

No. of 2021

VIRGIN ISLANDS

FINANCIAL SERVICES COMMISSION (AMENDMENT) ACT, 2021

ARRANGEMENT OF SECTIONS

Section

- 1... Short title and commencement.
- 2... Section 54A amended.
- 3... New section 54B inserted.

No. of 2021

**Financial Services Commission
(Amendment) Act, 2021**

**Virgin
Islands**

I Assent

Governor.
, 2021

VIRGIN ISLANDS

No. of 2021

A BILL for

An Act to amend the Financial Services Commission Act, 2001 (Act No. 12 of 2001) and for other matters connected therewith.

[Gazetted , 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and
commencement.

1. (1) This Act may be cited as the Financial Services Commission (Amendment) Act, 2021.

(2) This Act shall, subject to subsection (3), come into force on such date as the Minister may, by Notice published in the *Gazette*, appoint.

(3) Section 3 shall be deemed to have come into force on the 17th day of March, 2017, but it shall not, in relation to the filing of a document, apply to a licensee or other person who has already paid a penalty for a failure to file the document within a prescribed period.

Section 54A
amended.
No. 12 of 2001

2. Section 54A of the Financial Services Commission Act, 2001 (hereinafter referred to as the “principal Act”) is amended –

(a) in subsections (1), (3), (4) and (11), by inserting after the word “licensee” wherever it occurs, the words “or other person”;

(b) in subsection (6) (b), by inserting after the word “paid”, the words “immediately or”;

(c) by repealing subsection (10) and substituting the following new subsection –

“(10) Subject to section 54B (1), the liability of an authorised or a registered agent under this section does not absolve a licensee or other person from any liability for a breach or an offence committed by the licensee or other person.”; and

(d) by repealing subsection (12) and substituting the following new subsection

“(12) This section and section 54B apply to an authorised representative, insurance manager or any other person, who acts in the capacity of an agent with respect to a licensee or other person, appointed under this Act or any financial services legislation, as if the reference in this section and section 54B to “authorised or registered agent” were a reference to such authorised representative, insurance manager or other person acting in the capacity of an agent.”.

New section 54B
inserted.

3. The principal Act is amended by inserting after section 54A, the following new section

“Waiver
of
penalty.

54B. (1) Where a licensee or any other person is liable to a monetary penalty under this Act or a financial services legislation for a failure to file a document within a prescribed period and the failure is attributable either wholly or partly to –

(a) the default of an authorised or a registered agent of the licensee or other person; or

(b) an act of God,

the Commission may, if satisfied that the conditions specified in subsection (3) have been met and justify a waiver, waive the application or imposition of the penalty prescribed for the failure in relation to the licensee or other person.

(2) An authorised or a registered agent shall, where it is required to file a document or perform some other action on behalf of a licensee or other person under this Act or a financial services legislation, forthwith notify the licensee or other person –

- (a) if the authorised agent or registered agent has failed to file the document or perform the action in compliance with this Act or the financial services legislation concerned, the fact of that failure; and
 - (b) provide the reason or reasons for the failure to file the document or perform the action concerned.
- (3) The conditions referred to in subsection (1) are that
 - (a) in the case of a failure attributable wholly or partly to the default of an authorised or a registered agent –
 - (i) the licensee or other person submits an application in writing requesting a waiver of the penalty;
 - (ii) the licensee or other person describes the circumstances giving rise to the failure and who is responsible for the failure, including, where the licensee or other person is only partly responsible for the failure, identifying that part for which it is responsible;
 - (iii) the authorised or registered agent of the licensee or other person confirms in writing that the failure is attributable wholly or partly to the default of the authorised or registered agent;
 - (iv) where the failure is only partly attributable to the authorised or registered agent, an explanation in writing from the authorised agent or registered agent identifying the part attributable to it and the part attributable to the licensee or other person; and

- (v) the information required under subparagraphs (i) to (iv) are set out in an affidavit sworn to by the licensee or other person, except that the information required under subparagraph (iii) may be omitted if the authorised or registered agent has denied responsibility for any failure; or
- (b) in the case of a failure attributable to an act of God in circumstances where the required action to avert the failure rests with the licensee or other person or with the authorised agent or registered agent, the licensee or other person or the authorised or registered agent, as the case may be –
 - (i) describes in writing the nature of the act of God that gave rise to the failure;
 - (ii) describes what aspects of its business was affected and to what extent, thereby giving rise to the failure; and
 - (iii) provides an indication as to when it will rectify the failure (if the failure has not already been rectified).

(4) Where an authorised or a registered agent denies that the failure to file a document within a prescribed period is attributable to it, it shall so indicate in writing.

(5) Where the Commission, after considering an application under subsection (1) which complies with the requirements of subsection (3), including subsection (4) (if applicable), forms the opinion that the failure to file a document within a prescribed period is attributable wholly or partly to the default of –

- (a) an authorised or a registered agent, the Commission may, without prejudice to any penalty it may impose under section 54A (1), (2) or (3) –

- (i) suspend the authorised agent or registered agent from taking on new business for such period and on such conditions as the Commission may determine;
 - (ii) direct the licensee or other person to change its authorised or registered agent and seek the Commission's approval of a new authorised or registered agent;
 - (iii) direct the authorised or registered agent to make such changes within the authorised or registered agent as the Commission deems fit to prevent any recurrence of the failure; or
 - (iv) take such other action, including enforcement action, against the authorised or registered agent as the Commission considers fit; or
- (b) a licensee or other person, the Commission may—
- (i) require the licensee or other person to pay the full penalty applicable for the failure;
 - (ii) require the licensee or other person to pay such portion of the penalty applicable for the failure as the Commission considers fit; or
 - (iii) waive the imposition of any penalty if the Commission is satisfied that the circumstances of the failure justify such a waiver.

(6) Where any matter is required under this section to be in writing, such matter shall be addressed and submitted to the Commission.

(7) An authorised or a registered agent who fails to comply with subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.”.

Passed by the House of Assembly this day of , 2021.

Speaker.

Clerk of the House of Assembly.

OBJECTS AND REASONS

This Bill aims to amend the Financial Services Commission Act, 2001 (Act No. 12 of 2001) (“the Act”) to empower the Financial Services Commission (“the Commission”) to consider applications for the waiver of monetary penalties in circumstances where the failure giving rise to the penalties is not the fault of a licensee, company or other person (“legal entities”). It is the legal requirement that any matter that needs to be filed with the Commission (including the Registry of Corporate Affairs) should be done through an authorised agent or a registered agent. Thus the consequence of any failure on the part of the authorised agent or registered agent to file a legal entity’s documents is suffered by the legal entity. This is the case because the Act and the various financial services legislation do not give the Commission the power to waive any penalty applicable to legal entities.

The Commission has, over the years, observed that in many instances failures by legal entities to file documents within prescribed periods were attributable to the default of authorised agents or registered agents. Invariably the legal entities would perform all the actions required of them to ensure the timely filing of documents or information, but authorised or registered agents fail to effect the necessary filing on time. This results in monetary penalties becoming applicable to the legal entities and, in some instances, depending on the length of period of the failure, the monetary penalties may be quite high. This becomes particularly difficult for small businesses which struggle to pay such monetary penalties to stay in good standing with the Commission.

It is in this context that the Bill seeks to amend the Act to enable the Commission to make a proper assessment of failures to file documents on time thereby leading to monetary penalties being suffered by legal entities. It is proposed that legal entities that are not at fault for failure to have their documents filed in accordance with the Act and the financial services legislation should not suffer. In order to ensure that this relief is not abused, the Bill provides both a process and conditions that must be satisfied before the Commission can properly exercise a discretion to waive a penalty. Thus clause 3 of the Bill introduces a new section 54B to provide the appropriate legislative framework in that regard, while at the same time ensuring the appropriate discipline of defaulting authorised agents and registered agents, as well as licensees or other persons.

In the same vein, clause 3 of the Bill (if enacted) also enables the Commission to waive the application of monetary penalties where the failure to file documents on behalf of legal entities is attributable to acts of God (such as a hurricane) which make compliance difficult or impossible.

Accordingly, Members of the House of Assembly are kindly requested to consider and approve the Bill.

Minister of Finance