

No. 4 of 2020

VIRGIN ISLANDS
FINANCIAL SERVICES (EXCEPTIONAL CIRCUMSTANCES) ACT,
2020

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I Assent
(Sgd.) Augustus J. U. Jaspert,
Governor
1st April, 2020

VIRGIN ISLANDS

No. 4 of 2020

An Act to provide for special measures for the conduct, operation, licensing, regulation, supervision and generally for the continuity, administration and transaction of financial services business in and from within the Virgin Islands in the event of any exceptional circumstances arising which affect financial services business and therefore require the adoption of special measures, and for other matters connected therewith.

[Gazetted 2nd April, 2020]

ENACTED by the Legislature of the Virgin Islands as follows:

Preliminary

1. (1) This Act may be cited as the Financial Services (Exceptional Circumstances) Act, 2020. Short title and commencement.

(2) This Act shall come into force on the 28th day of March, 2020.

2. (1) In this Act, unless the context otherwise requires Interpretation.

“Board” means the Board of Commissioners of the Commission established under section 5 of the FSCA;

“Chairman” means the Chairman of the Board;

“Commission” means the Financial Services Commission established under section 3 of the FSCA;

“EC” means the Enforcement Committee established under section 14 of the FSCA;

“exceptional circumstance” means any circumstance that arises in or outside the Virgin Islands which the Minister declares under section 3 to constitute an exceptional circumstance;

“effective date” means the date appointed by the Commission in the Order issued under section 3(2)(c);

“financial services business” has the meaning specified in section 2(1) of the FSCA;

“financial services legislation” means any principal legislation listed in Schedule 2 of the FSCA and any subsidiary legislation made thereunder;

No. 12 of 2001

“FSCA” means the Financial Services Commission Act;

“Internet site”, in relation to the Commission, means the principal public access Internet site for the time being maintained by, or on behalf of, the Commission, and includes any other public access Internet site operated and maintained by the Commission from any location;

“licence” means an authorisation or approval, a registration or recognition, or a licence, certificate or other form of document, which the Commission is empowered to provide, issue or grant under a financial services legislation or the FSCA;

“licensee” means a person holding a licence;

“LSC” means the Licensing and Supervisory Committee established under section 14 of the FSCA;

“Managing Director” means the Managing Director of the Commission appointed under section 10 of the FSCA;

“Minister” means the Minister to whom responsibility for financial services is assigned;

“Order” means an Order issued by the Minister under section 3 declaring this Act or any provision thereof to be applicable as of the effective date;

“registered address” or “registered office” refers to a licensee’s or other person’s registered office or principal office in the Virgin Islands; and

“Registrar” means the Registrar of Corporate Affairs appointed under section 229 of the BVI Business Companies Act.

(2) A reference in this Act to “other person” refers to any person that is subject to the FSCA or any financial services legislation or whose conduct is subject to or affected by the FSCA or any financial services legislation and includes an approved person, a recognised person and an authorised person.

(3) Where any provision of this Act conflicts with any other provision of the FSCA or any financial services legislation, the provision of this Act shall take precedence.

3. (1) The provisions of this Act shall apply whenever the Minister, on the advice of the Commission, issues an Order published in the *Gazette* declaring that a circumstance has arisen or is likely to arise, whether in or outside the Virgin Islands, which Application.

- (a) is of such a nature that makes the conduct, operation, licensing, regulation, supervision or generally the administration or transaction of financial services business in and from within the Virgin Islands in accordance with the FSCA or any financial services legislation difficult or impossible; or
- (b) otherwise requires different or special measures to facilitate the conduct, operation, licensing, regulation, supervision or generally the administration or transaction of financial services business in and from within the Virgin Islands.

(2) An Order issued under subsection (1)

- (a) may specify that all the provisions, or only specified provisions, of this Act apply to all or specified licensees or other persons and in such manner and to such extent as the Order may specify;
- (b) may exclude the application of any or all the provisions of this Act to any licensee or other person; and
- (c) shall provide the date on which the provisions of this Act will apply and, unless otherwise specified or permitted under this Act, the duration of such application, and the application may be given retroactive effect if the Commission considers that necessary.

Purpose and
objects of this
Act.

4. (1) The purpose of this Act is to make special provisions, in exceptional circumstances, to facilitate the conduct, operation, licensing, regulation, supervision and generally for the continuity, administration and transaction of financial services business in and from within the Virgin Islands.

(2) The objects of this Act are, where an exceptional circumstance arises or is likely to arise and depending on the nature and extent of the exceptional circumstance to

- (a) enable the taking of appropriate measures to ensure the continuity of financial services business in and from within the Virgin Islands;
- (b) minimize any disruption in the conduct of financial services business through the adoption and implementation of appropriate measures;
- (c) permit licensees and other persons to shift the operation of their financial services business from the Virgin Islands to another jurisdiction for a limited period while at the same time ensuring compliance with the FSCA and any applicable financial services legislation, to the extent feasible;
- (d) clarify matters relating to the relocation within the Virgin Islands of licensees' and other persons' business operations;
- (e) clarify matters relating to the regulation and supervision by the Commission of licensees and other persons who have shifted their operation from the Virgin Islands to another jurisdiction;
- (f) enable the Commission to disapply certain provisions of the FSCA or any applicable financial services legislation or policies or guidelines with respect to licensees or other persons for a limited period;
- (g) clarify the status of certain activities that were pending prior to the effective date and how they are to be dealt with;
- (h) clarify matters relating to the filing of documents and the payment of fees;
- (i) enable the Commission to perform its administrative and statutory duties in a manner not otherwise contemplated or

required under the FSCA or any applicable financial services legislation, including the taking of decisions by electronic means; and

- (j) provide for miscellaneous matters that relate to or are affected by the exceptional circumstance.

Administration

5. (1) The Board may not, in an exceptional circumstance, meet for the number of times stipulated in section 7(1) of the FSCA, but shall meet at such other times and places, whether within or outside the Virgin Islands, as the Chairman considers appropriate and convenient for the Board to discharge its functions, including holding meetings by electronic means.

Meetings of the Board.

(2) For the purposes of subsection (1), the Chairman may determine that meetings of the Board shall be held by electronic means for such period or periods as he may determine.

6. (1) Subject to subsection (4) where, after the effective date, any action or decision is required to be taken or made by the Board, that action or decision may be taken or made by

Exercising powers of the Board.

- (a) the Chairman in his or her discretion; or
- (b) the Managing Director, acting after consultation with the Chairman, unless where the Chairman cannot for any reason be contacted and the matter or decision is of an urgent nature.

(2) Where the Managing Director acts under subsection (1)(b) without consulting with the Chairman, he or she shall as soon as practicable after so acting inform the Chairman in writing of the action he or she has taken, outlining the urgency that necessitated the action.

(3) Nothing contained in this section prevents the Board from convening to perform its functions, and the Chairman and the Managing Director shall present to the Board for its ratification any action or decision taken pursuant to subsection (1).

(4) This section applies only where any action or decision that should ordinarily be taken or made by the Board is considered by the Chairman or the Managing Director, as the case may be, to be of an urgent nature and is impracticable to convene a meeting of the Board for the action or decision to be taken or made.

Exercising powers of EC and LSC.

7. (1) Where, in the opinion of the Managing Director, any decision that should ordinarily be taken by the EC or LSC, is of an urgent nature and is impracticable to convene a meeting of the EC or LSC to take such decision, the Managing Director may, acting in his or her own discretion, take the decision.

(2) Where the Managing Director acts pursuant to subsection (1), he or she shall as soon as practicable after taking the decision, inform the EC or LSC, as the case may be, at its next convenient meeting of the decision he or she had taken, outlining the urgency that necessitated the decision.

(3) The Managing Director may, instead of acting under subsection (1), delegate to any member of his or her senior management team the authority to take a decision on a matter that should ordinarily be taken by the EC or LSC.

Quorum, majority vote, etc. waived.

8. For purposes of sections 6 and 7, where the FSCA or any applicable financial services legislation requires a quorum or majority vote for any action or decision to be taken or made, or the requisitioning by persons of a special meeting, that requirement shall not apply in relation to the exercise of powers under those sections.

Relocating Financial Services Business

Authority to relocate to another jurisdiction.

9. (1) Where, prior to the effective date, a licensee or other person that was based and carrying on financial services business in the Virgin Islands wishes to relocate to another jurisdiction temporarily on or after the effective date to continue the operation of its business it may, subject to this Act and the Order, do so.

(2) The relocation of a licensee or other person to another jurisdiction may comprise the whole or part of its business operations and the relocation of all or some of its staff, to the extent the licensee or other person considers necessary for the continuity of its business.

(3) Where a licensee or other person relocates from the Virgin Islands to another jurisdiction, it shall for all legal intents and purposes be deemed to be operating in the Virgin Islands and shall, subject to this Act, continue to be dealt with in accordance with the applicable laws of the Virgin Islands.

Relocating within the Virgin Islands.

10. (1) Where, after the effective date, a licensee or other person relocates from its registered address to a new address within the Virgin Islands due to damage caused to the premises comprising the registered address or due to those premises becoming a health hazard or otherwise becoming unsuitable for the licensee or other person, or for the staff of the licensee or other person, to conduct business from, the licensee or other person shall notify the Commission of that fact in accordance with subsection (2).

(2) A notification under subsection (1) shall be in writing prior to, or within one month of, the licensee or other person relocating from its registered address, following the date on which the Order is published in the Gazette or the date on which it relocated, whichever is later, and shall include the following information:

- (a) details of the new address;
- (b) the date the licensee or other person relocated or intends to relocate to its new address and, if it relocated or is to relocate over a period of time, the last date on which it completed or expects to complete its relocation;
- (c) whether the relocation to the new address is temporary or is expected to be permanent; and
- (d) if the relocation to the new address is temporary, to indicate the efforts it is undertaking or intends to undertake to relocate back to its registered address or to a new permanent address.

(3) A temporary relocation of the registered address of a licensee or other person shall not be treated as a change of registered address under any financial services legislation and no fee is payable in relation thereto.

(4) Where a licensee or other person relocates from its registered address to a new address in the Virgin Islands on a permanent basis, the relocation shall be treated as a change of registered address and shall, subject to subsection (5), be dealt with in accordance with the FSCA or any applicable financial services legislation.

(5) Subsection (4) shall not apply in relation to the payment of any fee if the reason for relocating to a new address on a permanent basis is that the premises comprising the registered address of the licensee or other person

- (a) remained damaged and unrepaired;
- (b) are considered a health hazard;
- (c) are no longer available to the licensee or other person within the period specified in this Act or the Order; or
- (d) are, for any other cogent reason acceptable to the Commission, unsuitable for the licensee or other person to conduct its business from.

(6) Unless the Commission determines otherwise for good reason, if after a period of 3 months from the date this Act ceases to have effect, a licensee or other person fails to relocate to its registered address on a permanent basis, the licensee or other person shall be deemed to have changed its registered office and shall, subject to subsection (5), be liable to be treated as such in accordance with the FSCA or any applicable financial services legislation.

Conditions for
relocating
outside the
Virgin Islands.

11. (1) Where a licensee or other person has relocated from the Virgin Islands to another jurisdiction pursuant to section 9, it shall within one month of relocating, following the date of publication of the Order or the date on which it relocated, whichever is later, notify the Commission in writing of that fact stating the following matters:

- (a) the jurisdiction to which the licensee or other person has relocated the operations of its business;
- (b) the date on which it relocated the operations of its business to the jurisdiction and, if it has relocated over a period of time, the last date on which it completed its relocation;
- (c) whether it has wholly or only partially relocated the operations of its business to another jurisdiction and, if partially, to comply with subsection (4);
- (d) whether it has relocated its staff to another jurisdiction and, if so, provide a list of the staff it has relocated and those, if any, remaining in the Virgin Islands;
- (e) whether it has laid off any of its staff and, if so, provide a list of the staff laid off and indicate whether the laying off is temporary or permanent; and
- (f) the efforts the licensee or other person is undertaking or intends to undertake to relocate the operations of its business back to the Virgin Islands and within what period, having regard to the transition period provided under this Act or the Order or, if extended, the period of extension.

(2) Where the Commission receives information under subsection (1)(e), it may share the information with the Minister responsible for labour matters.

(3) Where a licensee or other person has relocated the operation of its business from the Virgin Islands to another jurisdiction pursuant to section 9, it shall

- (a) segregate its Virgin Islands' business, including all operations related thereto as was the case prior to the effective date, from any other business it may engage in or have in that other jurisdiction;
- (b) continue to comply with its obligations under the laws of the Virgin Islands as they relate to the licensee's licence or, as the case may be, other person's approval, recognition or authorisation, including adhering to best practices with respect to its business; and
- (c) conduct itself and its business in a manner that does not contravene the laws of the jurisdiction to which it has relocated the operations of its business.

(4) Where a licensee or other person has only partially relocated the operations of its business to another jurisdiction, it shall indicate what operations are relocated and the operations that remain in the Virgin Islands.

(5) Every licensee or other person that has relocated the operations of its business, whether wholly or partially, from the Virgin Islands to another jurisdiction shall, following the initial notification to the Commission under subsection (1), provide the Commission with a periodic report regarding the progress it is making in relocating the operations of its business back to the Virgin Islands.

(6) The periodic report referred to in subsection (5) shall be provided in writing every month from the date of the initial notification under subsection (1), unless the Commission in its discretion provides in writing a different reporting period or waives the periodic reporting in any particular case.

(7) If, upon this Act or any particular provision thereof, ceasing to have effect a licensee or other person who had relocated the operations of its business in the Virgin Islands to another jurisdiction fails to relocate back to the Virgin Islands, the licensee or other person shall, unless the Commission determines otherwise for good reason, be deemed to have left the Virgin Islands permanently and shall be liable to be treated as such in accordance with the FSCA and any applicable financial services legislation.

(8) If a licensee or other person who had relocated the operation of its business in the Virgin Islands to another jurisdiction relocates back to the Virgin Islands to premises different from those of its registered office, it shall make the necessary filing for change of registered office without being liable for payment of any applicable fee in relation to such change.

Insurance

Special provisions in respect of loss adjusters.
No. 1 of 2008

12. (1) The provisions of the Insurance Act and the Regulatory Code relating to the licensing of loss adjusters are, in an exceptional circumstance, disapplied.

(2) Notwithstanding subsection (1), a loss adjuster who intends to perform or had since the effective date commenced performing the function of loss adjuster in the Virgin Islands shall, within 10 days of the publication of Order, apply to the Commission in writing to be registered as a loss adjuster.

(3) The Commission shall, upon receipt of an application pursuant to subsection (2), review the application and, unless it considers that granting the application is not in the public interest, register the applicant as a loss adjuster on such terms and conditions as the Commission considers fit.

Establishment of Financial Services Complaints Tribunal.

13. (1) There is hereby established a tribunal to be known as the Financial Services Complaints Tribunal (hereinafter referred to as “the Tribunal”).

(2) The Tribunal shall, subject to subsection (3), comprise five Members, one of whom shall be the Chairperson, who shall be appointed by the Minister, acting after consultation with the Commission.

(3) For the purposes of any proceedings before it, the Tribunal may comprise a panel of three members.

(4) The persons to be appointed as members of the Tribunal shall be individuals who

- (a) are fit and proper in accordance with Schedule 1A of the Regulatory Code;
- (b) are physically resident in the Virgin Islands;
- (c) have at least seven years post qualification experience in their respective fields of professional expertise;
- (d) are capable of exercising sound and fair judgment;
- (e) are not members of the House of Assembly; and
- (f) have not been certified to be medically unsound.

- (5) The functions of the Tribunal are to
- (a) receive and investigate reports from persons (hereinafter referred to as the “complainants”) who are aggrieved by a decision of a licensee with respect to any claim they have lodged or filed with the licensee or any matter with respect to transactions that affect or relate to a client or a customer of the licensee;
 - (b) mediate between a complainant and a licensee with the objective of enabling an amicable settlement between the complainant and the licensee;
 - (c) advise a complainant of his or her options in the event that the complainant and the licensee are unable to reach an amicable settlement;
 - (d) ensure that a licensee carries out its business justly and fairly in relation to its clients or customers so that the clients or customers are not taken advantage of; and
 - (e) submit a written report to the Commission outlining the matters it has received and how it has disposed of them.

(6) Where, in the course of an investigation or mediation, the Tribunal forms the view that a licensee might have committed or may be committing an offence or has failed to comply with a requirement of the FSCA or any financial services legislation, or any condition attached to the licensee’s licence, the Tribunal shall immediately notify the Commission in writing of that fact.

(7) For the purposes of performing its functions under this section, the Tribunal may request from a licensee such document or information as it considers necessary and the licensee shall comply accordingly.

(8) Where a licensee fails to comply with a request made by the Tribunal pursuant to subsection (7), the Tribunal shall report such failure to the Commission which may take enforcement action against the licensee as if the failure were a breach of financial service legislation.

(9) For the avoidance of doubt and unless otherwise specified in the FSCA, a financial services legislation or other enactment, the category of contravention and description under which the Commission may take enforcement action against a licensee under subsection (8) shall be that specified in category 10 (Other contravention) of Schedule 1 of the Financial Services (Administrative Penalties) Regulations.

(10) In the conduct of its proceedings, the Tribunal shall adopt such procedures as it considers appropriate and shall meet at such times and places, including outside the Virgin Islands if exceptional circumstances so dictate, as the Chairperson of the Tribunal considers expedient for the Tribunal to discharge its functions, and such meeting may be held by electronic means.

(11) The Tribunal and members thereof shall not be liable for anything done in good faith, in the exercise of powers or performance of functions conferred or imposed by this Act, including any advice given pursuant to subsection (5) (c) or any action taken pursuant to guidelines made by the Commission in relation to this section.

(12) The Order may, notwithstanding the generality of this section, specify which licensees this section shall apply to.

General Provisions

Outstanding obligations and liabilities prior to the effective date.

14. Except as otherwise provided in this Act, if any obligation or liability arose in relation to a licensee or other person with respect to a financial services business or any other matter under the FSCA or any applicable financial services legislation, prior to the effective date on which the obligation is to be performed or the liability is to be discharged or enforced or complied with, was liable to be enforced, complied with or in any other way adhered to or, the obligation or liability shall, unless waived by the Commission in exercise of its powers under section 54B of the FSCA, continue to apply until discharged.

Modification of certain obligations and liabilities.

15. (1) Where, prior to the effective date

- (a) a licensee was required to be resident or to have a director or authorised agent resident in the Virgin Islands, such licensee, director or authorised agent, as the case may be, may be resident outside the Virgin Islands for the period that this Act remains in force in respect of the licensee;
- (b) a licensee or other person had applied for and received an extension of time to perform an obligation which remained outstanding on or after the effective date, irrespective of whether or not the extended time has come to an end, the Commission may further extend the time once for such period as it considers appropriate for the obligation to be performed;
- (c) a licensee who has relocated to another jurisdiction in accordance with this Act was required to maintain and keep any records in the Virgin Islands, those records may be maintained and kept at its other jurisdiction until such time as it relocates back to the Virgin Islands or the application

of this Act or the Order comes to an end, whichever is earlier;

- (d) an administrative penalty was imposed on a licensee or any other person which had not been satisfied on or before the effective date, the licensee or other person may apply to the Commission in writing for extension of time to effect payment of the penalty or to pay the penalty on an installment basis pursuant to regulation 4(7) of the Financial Services (Administrative Penalties) Regulations;
- (e) a licensee to which this Act applies was required to display its licence in accordance with section 14(2) of the Regulatory Code, that requirement shall not apply if the licensee has relocated from the Virgin Islands to another jurisdiction and, in the case of a licensee that has relocated within the Virgin Islands from its principal office, section 14 (2)(a) of the Regulatory Code shall not apply; and
- (f) a licensee or other person was required to file a matter with the Commission or the Registrar and the deadline for filing that matter falls on or after the effective date, that matter may be filed no later than 14 days after the Order is published in the *Gazette* without attracting any penalty for late filing.

S.I. No. 86 of
2001

(2) For the purposes of

- (a) subsection (1)(a), the licensee shall indicate to the Commission in writing the jurisdiction in which the director is currently residing;
- (b) subsection (1)(b), the Commission may set different periods for different licensees or other persons;
- (c) subsection (1)(d), an application for extension of time or payment of an administrative penalty on an instalment basis shall be submitted within one month following the date on which the Order is published in the *Gazette* making this Act applicable to the licensee or other person and, in the absence of any application, payment of the administrative penalty shall be dealt with in accordance with the laws applicable thereto; and
- (d) subsection (1)(e), the disapplication of section 14(2) of the Regulatory Code applies only if the licensee has relocated

the whole of the operations of its financial services business to another jurisdiction.

(3) Where the Commission provides an extension of time to a licensee or other person under subsection (1)(b) to perform an obligation, the licensee or other person shall not be liable to the payment of any fee related to the grant of the extension of time.

(4) Where, after the effective date, a licensee or other person desires, or is required, to make an application or a payment to, or file a matter with, the Commission or the Registrar, that application, fee or matter may be made, paid or filed in such manner, other than the manner provided in the FSCA or any applicable financial services legislation or any established process or procedure, as the Commission may determine.

(5) Where any other obligation or liability under the FSCA or any applicable financial services legislation not provided in this section is brought to the attention of or considered by the Commission to require modification in order to facilitate the conduct of financial services business by any licensee or other person and such modification will not, in the opinion of the Commission, be contrary to the public interest, the Commission may, by an Order published on the Internet site, modify the obligation or liability in such manner as it considers fit.

Non-availability of information to complete an application.

16. (1) Where, in an application to the Commission for a licence or any other purpose, an applicant is required to provide information (hereinafter referred to as “specified information”) that is obtainable from a third party within the Virgin Islands which has been affected by the exceptional circumstance and is therefore unable to provide such specified information to the applicant, the applicant may, subject to subsection (2), submit the application to the Commission without the specified information.

(2) Where an applicant submits an application without the specified information, he or she shall at the same time of submitting the application, make and provide a declaration containing the following information –

- (a) the specified information required with the application and ordinarily obtainable from the third party;
- (b) the name of the third party;
- (c) the date an attempt was made to obtain the specified information from the third party; and
- (d) the reason the specified information could not be obtained from the third party.

(3) The declaration required under subsection (2) shall be in such form as the Commission may, by a notice published on the Internet site, provide.

(4) For purposes of this section, “an applicant” refers to any person who is required under the FSCA or any applicable financial services legislation to provide specified information with respect to an application for a licence.

17. (1) The Commission may issue such guidelines as it considers necessary to provide guidance on, and clarify matters relating to, the implementation of the provisions of this Act. Power to issue guidelines.

(2) Any guidelines issued pursuant to subsection (1) shall, before they are implemented, be published in the *Gazette*, but this requirement may not be complied with if the Commission is satisfied that an exceptional circumstance justifies such non-compliance.

18. (1) Where any matter or thing is to be carried out or done within a time frame specified under this Act or the Order, the Commission may, if it considers it appropriate having regard to the nature and extent of an exceptional circumstance, extend the time frame in such manner as it considers fit. Power to extend time.

(2) Where any extension of time under subsection (1) is of general application, the Commission shall issue a notice, published in the *Gazette*, notifying such extension.

19. (1) Where under this Act any matter or thing is required to be published in the *Gazette*, the matter or thing may be published on the Internet site or in such other manner as may be expedient, having regard to the exceptional circumstance concerned. Publication.

(2) Where any document or other matter under the FSCA or any applicable financial services legislation is required to be filed in a manner other than by electronic means, that document or other matter may, for the purposes of this Act and the Order, be filed by electronic means.

20. (1) The Financial Services (Continuity of Business) Act, 2017 is repealed. Repeal and savings.
No. 21 of 2017

(2) Notwithstanding subsection (1), the Insurance Tribunal established under the Financial Services (Continuity of Business) Act, 2017 shall, from the date of the coming into force of this Act, continue to be in place as the Financial Services Complaints Tribunal and perform the functions assigned to it as if it were established as such under section 13(1) of this Act.

(3) Notwithstanding the existence of an exceptional circumstance or an Order is issued by the Commission as contemplated under this Act, the

Tribunal may continue to function as a permanent body until otherwise determined by the Minister after consultation with the Commission.

Passed by the House of Assembly this 27th day of March, 2020.

Julian Willock,
Speaker.

Phyllis Evans,
Clerk of the House of Assembly.

LEGAL REPORT

The object of this Act is essentially to provide a legislative framework to enable the Virgin Islands to take appropriate measures, during and after any period of occurrence of any exceptional event, in order to ensure the smooth functioning and administration of financial services business in and from within the Territory. It may be recalled that, following Hurricanes Irma and Maria, the National Assembly enacted the Financial Services (Continuity of Business) Act, 2017 (“the 2017 Act”) to enable licensees and other approved, recognised or authorised persons (collectively referred to as “licensees”) of financial services business to carry on with their business with as little interruption as possible. The world is currently faced with the pandemic of the Corona Virus which is already disrupting the normal ways of doing business at the national and global levels. It is reckoned that this is already affecting the financial services industry of the Virgin Islands.

The 2017 Act was specifically designed to cater for the effects of Hurricanes Irma and Maria by enabling licensees to relocate their businesses outside or elsewhere within the Virgin Islands for a temporary period without contravening any financial services legislation. That Act was put in place for a transient period only and was not meant to last indefinitely. With the advent of the Corona Virus and the debilitating effect it is having both on human lives and businesses, it is considered appropriate that a new and all-embracing legislation is needed to deal with exceptional circumstances in relation to financial services whenever they arise. This will henceforth make it unnecessary to enact specific legislation each time an exceptional circumstance arises that affects the operations of financial services business.

Accordingly, the aim of this Act (as provided in the long title) is “to provide for special measures for the conduct, operation, licensing, regulation, supervision and generally for the continuity, administration and transaction of financial services business in and from within the Virgin Islands in the event of any exceptional circumstances arising which affect financial services business and therefore require the adoption of special measures”. The Act provides the framework to deal with exceptional circumstances relative to financial services business; this will relate primarily to the facilitation of financial services business in and from within the Virgin Islands.

In the Preliminary part of the Act, the term “exceptional circumstance” is defined to mean any circumstance that arises in or outside the Virgin Islands which the Minister with responsibility for financial services matters declares to constitute an exceptional circumstance. Such exceptional circumstance may relate to natural disasters, health hazards of epic proportion or other similar occurrences. In such a situation the Minister may, with the advice of the Financial Services Commission (“the Commission”), issue an Order published in the *Gazette* to activate the provisions of the Act in relation to all or any particular financial services business. However, the exceptional circumstance must be of a nature that makes the

conduct, operation, licensing, regulation, supervision or generally any administration or transaction of financial services business in and from within the Virgin Islands difficult or impossible if the normal rules under the Financial Services Commission Act, 2001 or any regulatory legislation were to be applied; otherwise the exceptional circumstance must be such that it requires the adoption or application of different or special measures to facilitate the conduct, operation, licensing, regulation, supervision or generally any administration or transaction of financial services business in and from within the Virgin Islands (clause 3 (1) of the Act). The Order issued by the Minister activating the provisions of the Act may apply to all or only specified provisions thereof and may extend to all or only to specified licensees; it may equally exclude the application of all or any provisions of the Act to any particular licensee. In addition, the Order must provide the date on which the provisions of the Act will take effect and, in that regard and having regard to the exceptional circumstance concerned, may provide for such provisions to have retroactive effect. This approach was found necessary with respect to the 2017 Act.

The Act outlines in detail its purpose and objects (clause 4), which includes taking appropriate steps to ensure the continuity of financial services business during or after any period of occurrence of an exceptional circumstance.

The part on administration essentially gives the Chairman of the Board, and the Managing Director, of the Commission certain powers to exercise in the event of an exceptional circumstance arising. This is designed to facilitate the taking of decisions when the Board is unable to meet or when the internal organs of the Commission (Licensing and Supervisory Committee and Enforcement Committee) cannot be activated in the normal way. In such a situation the requirements for a quorum and majority in decision-making will not apply.

The Act makes further provision in the third part to allow licensees to relocate outside, and elsewhere within, the Virgin Islands during or after any period of occurrence of an exceptional circumstance. In that regard, the Act provides certain conditions that must be satisfied in relation to relocating outside the Virgin Islands.

The fourth part of the Act establishes the Financial Services Complaints Tribunal (Tribunal) and exempts insurance loss adjusters from the licensing requirements under the Insurance Act, 2008 during or after a period of occurrence of an exceptional circumstance. The Tribunal may continue to be in place until otherwise determined by the Minister. Accordingly, the Tribunal established under the 2017 Act is continued under the Act as if it were established under the Act.

The final part of the Act outlines relevant general provisions relating to how outstanding obligations and liabilities, prior to the Act becoming effective through an Order, are to be dealt with. In a similar vein, it also modifies certain

obligations and liabilities. Where a person who wishes to submit an application to the Commission, but could not do so on account of the absence of a document that was with a third party in the Virgin Islands affected by an exceptional circumstance, such person may submit the application without that document. The Commission is empowered to issue guidelines for a better understanding of, and compliance with, the provisions of the Act and/or the Order issued in that regard. It may also extend the times provided in the Act within which certain obligations may be performed. In addition, any requirement for a matter to be published in the *Gazette* may, as an alternative, be published on the Commission's website or in such other manner as the exceptional circumstance dictates.

This Act provides a good legislative framework for facilitating the continued conduct, operation, licensing, regulation and supervision of financial services business in and from within the Virgin Islands without any undue interruption. Accordingly, the Members of the Honourable House of Assembly are kindly requested to lend support to the Act in order to ensure the issuing of the relevant Order to address concerns relative to the Corona Virus in the immediate term and, in the long term, for new Orders to deal with future exceptional circumstances.

This Act was introduced in the House of Assembly on the 27th day of March, 2020, taken through its remaining stages and passed on the 27th day of March, 2020.

In my opinion, His Excellency the Governor may properly assent to this Act in the name and on behalf of Her Majesty.

Baba Aziz
Attorney General
31st March 2020