

FINANCIAL SERVICES COMMISSION (AMENDMENT) ACT, 2019-21

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FINANCIAL SERVICES COMMISSION (AMENDMENT) ACT,
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BARBADOS

I assent
S. MASON
Governor-General
17th May, 2019.

2019-21

An Act to amend the *Financial Services Commission Act, 2010*.

[Commencement: 20th May, 2019]

ENACTED by the Parliament of Barbados as follows:

Short title

- 1.** This Act may be cited as the *Financial Services Commission (Amendment) Act, 2019*.

Amendment of section 2 of Act 2010–21

2. Section 2 of the Financial Services Commission Act, 2010 (Act 2010-21), in this Act referred to as the principal Act, is amended by inserting the following definitions in their appropriate alphabetical order:

“ authorised person ” means an auditor, an examiner, an investigator or any other person who exercises any function or responsibility pursuant to this Act;

“ group ” means

(a) in relation to a company, that company and

(i) any other company which is its holding company or subsidiary;

(ii) any other company which is a subsidiary of its holding company;

(iii) any company which directly or indirectly controls or is controlled by any company referred to in sub-paragraph (i) or (ii);

(iv) any company which is controlled by a person who directly or indirectly controls a company referred to in sub-paragraph (i), (ii) or (iii);

(v) any company in which a group of immediate relatives has a controlling interest;

(b) in relation to a person other than a company,

(i) a group of immediate relatives where each member of the group is substantially dependent upon the same income source;

(ii) a group of persons in which one member has power directly or indirectly to control the other members; or

- (iii) any other group of persons that may be prescribed by the Commission;”.

Amendment of section 4 of Act 2010-21

3. *Section 4 of the principal Act is amended in subsection (1) by deleting paragraph (f).*

Amendment of section 6 of Act 2010-21

4. *Section 6 of the principal Act is amended by*

(a) deleting subsection (1) and substituting the following:

“(1) Subject to subsection (2), no person shall operate any financial institution unless the financial institution is registered or licensed, as the case may be, in accordance with the relevant specified enactment or this Act.”;

(b) deleting subsection (6) and substituting the following:

“(6) Where there is reasonable cause to believe that any person has contravened subsection (1), the Commission may cause an investigation to be made of that person and the provisions of this Act shall apply *mutatis mutandis* for the purposes of the investigation as if the person was registered or licensed under this Act.”.

Insertion of new sections 6A, 6B and 6C in Act 2010-21

5. *The principal Act is amended by inserting immediately after section 6 the following new sections:*

“Alterations in respect of shareholdings

- 6A.** Every financial institution shall submit to the Commission
- (a) at the beginning of each year, a list of the shareholders on its register who hold shares of a value of 5 per cent or more of its stated capital; and
 - (b) at such times as the Commission determines, a list showing such changes in the shareholding as indicated in the list referred to in paragraph (a).

Conditions of licence

6B.(1) A licence or certificate of registration issued under a specified enactment or this Act shall be subject to the following conditions:

- (a) no person shall, without the approval of the Commission and subject to such conditions as the Commission may consider necessary, directly or indirectly acquire or hold any significant interest in a licensee or registrant;
 - (b) where approval has been obtained to increase the interest in accordance with paragraph (a) no person shall hold an interest the value of which exceeds the amount approved by the Commission.
- (2) For the purposes of subsection (1)(a), a significant interest is any interest or combination of interests that exceed
- (a) in aggregate 10 per cent of the value of the stated capital of a licensee or registrant; or
 - (b) 10 per cent of any class of shares of a licensee or registrant.

(3) In determining whether the approval of the Commission referred to in subsection (1) should be granted, the Commission shall take into account the following:

- (a) whether the person who is seeking to acquire the shares
 - (i) has been convicted of an offence involving fraud or dishonesty;
 - (ii) is a discharged bankrupt; or
 - (iii) has been involved in any act of impropriety related to financial matters; or
- (b) whether the acquisition of the interest or shares is likely to prejudice
 - (i) the financial condition or capitalization of the licensee or registrant; or
 - (ii) the interest of depositors.

(4) A person who acquires an interest or shares beyond the value referred to in subsection (1) without the approval of the Commission shall, on the direction of the Commission, dispose of such interest or shares.

(5) A person who fails to dispose of the interest or shares directed to be disposed of by the Commission under subsection (4) is guilty of an offence and is liable on summary conviction to a fine of \$25 000 or to imprisonment for 12 months or to both such fine and imprisonment.

(6) A licensee or registrant that permits any person or group of persons to contravene this section is guilty of an offence and liable on summary conviction to a fine of \$25 000.

(7) Where a financial institution fails to comply with a directive of the Commission given under subsection (4) after a conviction is first

obtained, the Commission may revoke the licence or registration of the financial institution, as the case may be.

Disqualification of directors and officers

6C.(1) A director or officer of a financial institution may be removed from office by the Commission if

- (a) he becomes the auditor of a financial institution which is registered or licensed under this Act; or
- (b) in the opinion of the Commission, he is not a fit and proper person to hold that office.

(2) A person who has been a director or officer of a financial institution whose registration has been cancelled or whose licence has been revoked under this Act shall not, without the prior approval of the Commission, act or continue to act as a director or officer of any other financial institution registered or licensed under this Act.

(3) Where

- (a) a financial institution permits a person referred to in subsection (1) to act as a director or officer of that institution; or
- (b) any person contravenes subsection (2),

the financial institution or person, as the case may be, is guilty of an offence.

(4) A financial institution or person guilty of an offence under subsection (3), is liable on summary conviction,

- (a) in the case of an individual, to a fine of \$10 000 or to imprisonment for 6 months or to both; and
- (b) in the case of a person other than an individual, to a fine of \$20 000.

(5) A financial institution shall give the Commission notice in writing of any change in its directors within 7 days of such change.”.

Amendment of section 8 of Act 2010-21

6. *Section 8 of the principal Act is amended in subsection (1) by*

(a) deleting paragraph (b) and substituting the following:

“(b) examine or investigate the affairs of a financial institution in accordance with this Act;”;

(b) deleting paragraph (f) and substituting the following:

“(f) exempt any financial institution or any financial services sector from any requirement under this Act or any requirement under the specified enactments or the guidelines where in the opinion of the Commission it is necessary to do so;”.

Amendment of section 10 of Act 2010-21

7. *Section 10 of the principal Act is amended in subsection (2) by deleting paragraph (c) and substituting the following:*

“(c) any other information, records or documents the Commission considers necessary for the purpose of carrying out its functions under this Act.”.

Amendment of section 11 of Act 2010-21

8. *Section 11 of the principal Act is amended by deleting subsection (2) and substituting the following:*

“(2) An auditor may not be appointed by a financial institution for the purposes of this section, unless that auditor is approved by the Commission

- (a) as having the capacity and resources to satisfactorily audit that particular financial institution; and
- (b) as being a fit and proper person to audit the financial institution.”.

Amendment of section 20 of Act 2010-21

9. *Section 20 of the principal Act is amended in subsection (1)(c) by deleting sub-paragraph (ii) and substituting the following:*

“(ii) after consultation with the Minister.”.

Amendment of section 21 of Act 2010-21

10. *Section 21 of the principal Act is amended by*

- (a) *deleting subsection (3) and substituting the following:*

“(3) Where a financial institution is dissatisfied with the decision of the Commission after representation is made under subsection (2), the financial institution may, within 30 days after it is notified of the Commission's decision, appeal to the Tribunal.”;

- (b) *inserting the following new subsection immediately after subsection (3):*

“(4) Where the Commission cancels the registration or revokes the licence of a financial institution under this section, and there is no appeal or the appeal is disallowed, notice of the revocation or

cancellation shall be published in the *Official Gazette* and in a daily newspaper published and circulating in Barbados.”.

Amendment of section 23 of Act 2010-21

11. *The principal Act is amended by deleting section 23 and substituting the following:*

“Obstruction

23. Any person who,

- (a) obstructs any authorised person while in the exercise of any power or authority given under this Act; or
- (b) in any way obstructs the examination or investigation of a financial institution or a business under this Act,

is guilty of an offence and is liable on conviction on indictment to a fine of \$200 000 or imprisonment for 5 years, or to both.”.

Amendment of section 25 of Act 2010-21

12. *Section 25 of the principal Act is amended in subsection (1)(b) by deleting the words “or the specified enactments” and substituting the words “a specified enactment or the Money Laundering and Financing of Terrorism (Prevention and Control) Act, Cap. 129.”.*

Insertion of new section 25A in Act 2010-21

13. *The principal Act is amended by inserting the following new section immediately after section 25:*

“Termination of registration or licence

25A.(1) Where a financial institution gives notice in writing to the Commission of its intention to cease operations, the Commission shall terminate the registration or licence of the financial institution, where the financial institution has complied with the provisions of this Act and the relevant specified enactment relating to the cessation of operations.

(2) For the purposes of subsection (1), the Commission may impose such conditions on the financial institution as it thinks necessary.”.

Amendment of section 39 of Act 2010-21

14. *Section 39 of the principal Act is amended in subsection (1)*

(a) *by deleting paragraph (a) and substituting the following:*

“(a) to the Revenue Commissioner;”; and

(b) *by deleting paragraph (d) and substituting the following:*

“(d) subject to subsection (2), to the appropriate supervisory authority of financial institutions outside Barbados at the request of that authority.”.

Amendment of section 44 of Act 2010-21

15. *Section 44 of the principal Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (c):*

“(d) charges for the late filing of documents or information.”.

Amendment of section 54 of Act 2010-21

16. *Section 54 of the principal Act is amended by deleting paragraph (a) and substituting the following:*

“(a) to make provision for any exemptions granted under this Act relating to a particular financial services sector;”.

Amendment of the Second Schedule of Act 2010-21

17. *The Second Schedule of the principal Act is amended by deleting paragraph 1.*

Amendment of the Third Schedule of Act 2010-21

18. *The Third Schedule of the principal Act is amended by deleting paragraphs 1 to 4 and substituting the following:*

“**1.(1)** The Minister shall appoint as Chairman, a member who is an attorney-at-law and who has been in practice for not less than 10 years and such other number of members as the Minister deems appropriate.

(2) The members of the Tribunal are entitled to such remuneration and allowances as the Minister determines.

2. A member may at any time resign his membership by notice in writing addressed to the Minister.

3.(1) Where the Minister is satisfied that a member

(a) has been incapacitated by physical or mental illness; or

(b) is otherwise unable or unfit to discharge the functions of a member,

the Minister may by notice published in the *Official Gazette*, declare the office of the member to be vacant and, thereupon, the office shall become vacant.

(2) In the case of the temporary absence or inability of a member to act, the Minister may by notice published in the *Official Gazette*, appoint a suitable person to act in that member's place.

4. The Minister shall publish in the *Official Gazette* notice of the appointment and cessation of appointment of a member.”.