

- (b) contravened any provision made by or under an enactment designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice
- (c) engaged in any business practices appearing to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on that person's method of conducting business;
- (d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment.

**PART II**  
**CONTINUATION, CAPITAL AND ADMINISTRATION OF COMMISSION**

**4. Continuation of Commission**

(1) The Commission established under section 316 of the former Act as the Financial Services Regulatory Commission is preserved and continues to be a body corporate for the purposes of this Act so that its corporate identity and, subject to the provisions of this Act, its rights and obligations are not affected by the repeal of provision of that Act.

(2) The Commission—

- (a) under its corporate name has perpetual succession and a common seal;
- (b) is capable of suing and being sued in its corporate name; and
- (c) has the functions and powers conferred or assigned by this Act.

(3) For the purpose of carrying out its functions under this Act the Commission may buy, sell, hold, deal and otherwise acquire and dispose of land and other property of whatsoever nature and may enter into contracts whether of agency or otherwise.

(4) All deeds, documents and other instruments requiring the seal of the Commission shall be sealed with the common seal of the Commission by the authority of the Board in the presence of the Chairman or Chief Executive Officer and of one other director of the Commission.

(5) The Commission shall establish and maintain its head office and principal place of business within Antigua and Barbuda, and shall cause details thereof to be gazetted, and service of all documents on the Commission shall be deemed to be effective if delivered at the head office.



**THE FINANCIAL SERVICES REGULATORY COMMISSION ACT, 2013**

**No. 5 of 2013**

*[ Published in the Official Gazette Vol. XXXIII No. 41  
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by Ralph George, Government Printer  
— By Authority, 2013.

“regulatory handbook” means the handbook issued by the Board under section 30; and

“regulatory law” means any one or more of the—

- (a) The Co-operative Societies Act, 2010;
- (b) The Insurance Act, 2007;
- (c) The Money Services Business Act, 2007;
- (d) The Corporate Management and Trust Service Providers Act, 2008;
- (e) The International Trust Act, 2007;
- (f) The International Foundations Act, 2007;
- (g) The International Limited Liability Companies Act, 2007,

and any other laws that may be prescribed by the Minister by regulations made under this Act.

### **3. Determination of fitness and propriety**

(1) In determining for the purposes of this Act whether a person is a fit and proper person, regard shall be had to all circumstances, including that person’s—

- (a) honesty integrity and good reputation;
- (b) competence and capability;
- (c) financial soundness;
- (d) probity, and soundness of judgment for fulfilling the responsibilities of that position; and
- (e) the diligence with which that person is fulfilling or likely to fulfill the responsibilities of that position;

(2) Without prejudice to the generality of section (1) regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that the person has

- (a) committed an offence involving fraud or other dishonesty or violence;

“Commission” means the Financial Services Regulatory Commission established under section 316 of the former Act;

“Board” means the Board of directors established under section 8;

“civil and administrative investigations and proceedings” mean proceedings in any court of law in the jurisdiction of an overseas regulatory authority and investigations undertaken by the overseas regulatory authority preliminary to bringing such proceedings;

“Chief Executive Officer” means the Chief Executive Officer of the Commission;

“collaborative functions” means the functions of the Commission specified in section 5(1)(b);

“director” means a director of the Commission appointed under section 9 and includes the Chairman and the Deputy Chairman of the Board;

“financial services business” means business regulated under any regulatory law;

“former Act” means the International Business Corporations Act, Cap 222;

“licensee” means a person holding a licence under any of the regulatory laws;

“domestic bank” means any bank or branch thereof licensed under the Banking Act 2005 to transact business as such in Antigua and Barbuda;

“overseas regulatory authority” means an authority which, in a country or territory outside Antigua and Barbuda, exercises functions corresponding to—

(a) any of the regulatory functions of the Commission; or

(b) any additional functions as may be specified in regulations including the conduct of civil and administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority;

“public body” includes a statutory Board and a company wholly owned by the government;

“public officer” has the meaning assigned to it by section 127(1) of the Constitution;

“regulatory functions” means the functions of the Commission specified in section 5(1)(a) or, in relation to an overseas regulatory authority, functions corresponding to the functions of the Commission specified in section 5(1)(a);

## **THE FINANCIAL SERVICES REGULATORY COMMISSION ACT, 2013**

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#### **SECTIONS**

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1. Short title.
2. Interpretation
3. Determination of fitness and propriety

#### **PART II**

#### **CONTINUATION, CAPITAL AND ADMINISTRATION OF COMMISSION**

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5. Principal functions of Commission
6. Calculated surplus
7. Allocation of surplus
8. Board of directors
9. Appointment of directors
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Non-continuing employees

[L.S.]



I Assent,

**Louise Lake-Tack,**  
*Governor-General.*

19th July, 2013.

**ANTIGUA AND BARBUDA**

**THE FINANCIAL SERVICES REGULATORY COMMISSION ACT, 2013**

**No. 5 of 2013**

**AN ACT** to repeal parts of the International Business Corporations Act, Cap 222, to provide for the Financial Services Regulatory Commission to be preserved and to continue in existence, and for incidental and connected purposes.

**ENACTED** by the Parliament of Antigua and Barbuda as follows:

**PART I  
INTRODUCTORY**

**1. Short title and commencement**

- (1) This Act may be cited as the Financial Services Regulatory Commission Act, 2013.
- (2) This Act shall come into force on such day or days as the Minister may appoint by Notice in the *Gazette*.
- (3) A Notice under subsection (2) may appoint different days for different provisions or for different purposes of the same provision.

**2. Interpretation**

In this Act—

(4) A breach of the statements of principle or guidelines issued under subsection (1) shall not constitute a criminal offence, or of itself give rise to any right of action by persons affected, or affect the validity of any transaction.

(5) Statements of principle and guidelines made under subsection (1) may provide for the imposition by the Commission of penalties for breach of such rules, but—

- (a) no penalty shall exceed \$3,000; and
- (b) the rules shall establish the procedure and policy for imposing the penalty.

#### 19. Commission may request information

(1) The Commission may at all reasonable times, by notice in writing given—

- (a) to a person regulated under the regulatory laws;
- (b) to a connected person; or
- (c) to a person reasonably believed to have information relevant to an inquiry by the Commission require him—
  - (i) to provide specified information or information of a specified description; or
  - (ii) to produce specified documents or documents of a specified description,

as it may reasonably require in connection with the exercise by the Commission of its regulatory functions.

(2) Where, in accordance with section 31, the Commission is satisfied that assistance should be provided in response to a request by an overseas regulatory authority it may in writing direct—

- (a) a person regulated under the regulatory laws;
- (b) a connected person;
- (c) a person that is engaging in an activity that is subject to regulation under the regulatory laws; or
- (d) a person reasonably believed to have information relevant to enquiries to which the request relates, within a stated time, to—

(6) The Commission may, by resolution of the Board, appoint an officer of the Commission either generally or in a particular case to execute or sign on behalf of the Commission any agreement or other instrument not under seal in relation to any matter coming within the powers of the Commission.

#### 5. Principal functions of Commission

(1) The principal functions of the Commission are—

- (a) regulatory functions, namely—
  - (i) to regulate and supervise financial services business carried on in or from within Antigua and Barbuda in accordance with this Act and the regulatory laws; and
  - (ii) to perform any other regulatory or supervisory duties that may be imposed on the Commission by any other Act;
- (b) collaborative functions, namely, to provide assistance to overseas regulatory authorities in accordance with this Act; and
- (c) advisory functions, namely, to advise the Government on the matters set out in paragraphs (a) and (b) and, in particular, with regard to—
  - (i) whether the regulatory functions and the collaborative functions are consistent with functions discharged by an overseas regulatory authority;
  - (ii) whether the regulatory laws are consistent with the laws and regulations of countries and territories outside Antigua and Barbuda; and
  - (iii) the recommendations of international organisations.

(2) In performing its functions and managing its affairs, the Commission shall—

- (a) have regard to the requirements of a sound financial system in Antigua and Barbuda;
- (b) have regard to the maintenance of market confidence, consumer protection and the reputation of Antigua and Barbuda as a financial centre;
- (c) use its resources prudently for its efficient and economic operation;
- (d) have regard to generally accepted principles of good corporate governance;
- (e) comply with this and any other Act, including any regulations or directions made or given thereunder; and

- (f) have such ancillary powers as may be required to fulfil the functions set out in paragraphs (a) to (e).

(3) In performing its regulatory functions and its collaborative functions, the Commission shall, in addition to complying with the requirements of subsection (2)—

- (a) co-operate with domestic and international government agencies and statutory organisations with a view to reducing the possibility of financial services business or relevant financial business being used for the purpose of money laundering or other crime;
- (b) recognise the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
- (c) recognise the desirability of facilitating innovation in financial services business; and
- (d) recognise the need for transparency and fairness on the part of the Commission.

#### **6. Calculated surplus**

(1) The net surplus of the Commission for any financial year shall include, but shall not be limited to, the income from the investments of the Commission, fees charged for its services, and the surplus from the sales of investments belonging to the Commission; and shall be determined by the Commission after meeting or providing for all expenditure for that year and making such provisions for contingencies and the establishment of such additional reserves as it may consider desirable.

(2) Administrative penalties imposed by the Commission shall be paid direct to the Consolidated Fund and not included when calculating the surplus.

#### **7. Allocation of surplus**

(1) The net surplus of the Commission for each financial year shall be calculated in accordance with section 6 and 10% of any net surplus shall be transferred to the Consolidated Fund unless otherwise agreed by the Minister.

(2) Where the total assets of the Commission are less than the total liabilities of the Commission such deficiency shall be a first charge on the Commission's net surplus.

#### **8. Board of directors**

(1) There shall be a Board of directors of the Commission which, subject to this Act, shall be responsible for the policy and general administration of the affairs and business of the Commission.

(2) Nothing in section 14 precludes any director, committee member or management employee from taking part in the consideration or discussion of, or voting on, any question whether an application should be made to the Minister for the exercise of the powers conferred by subsection (1).

(3) Section 14 shall not apply to an interest in a contract, proposed contract, licence or other matter which a director, committee member or employee has as a member of the public or to an interest in any matter relating to the terms on which the right to participate in any service is offered to the public.

(4) Where a director, committee member or management employee has an indirect pecuniary interest in a contract, proposed contract, licence or other matter by reason only of a beneficial interest in securities of a company or other body, and the nominal value of those securities does not exceed \$3,000 or one-thousandth of the total nominal value of the issued share capital of the company or other body, whichever is the less, and, if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-thousandth of the total issued share capital of that class, section 14 shall not prohibit him from taking part in the consideration or discussion of the contract, proposed contract, licence or other matter or from voting on any question with respect to it, without prejudice, however, to his duty to disclose his interest.

#### **17. Power to employ staff, etc.**

(1) The Commission may employ, at such remuneration and on such terms and conditions as may be approved from time to time by the Board, such persons as the Board considers necessary for the performance of the functions of the Commission.

(2) On the request of the Commission the Minister may, subject to such conditions as he may impose, and after consultation with the Commission, approve of the appointment of any public officer in the service of Government by way of secondment to any office with the Commission, and any public officer so appointed shall, in relation to pension, gratuity or other allowance and to other rights and obligations as a public officer, be treated as continuing in the service of Government.

#### **18. Commission may issue rules, etc.**

(1) After such consultation with the private sector as the Commission may consider appropriate the Commission may issue or amend statements of principle or guidelines concerning the conduct of licensees and their officers and employees.

(2) Statements of principle or guidelines issued under subsection (1) shall be consistent with this Act and the regulatory laws and with any regulations or directions made or given thereunder.

(3) The Commission shall, without delay, publish in the Gazette notice of the issue or amendment of statements of principle or guidelines under subsection (1).

- (b) he shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 2 years, or to both,

unless he proves that he did not know that the contract, proposed contract, licence or other matter in which he had a pecuniary interest was the subject of consideration at that meeting.

- (3) A disclosure under subsection (1) shall be recorded in the minutes of the Board or committee.

(4) No act or proceeding of the Board or committee, shall be questioned on the ground that a director of the Board or a member of the committee or an employee of the Commission has contravened this section.

#### **15. Pecuniary interests for the purposes of section 14**

(1) For the purposes of section 14, a director, a member of a committee appointed under section 13, or a management employee of the Commission shall be treated, subject to subsections (2) and (3) and to section 16, as having indirectly a pecuniary interest in a contract, proposed contract, licence or other matter if—

- (a) he, or any nominee of his, is a shareholder of a company or other body with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the licence or other matter under consideration;
- (b) he is a partner, or is in the employment of a person with whom the contract was made or is proposed to be made, or who has a direct pecuniary interest in the licence or other matter under consideration; or
- (c) he or any partner of his is a professional adviser to a person who has a direct or indirect pecuniary interest in a contract, proposed contract, licence or other matter.

(2) Subsection (1) shall not apply to membership of or employment under any public body.

(3) In the case of married persons, the interest of one spouse shall be deemed for the purpose of this section to be also the interest of the other unless the spouse had no knowledge of the interest of the other spouse and derived no benefit from such interest.

#### **16. Removal or exclusion of disability, etc.**

(1) The Minister may, in the public interest and subject to such conditions as he may think fit, appoint persons to act as directors for any specified period, in any case in which the number of directors disabled by section 14 at any one time would be so great a proportion of the whole as to impede the transaction of business.

(2) The Board shall consist of not less than seven nor more than nine directors including a Chairman and Deputy Chairman. Each of the directors shall hold qualifications in business administration, accounting, banking, finance, law and/or experience in business management.

(3) The directors mentioned in subsection (2) shall be appointed in accordance with section 9, each of whom shall be a fit and proper person and shall have demonstrated to the satisfaction of the Minister substantial knowledge and experience relevant to at least some of the functions of the Commission.

#### **9. Appointment of directors**

(1) The directors referred to in section 8(2) shall be appointed by the Minister with the approval of Cabinet.

(2) The directors so appointed—

- (a) shall not act as delegates on the Board from any commercial, financial, agricultural, industrial or other interests with which they may be connected;
- (b) shall hold office for a term of three years and shall be eligible for re-appointment; and
- (c) may be paid by the Commission out of the funds of the Commission such remuneration and allowances as may be determined by Cabinet.

(3) If any director appointed under subsection (1) dies, resigns or otherwise vacates his office before the expiry of the term for which he has been appointed, another person may be appointed by the Minister for the unexpired period of the term of office of the director in whose place he is appointed.

#### **10. Appointment of Chief Executive Officer**

(1) The Board, after consultation with the Minister, shall appoint a fit and proper person to be the Chief Executive Officer.

(2) The Chief Executive Officer shall be an employee of the Commission on such terms and conditions of service as the Board may decide.

(3) The Chief Executive Officer shall be entrusted with the day to day administration of the Commission to the extent of the authority delegated to him by the Board.

(4) The Chief Executive Officer shall render his services exclusively to the Commission and shall be answerable to the Board for his acts and decisions.

### **11. Termination of appointments**

(1) No person may be appointed as or remain a director of the Commission who is a member of the Legislature.

(2) A director who resigns his office shall cease to hold office immediately.

(3) The appointment of the Chief Executive Officer or of any director who—

- (a) becomes of unsound mind or incapable of carrying out his duties;
- (b) becomes bankrupt, suspends payment to or compounds with his creditors;
- (c) is convicted in Antigua and Barbuda or in any other jurisdiction of an offence involving dishonesty, fraud, violence or any indictable offence;
- (d) in the case of a director, is absent, without leave of the chairman of the Board or, in the case of the chairman of the Board, without leave of the Minister, from three consecutive meetings of the Board;
- (e) fails to comply with his obligations under section 14,
- (f) has been a director or manager of a company which has been wound-up by a court or has been placed in receivership; or
- (g) is not a fit and proper person in accordance with the criteria specified in section 3 shall be terminated.

(4) The Minister shall terminate the appointment of any director who is guilty of serious misconduct in relation to his duties.

(5) The Minister may, in the public interest, terminate the appointment of any director.

### **12. Meetings and decisions of Board**

(1) The chairman of the Board shall summon regular meetings of the Board as often as may be required, but not less frequently than monthly, and shall summon extraordinary meetings when required to do so in accordance with rules made under section 29.

(2) At a meeting of the Board, the Chairman of the Board or, if he is not present, the Deputy Chairman or, if he is not present, a director chosen by the directors present, shall act as the chairman of the meeting.

(3) At every meeting of the Board, a quorum shall consist of a majority of the directors appointed, and decisions shall be adopted by a simple majority of the votes of the directors present and voting except that, in the case of an equality of votes, the chairman of the meeting shall, in addition, have a casting vote.

(4) The validity of the proceedings of the Board shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

(5) The Board shall have power to delegate from time to time any of its duties and powers (other than a licensing or supervisory power or duty), to a committee appointed by the Board under section 13, and may impose limits on the extent of such delegation.

(6) A delegation under subsection (5) is revocable at will and shall not prevent the exercise by the Board of any duties or powers so delegated.

(7) For the purposes of this Act, a director shall be deemed to be present at a meeting of the Board if he gains access to the meeting by conference telephone or by some other conference facility.

### **13. Committees**

(1) The Board may appoint committees to assist the Board in exercising the Board's management functions under this Act, and shall appoint such persons as it sees fit to be members of the committees.

(2) The Board may, by instrument in writing, delegate to a committee appointed by the Board under subsection (1), such powers and duties (other than licensing or supervisory powers or duties) as the Board sees fit; and the committee shall exercise and carry out the powers and duties so delegated by the Board.

### **14. Pecuniary interest of director, committee member or management employee**

(1) If a director, a member of a committee appointed under section 13, or a management employee so designated by the Board of the Commission has any pecuniary interest, direct or indirect, in any contract, proposed contract, licence or other matter and is present at a meeting of the Board or committee, at which the contract, proposed contract, licence or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after its commencement, disclose the fact and shall not take part in the consideration or discussion of the contract, proposed contract, licence or other matter or vote on any question with respect to it, and shall be excluded from the meeting for the duration of the consideration, discussion and voting procedure.

(2) If any person fails to comply with the provisions of subsection (1)—

- (a) he shall be disqualified from holding office as a director, or, if a management employee, shall be discharged from the service of the Commission; and



(3) The regulatory handbook shall include policies and procedures for—

- (a) giving warning notices to persons affected adversely by proposed actions of authorized officers of the Commission;
- (b) giving reasons for the decisions of authorized officers of the Commission and
- (c) receiving and dealing with complaints against the actions and decisions of authorized officers of the Commission.

(4) In cases where the regulatory handbook would have the effect of creating, directly or indirectly, statements of principle or guidelines concerning the conduct of licensees or their officers or employees, the Commission shall consult with the private sector associations.

(5) The regulatory handbook may provide for exceptions from its own requirements to be made by the Board or a specified committee or officer of the Commission.

(6) The Commission shall publish the regulatory handbook and any amendments to it, and the regulatory handbook and any such amendments shall take effect and come into operation on the date of such publication.

(7) The committees and officers of the Commission shall observe the policies and procedures contained in the regulatory handbook.

(8) The Commission shall keep the regulatory handbook under continuous review and may consult with the private sector associations on the extent to which the regulatory handbook could be made more consistent with section 5 and with statements of principle and guidelines made under section 18.

### 31. Confidentiality and Disclosure

(1) Subject to subsections (2) and (3), a person who is a director, officer, employee, agent, adviser or external consultant of the Commission and who discloses any information—

- (a) relating to the affairs of the Commission;
- (b) relating to any application made to the Commission or the Government under the regulatory laws;
- (c) relating to the affairs of a licensee;
- (d) relating to the affairs of a customer, member, client or policyholder of, or a company or mutual fund managed by, a licensee; or

- (i) provide the Commission with specified information or information of a specified description with respect to any matter relevant to the inquiries to which the request relates;
- (ii) produce specified documents or documents of a specified description relevant to those inquiries; or
- (iii) give to the Commission such assistance in connection with those inquiries as the Commission may specify in writing.

(3) Where a person fails to comply with a requirement under subsection (1) or a direction given under subsection (2) within three days from the date of the requirement or direction or such longer period as the Commission may permit, the Commission may apply to the court for an order requiring the person to comply with the requirement or direction.

(4) Where, in connection with a requirement under subsection (1) or a direction given under subsection (2), the Commission considers it necessary to examine a person on oath, the Commission may apply by way of fixed date claim to the High Court to have that person examined before the court.

(5) Where documents are produced pursuant to subsection (1) or (2), the Commission may take copies of them or extracts from them.

(6) A person shall not be required under this section to disclose information or to produce a document which he would be entitled to refuse to disclose or to produce on the grounds of legal professional privilege in court proceedings except that an attorney-at-law may be required to provide the name and address of his client or principal.

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

(8) (a) In this section—

“document” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of it in legible and intelligible form.

(b) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him—

- (i) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;

(ii) by, or by a representative of, a person seeking legal advice from the adviser; or

(iii) by any person—

(A) in contemplation of, or in connection with, legal proceedings; and

(B) for the purpose of those proceedings.

(c) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

(d) For the purposes of subsections (1) and (2), a person is connected with a person regulated under the regulatory laws (“A”) if he is or has at any relevant time been—

(i) a member of A’s group;

(ii) a controller of A;

(iii) any other member of a partnership of which A is a member; or

(iv) a member, officer, manager, employee or agent of A.

(9) A person who, without reasonable cause—

(a) fails to comply with a requirement of the Commission under subsection (1) or a direction of the Commission under subsection (2);

(b) with intent to avoid the provisions of subsection (2) or (3) destroys, mutilates, defaces, hides or removes a document; or

(c) wilfully obstructs an inquiry by the Commission, made in accordance with subsection (1) or (2),

is guilty of an offence and liable on summary conviction to a fine of \$30,000 and on conviction on indictment to a fine of \$300,000, and if the offence of which he is convicted is continued after conviction he commits a further offence and is liable to a fine of \$30,000 for every day on which the offence is so continued.

(10) (a) Where an offence under this section, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to

(b) whose disclosure, in the Minister’s opinion, would be incompatible with the public interest or an international obligation of Antigua and Barbuda.

(7) Expenses reasonably incurred in conducting a review or inquiry shall be paid out of the Consolidated Fund.

## PART IV GENERAL

### 26. Immunity

Neither the Commission, nor any director or employee of the Commission, shall be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions under this Act and the regulatory laws unless it is shown that the act or omission was in bad faith.

### 27. Indemnity

The Commission shall indemnify a director against all claims, damages, costs, charges or expenses incurred by that director in the discharge or purported discharge of his functions or duties under this Act and the regulatory laws, except claims, damages, costs, charges or expenses caused by the bad faith of that director.

### 28. Regulations

The Minister may make regulations providing for such matters as may be contemplated by, or necessary for giving full effect to, this Act and for its administration including the charging of fees for any administrative service provided by the Commission to a licensee or to members of the public upon request.

### 29. Rules

(1) The Commission may, subject to this Act, make such rules as it thinks fit to regulate its own internal management.

(2) A copy of rules made under subsection (1) shall be forwarded to the Minister.

### 30. Regulatory handbook

(1) The Board may issue, and shall from time to time amend, a regulatory handbook setting out, as far as is practicable, the policies and procedures to be followed by the Commission, its committees and its officers in performing the Commission’s regulatory functions and collaborative functions.

(2) The regulatory handbook shall be consistent with any act or any regulations or policy directions given or made thereunder.

- (b) enquire into any action or inaction of the Commission which appears to raise questions of importance to the public interest,

and such appointment may include directions concerning the scope and conduct of the review or inquiry and the making of interim reports.

(2) The person appointed under subsection (1) (“the appointed person”) may, subject to any directions given in his appointment—

- (a) obtain such information from such persons and in such manner as he thinks fit;
- (b) review or enquire into such matters as he thinks fit; and
- (c) determine the procedure to be followed in connection with the review or the inquiry.

(3) The appointed person may require any person who, in his opinion, is able to provide any information or produce any document which is relevant to the review or inquiry to provide any such information or produce any such document, and for this purpose the appointed person shall have the same powers as the Grand Court in respect of the attendance and examination of witnesses (including the examination of witnesses abroad) and in respect of the production of documents.

(4) Where a person fails to comply with a requirement imposed on him under subsection (3), the appointed person may refer the matter to the Court which may enquire into the matter and, if satisfied after hearing—

- (a) any witness who may be produced against or on behalf of the person who fails to comply; and
- (b) any statement made by or on behalf of such person,

that such person would have been in contempt of court if the review or inquiry had been proceedings before the court, such person may be dealt with by the court in the same manner as if he were in contempt of court.

(5) The appointed person shall, upon the completion of the review or inquiry, make a written report to the Minister setting out the result of the review or inquiry and making such recommendations (if any) as he considers appropriate.

(6) The report under subsection (5) shall be laid before the Legislature, subject to the removal of any material—

- (a) which the Minister considers to relate to the affairs of a particular person whose interests would be seriously and unfairly prejudiced by the publication; or

any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and liable to be proceeded against and punished accordingly.

- (b) Where the affairs of a body corporate are managed by its members, paragraph (a) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(11) Where a person complies with a requirement under subsection (1), a direction under subsection (2) or an order under subsection (3), or gives evidence under subsection (4), such compliance shall not be treated as a breach of any restriction upon disclosure of information by or under any act and shall not give rise to any civil liability.

## 20. Assistance in obtaining information

(1) Where, in accordance with section 31, the Commission is satisfied that assistance should be provided in response to a request by an overseas regulatory authority, and that such assistance cannot be provided satisfactorily by means of its powers in section 19(2), the Commission may—

- (a) authorise a competent person to exercise any of its collaborative functions; and
- (b) seek the assistance of the Commissioner of Police and or the office of the Director of the Office of National Money Laundering Control Policy (ONDPCP) in the exercise of those functions.

(2) No such assistance shall be sought or authority granted under subsection (1) except for the purpose of investigating—

- (a) the affairs, or any aspect of the affairs, of a person specified by the Commission; or
- (b) a subject matter specified by the Commission,

being a person who, or a subject matter which, is the subject of the inquiries being carried out by or on behalf of an overseas regulatory authority.

(3) No person shall be bound to comply with a requirement imposed by a person exercising powers by virtue of an authority granted under this section unless he has, if required, produced evidence of his authority.

(4) Where the Commission seeks assistance or grants an authority under subsection (1), the assistance or authority shall be provided or executed in such manner as the Commission may deter-

mine; and where the Commission grants such an authority to a person, he shall make a report to the Commission in such manner as the Commission may require on the exercise of that authority and the results of exercising it.

### 21. General powers

The Commission may—

- (a) open and maintain accounts with domestic banks;
- (b) open and maintain accounts with banks and other depositories outside Antigua and Barbuda and appoint correspondents or agents outside Antigua and Barbuda;
- (c) purchase and sell foreign currencies and purchase, sell, discount and rediscount bills of exchange and Treasury bills drawn in or on places outside Antigua and Barbuda;
- (d) purchase and sell securities of, or guaranteed by, such foreign governments as may be approved by the Board;
- (e) purchase and sell such other securities and investments as may be authorised by the Board;
- (f) subject to the Finance Administration Act 2006, borrow money, on such terms and conditions, as may be authorised by the Board; and
- (g) without prejudice to section 22, do anything which is calculated to facilitate, is incidental to or consequential upon the exercise of the powers of the Commission or the discharge of its duties under this Act.

### 22. Prohibited activities

Except as expressly authorised by this Act, the Commission may not—

- (a) engage in trade or otherwise have a direct interest in any commercial, agricultural, industrial or other undertaking except such interest as the Commission may acquire in the course of the satisfaction of debts due to it, so, however, that it shall be the duty of the Commission to dispose of any such interest so acquired at the earliest suitable opportunity;
- (b) purchase shares of any company including the shares of any banking company or public corporation;

- (c) make loans to any person; or
- (d) purchase, acquire or lease real property except so far as the Board considers necessary or expedient for the provision or future provision of business premises for the Commission or of any other requirement incidental to the performance of its functions under this Act.

## PART III ACCOUNTS AND STATEMENTS

### 23. Funds and resources of the Commission

The funds and resources of the Commission shall comprise—

- (a) such monies as may be appropriated by law for the purposes of the Commission;
- (b) monies paid and property provided to the Commission by way of grants, rent, interest and other income derived from the investment of the Commission's funds;
- (c) monies derived from the disposal of or dealing with real or personal property held by the Commission;
- (d) monies borrowed by the Commission in accordance with this Act; and
- (e) any property lawfully received or made available to the Commission.

### 24. Application of other enactments

(1) The Commission is a statutory body as defined in section 2 of the Finance and Audit Act (Cap 168) and in section 2 of the Finance Administration Act, 2006, and accordingly those Acts apply to—

- (a) the Commission's expenditure budget for each financial year; and
- (b) the preparation, maintenance, auditing and publication of the Commission's accounts.

### 25. Independent review of Commission's performance

(1) The Minister may, at any time, appoint an independent person to—

- (a) review the Commission's performance of any of its functions, including its observance of its general duties under section 5 and the regulatory handbook authorised under section 30; or

- (a) by the repeal of section 75(7); and
- (b) in section 87(1) by inserting after “this Act” the words “or the Financial Services Regulatory Commission Act 2013.

(6) The Insurance Act 2007 is amended in section 209(1) by deleting the words “Accountant General” and substituting the word “Commission”.

**42. Repeal**

Sections 316, 317, 360, 361, 373 and 374 of the International Business Corporations Act (Cap 222) are repealed.

**SCHEDULE**

Section 39 (3)

- Chief Executive Officer
- Supervisor of International Banks and Trusts
- Superintendent of Insurance
- Manager of International Business Corporations and Non-Bank Financial Institutions
- Director of Gaming
- Supervisor of Cooperatives
- Human Resources Manager
- Finance Manager
- Supervisor of Information Technology Dept.

Passed by the House of Representatives on the 21st June, 2013.

Passed by the Senate on the 5th July, 2013.

**D. Gisele Isaac-Arrindell,**  
*Speaker.*

**Hazlyn M. Francis,**  
*President.*

**Romana Small,**  
*Clerk to the House of Representatives.*

**Romana Small,**  
*Clerk to the Senate.*

- (e) shared by or with an overseas regulatory authority or any communication related thereto,

that he has acquired in the course of his duties or in the exercise of the Commission’s functions under this or any other act, is guilty of an offence and liable on summary conviction to a fine of \$30,000 and to imprisonment for one year, and on conviction on indictment to a fine of \$150,000 and to imprisonment for three years.

(2) Subsection (1) shall not apply to a disclosure—

- (a) lawfully required or permitted by any court of competent jurisdiction within Antigua and Barbuda;
- (b) for the purpose of assisting the Commission to exercise any functions conferred on them by this Act, by any other act or by regulations made thereunder;
- (c) in respect of the affairs of a licensee or of a customer, member, client or policyholder of, or a company or mutual fund managed by, a licensee, with the authority of the licensee, customer, member, client, policyholder, company or mutual fund, which consent has been voluntarily given;
- (d) if the information disclosed is or has been available to the public from any other source;
- (e) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of any licensee, or of any customer, member, client or policyholder of, or company or mutual fund managed by, a licensee to which the information relates to be ascertained;
- (f) lawfully made—
  - (i) to the Attorney General or a law enforcement agency in Antigua and Barbuda, with a view to the institution of, or for the purpose of, criminal proceedings;
  - (ii) to a person pursuant to the Money Laundering (Prevention) Act 1996; or
  - (iii) under subsection (3); or
- (g) for the purposes of any legal proceedings in connection with—
  - (i) the winding-up or dissolution of a licensee; or
  - (ii) the appointment or duties of a receiver of a licensee.

(3) Subject to subsection (8), where the Commission is satisfied that a request for assistance from an overseas regulatory authority should be granted, the Commission—

- (a) may disclose information necessary to enable the overseas regulatory authority to exercise regulatory functions, including the conduct of civil and administrative proceedings to enforce laws, regulations and rules administered by the overseas regulatory authority;
- (b) shall keep a record of all such requests and disclosures and an inventory of the information disclosed; and
- (c) may, either at the time of request or at any time thereafter, consent to the use of the information for the purpose of—
- (i) the conduct of civil and administrative enforcement proceedings;
  - (ii) assisting a self-regulatory organisation with surveillance or enforcement activities (insofar as the Commission is satisfied that the organisation is involved in the supervision of conduct that is the subject of the request); or
  - (iii) assisting a criminal investigation or prosecution of any charge applicable to the contravention of the provision specified in the request, where such charge pertains to a contravention of the laws and regulations administered by the requesting authority.

(4) In deciding whether or not to assist an overseas regulatory authority (whether by use of the Commission's powers under subsection (3), section 19, section 20, or otherwise), the Commission shall take into account—

- (a) whether corresponding assistance would be given in the relevant country or territory to the Commission;
- (b) whether the inquiries relate to the possible breach of a law or other requirement which has no close parallel in Antigua and Barbuda or involve the assertion of a jurisdiction not recognised by Antigua and Barbuda; and
- (c) whether it is in the public interest to give the assistance sought.

(5) For the purposes of subsection (4)(a), the Commission may require an overseas regulatory authority which requests assistance to give a written undertaking, in such form as the Commission may require, to provide corresponding assistance to the Commission.

(6) Where an overseas regulatory authority fails to comply with a requirement of the Commission under subsection (5), the Commission may refuse to provide the assistance sought.

(7) The Commission may decline to exercise its power under subsection (3) unless the overseas regulatory authority undertakes to make such contribution towards the costs of the exercise as the Commission considers appropriate.

- (a) in section 2(i)—
- (i) in paragraph (f) of the definition “corporate management and trust service provider” by deleting “Foundation” and substituting “Foundations”; and
  - (ii) by deleting the definition “dollar”;
- (b) in section 4—
- (i) in subsection (2)(d) by deleting “Foundation” and substituting “Foundations”; and
  - (ii) in subsection (5) by inserting “United States” before “dollars”;
- (c) in section 5—
- (i) in subsection (3) by deleting “Services” and substituting “services”; and
  - (ii) in subsection (4) by deleting “commissioner” and substituting “Commission”;
- (d) in section 14(1)(b)(i) by inserting after “Liability” the word “Companies”;
- (e) by deleting sections 15 and 16;
- (f) in section 21(2) by deleting “Act” and substituting “act”;
- (g) in section 23(1)(a) by deleting “account” and substituting “accounts”;
- (h) in section 24(1) by inserting after “required” the words “by the Commission”; and
- (i) by deleting section 31.

(3) The International Trust Act, 2007 is amended in section 87(3) by deleting “one hundred thousand United States” and substituting “two hundred and seventy thousand”

(4) The International Limited Liability Companies Act, 2007 is amended—

- (a) by repealing section 29; and
  - (b) in section 30 by deleting “Notwithstanding” and substituting “Subject to”.
- (5) The International Foundations Act, 2007 is amended—

#### **40. Transitional provisions – general**

(1) The Minister may by regulations made under this Act provide for such further transitional, consequential and saving provisions to have effect in connection with the coming into operation of any provision of this Act as are necessary or expedient.

(2) Regulations made under subsection (1) may be given retrospective operation to a day not earlier than the day this Act comes into force.

(3) To the extent to which a regulation made under subsection (1) takes effect from a date earlier than the date of its publication in the Gazette, the regulation does not operate so as—

- (a) to affect in a prejudicial manner the rights of any person existing before that date of publication; or
- (b) to impose liabilities on any person in respect of anything done or omitted to be done before that date of publication.

(4) Subsections (1), (2) and (3) shall expire one year after they come into force.

(5) Regulations made under this section shall be subject to negative resolution of the legislature.

(6) Where a period of time specified in an enactment repealed by this Act is current at this Act's commencement, this Act shall have effect as if the provision corresponding to that enactment had been in force when that period began to run.

(7) All subordinate legislation made under an enactment repealed by this Act and in force immediately before the coming into force of this Act, so far as it is not inconsistent with the provisions of this Act, continues in force as if made under this Act.

(8) On and after the coming into force of this Act references in any other Act to the Board or any officer thereof shall be construed as references to the Commission.

#### **41. Consequential and miscellaneous amendments**

(1) The Money Services Business Act 2011 is amended in section 6—

- (a) in subsection (2)(a) by repealing “section” and substituting “subsection”; and
- (b) in subsection (9) by inserting after “vary the” the word “terms”.

(2) The Corporate Management and Trust Service Providers Act, 2008 is amended—

(8) The Commission shall not give to an overseas regulatory authority any assistance involving the disclosure or gathering of, or the giving of access to, information or documents unless—

- (a) the Commission has satisfied itself that the intended recipient authority is subject to adequate legal restrictions on further disclosures; or
- (b) the Commission has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Commission; and
- (c) the Commission is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's regulatory functions including the conduct of civil and administrative investigations or proceedings to enforce laws corresponding to the regulatory laws and administered by that authority; and
- (d) the Commission is satisfied that information provided following the exercise of its powers, will not be used in criminal proceedings against the person providing the information, other than proceedings for an offence of perjury.

#### **32. Memoranda of understanding**

(1) The Commission may in the exercise of its collaborative functions enter into memoranda of understanding with overseas regulatory authorities for the purpose of assisting consolidated supervision with such authorities.

(2) No memorandum of understanding may call for assistance beyond that which is provided for by this Act, or relieve the Commission of any of its functions or duties under this Act.

### **PART V SAVINGS, TRANSITIONAL PROVISIONS, CONSEQUENTIAL AMENDMENTS AND REPEAL**

#### **33. Continuance of applications**

(1) Every application made under an enactment repealed by this Act and wholly or partly heard when this Act comes into force shall be continued and dealt with in all respects as if this Act had not come into force.

(2) A permit or licence granted or renewed as the result of an application determined under subsection (1) shall be granted or renewed on the same terms and conditions that would have applied if this Act had not come into force.

(3) Every application made under an enactment repealed by this Act that has not been wholly or partly heard when this Act comes into force shall be taken to be an application made under this Act and this Act shall apply accordingly.

#### **34. Preservation of rights of appeal**

(1) In the case of an appeal under an Act that has been repealed by this Act that has been commenced but not finally determined before this Act comes into force, the Court shall continue to deal with the appeal as if this Act had not come into force.

(2) When an appeal referred to in subsection (1) is finally determined, this Act shall apply subject to any necessary modifications as if the appeal had been finally determined before this Act came into force.

#### **35. Continuance of pending proceedings**

(1) Every proceeding commenced under an enactment repealed by this Act may be continued and completed—

- (a) if the proceeding has been wholly or partly heard, as if the repealed enactment was still in force; and
- (b) in other cases, as if the proceeding had been commenced under this Act.

(2) Except as may be expressly provided in this Act, this Act shall not affect the rights of any party to any proceedings commenced in any court before this Act came into force.

(3) Except as otherwise expressly provided in this Act, every matter and proceeding commenced in any court under an enactment repealed under this Act and pending or in progress immediately before this Act came into force may be continued, completed and enforced under this Act.

#### **36. Provision for offences**

All proceedings in respect of offences committed or alleged to be committed against an enactment repealed by this Act may be commenced or continued as if this Act had not come into force.

#### **37. Preservation of effect of conviction under repealed enactment**

For the purposes of determining the punishment which may be imposed on a person in respect of the commission by him of an offence under any provision of this Act, an offence committed by that person under the corresponding enactment repealed by this Act shall be deemed to have been committed under that provision.

#### **38. Variation of liabilities**

On the day on which this Act comes into force the accrued liability of the Commission under section 317(6) of the former Act is cancelled and no further liability under that section shall subsist or arise.

#### **39. Transitional provisions –employees**

(1) Within twelve months of the coming into force of this Act and from time to time thereafter as it deems necessary the Board shall revise the organizational structure of the Commission.

(2) Subject to subsections (1), (3) and (4) on the coming into force of this Act the employees of the Commission shall continue to hold the respective positions that they held prior to the coming into force of this Act.

(3) Subsection (2) shall not apply to the holders of the positions in the Commission specified in the Schedule who, on the coming into force of this Act shall—

- (a) cease to be employed by the Commission; and
- (b) be paid such benefits and severance pay to which each would be entitled on a redundancy pursuant to the Antigua and Barbuda Labour Code, Cap 27 to a maximum severance pay of six weeks pay for each year of his term of employment.

(4) Management employees as designated by the Board from time to time shall be employed on a fixed term contract or otherwise as the Board shall determine.

(5) Without limitation of the powers of the Commission as an employer, the Commission may, as a result of the adoption of the revised organizational structure

- (a) prepare new or revised posts and job descriptions
- (b) reassign tasks among employees; and
- (c) terminate upon at least 60 days notice the employment of any employee who
  - (i) holds a post for which there is no equivalent in the new organizational structure; or
  - (ii) performs tasks which have been reassigned to other employees.

(6) In the event that an employee's employment is terminated pursuant to subsection (5)(c) such employee shall be deemed redundant for the purposes of the Antigua and Barbuda Labour Code, Cap. 27.