individual;
 - (c) a relative or spouse of a person in partnership with the individual;
 - (d) a company in respect of which he is a connected person under section 1;
 - (e) a trustee of a trust having as a beneficiary a person who is, apart from this section, a connected person.

4. In relation to an individual, “relative” means any person who can be expected to influence or be influenced by that individual and includes—
 - (a) a spouse, domestic partner or child of the individual;

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

(Act 3/2008, s. 8)

SCHEDULE 4

(Section 64)

OFFENCES UNDER THIS ACT

COLUMN 1 Section of Act creating offence	COLUMN 2 General nature of offence	COLUMN 3 Penalty (corporate body)	COLUMN 4 Penalty (individual)	COLUMN 5 Daily default fine
27	Board member, Commission employee or other person acting under the authority of the Commission disclosing protected information to any other person. Triable either way	\$50,000	\$10,000, imprisonment for 12 months or both	
32(1)	Person failing to comply with a notice issued under section 21(1) Triable either way	\$25,000	\$25,000, imprisonment for 12 months or both	\$250
32(2)	Person in purported compliance with a notice issued by the Commission under section 21(1)(a) providing information which he knows to be false or misleading in a material respect Triable either way	\$25,000	\$25,000, imprisonment for 12 months or both	

COLUMN 1 Section of Act creating offence	COLUMN 2 General nature of offence	COLUMN 3 Penalty (corporate body)	COLUMN 4 Penalty (individual)	COLUMN 5 Daily default fine
32(2)	<p>Person in purported compliance with a notice issued by the Commission under section 21(1) be recklessly providing information which is false or misleading in a material respect.</p> <p>Triable either way</p>	\$25,000	\$25,000, imprisonment for 12 months or both	
32(3)	<p>Person, for the purpose of obstructing or frustrating compliance with a notice issued by the Commission under section 21(1), destroying, mutilating, defacing, hiding or removing a document.</p> <p>Triable either way</p>	\$25,000	\$25,000, imprisonment for 12 months or both	
39(6)	<p>Person hindering or obstructing, or failing to provide all assistance reasonably required to, an investigator appointed under section 39</p> <p>Triable either way</p>	\$25,000	\$25,000, imprisonment for 12 months or both	\$250
40(6)	<p>Person failing to comply with a notice issued under section 40(2)</p> <p>Triable either way</p>	\$25,000	\$25,000, imprisonment for 12 months or both	\$250

COLUMN 1 Section of Act creating offence	COLUMN 2 General nature of offence	COLUMN 3 Penalty (corporate body)	COLUMN 4 Penalty (individual)	COLUMN 5 Daily default fine
40(7)	Person hindering or obstructing, or failing to provide all assistance reasonably required to, a skilled person appointed under section 40 Triable either way	\$25,000	\$25,000, imprisonment for 12 months or both	\$250
50(7)	Board member failing to make a declaration of interest or making a false or misleading statement in a declaration of interest		\$10,000	
54(3)	Licensee issuing or causing or permitting to be issued an advertisement, statement, brochure or other similar document intending it to mislead or knowing that it contains an incorrect statement of fact.	\$10,000	\$10,000	
54(4)	Licensee issuing or causing or permitting to be issued an advertisement, statement, brochure or other similar document contrary to a direction or authorisation of the Commission.	\$10,000	\$10,000	

COLUMN 1 Section of Act creating offence	COLUMN 2 General nature of offence	COLUMN 3 Penalty (corporate body)	COLUMN 4 Penalty (individual)	COLUMN 5 Daily default fine
63	Person providing information, making a representation or submitting a return that he knows to be false or materially misleading or does not believe to be true.	\$25,000	\$25,000, imprisonment for 12 months or both	

(Act 4/2013, s. 52)

SCHEDULE 5

(Section 52)

TRANSITIONAL PROVISIONS**Officers and employees**

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

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

Contracts

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

Registry Guidelines

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

Validation of acts and things done under the Act

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

(Act 6/2009, s. 4)
