

No. 15 of 2009

VIRGIN ISLANDS

PROLIFERATION FINANCING (PROHIBITION) ACT, 2009

ARRANGEMENT OF SECTIONS

Section

PRELIMINARY

1. Short title.
2. Interpretation.

DIRECTIONS

3. Power to give a direction.
4. Persons to whom a direction may be given.
5. Conditions for giving a direction.

REQUIREMENTS IN RELATION TO DIRECTIONS

6. Imposing requirements.
7. Customer due diligence.
8. Ongoing monitoring.
9. Systematic reporting.
10. Restricting or ceasing business.

PROCEDURES AND LICENSING IN RELATION TO DIRECTIONS

11. General directions: how given.
12. Specific directions: notification and duration of direction.
13. General directions: publication and duration of direction.
14. Directions restricting or ceasing business: exemption by licence.

ENFORCEMENT: INFORMATION POWERS

15. Power to require information or documents.
16. Powers of entry and inspection without a warrant, etc.
17. Entry to premises under warrant.
18. Restrictions on powers.
19. Failure to comply with information requirement.

ENFORCEMENT: CIVIL PENALTIES

- 20. Power to impose civil penalties.
- 21. Duty to issue penalty notice.
- 22. Right of appeal.

ENFORCEMENT: OFFENCES

- 23. Failure to comply with requirement imposed by a direction.
- 24. Offences in connection with licences.
- 25. Extra-territorial application of offences.
- 26. Time limit for summary proceedings.
- 27. Liability of officers of bodies corporate, etc.
- 28. Proceedings against unincorporated bodies.

GENERAL PROVISIONS

- 29. Report to Parliament.
- 30. Monitoring persons operating in the financial sector.
- 31. Assistance in preparing guidance.
- 32. Notices.
- 33. Exercise of powers under this Act and S.I. No. 13 of 2008.
- 34. Immunity from liability.
- 35. Power to amend section 2 (2).
- 36. Application to the Crown.
- 37. Regulations.

No. 15 of 2009

Proliferation Financing (Prohibition) Act, 2009

**Virgin
Islands**

I Assent

**(Sgd.) DAVID PEARLEY
Governor**

2nd November, 2009

VIRGIN ISLANDS

No. 15 of 2009

An Act to confer powers on the Financial Investigation Agency to take action against persons and activities that may be related to terrorist financing, money laundering or the development of weapons of mass destruction and for other connected matters.

[Gazetted 19th November, 2009]

ENACTED by the Legislature of the Virgin Islands as follows:

PRELIMINARY

Short title.

1. This Act may be cited as the Proliferation Financing (Prohibition) Act, 2009.

Interpretation.

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

“Agency” means the Financial Investigation Agency established under section 3 of the Financial Investigation Agency Act, 2003;

“biological weapon” means any biological agent or toxin as defined and referred to in section 1 (2) of the Biological Weapons Act 1974 (Overseas Territories) Order 1975;

U.K.S.I.1975
No. 240

“business relationship” means a business, professional or commercial relationship between a relevant person and a customer, which is expected by the relevant person, at the time when contact is established, to have an element of duration;

“chemical weapon” has the definition referred to in section 1 (1) of Schedule 1 of the Chemical Weapons (Overseas Territories) Order 2005, and the exceptions outlined in that section apply accordingly;

“Commission” means the Financial Services Commission established under the Financial Services Commission Act, 2001;

“conduct” includes an act and an omission;

“country” includes territory;

“currency” means the currency of the United States of America, and any amount expressed in that currency includes the equivalent in any other currency;

“designated person”, in relation to a direction, means a person in relation to whom the direction is given;

“direction” means a direction issued pursuant to section 3;

“document” means information that is recorded in any form;

“enforcement officer” means an officer of the Agency, or any officer of Customs or officer of the Police Force that is specifically or generally authorised by the Agency;

“House” means the House of Assembly of the Virgin Islands;

“money laundering” means any conduct that constitutes an offence under section 28, 29, or 30 of the Proceeds of Criminal Conduct Act, 1997;

“notice” means a notice in writing;

“nuclear weapon” includes any nuclear explosive device that is not intended for use as a weapon;

“proliferation” means the development or production of nuclear, radiological, biological or chemical weapons or systems for their delivery;

“radiological weapon” means a device designed to cause destruction, damage or injury by means of the radiation produced by the decay of radioactive material;

“relevant person” means a person to whom a direction is given;

“terrorism” bears the meaning provided for the term in article 2 of the Terrorism (United Nations Measures) (Overseas Territories) Order 2001;

“terrorist financing” means

- (a) the use of funds, or the making available of funds, for the purposes of terrorism; or
- (b) the acquisition, possession, concealment, conversion or transfer of funds that are, directly or indirectly, intended to be used or made available for the purposes of terrorism.

(2) Subject to subsection (3), a reference in this Act to a person operating in the financial sector refers to a person

- (a) whose business falls to be regulated under the Financial Services Commission Act, 2001 or any of the regulatory legislation outlined in Part 1 of Schedule 1 of that Act, and
- (b) who acts in the course of a business carried on by it in the Territory,

and “financial sector” shall be construed accordingly.

(3) A person who falls within the scope of subsection (2) solely as a result of engaging in financial activity on an occasional or very limited basis is not regarded for the purposes of this Act as operating in the financial sector.

(4) For the purposes of subsection (3), a person is regarded as engaging in a financial activity on an occasional or very limited basis if

- (a) the person’s total annual turnover in respect of the financial activity does not exceed one hundred thousand dollars;
- (b) the financial activity is limited in relation to a customer to no more than one transaction exceeding one thousand five hundred dollars, whether the transaction is carried out in a single operation or a series of operations which appear to be linked;
- (c) the financial activity does not exceed five percent of the person’s total annual turnover;

- (d) the financial activity is ancillary and directly related to the person's main activity;
- (e) the financial activity is not the transmission or remittance of money , or a representation of money value, by any means;
- (f) the person's main activity is not that of a person operating in the financial sector; and
- (g) the financial activity is provided only to customers of the person's main activity.

DIRECTIONS

Power to give a direction. **3.** (1) The Agency may, in relation to any country, give a direction to a relevant person mentioned in section 4 if any of the conditions outlined in section 5 are satisfied, except that direction may not be given in relation to a European Economic Area State.

(2) A direction given by the Agency may make different provision in relation to different descriptions or classes of relevant persons.

Persons to whom a direction may be given. **4.** A direction under this Act may be given to any of the following relevant persons:

- (a) a particular person operating in the financial sector;
- (b) any description or class of persons operating in the financial sector; or
- (c) all persons operating in the financial sector.

Conditions for giving a direction. **5.** (1) The conditions referred to in section 3 (1) with respect to a country are that

- (a) the United Nations Security Council or Financial Action Task Force has advised that measures should be taken in relation to the country because of the risks of terrorist financing, money laundering or proliferation activities being carried on
 - (i) in the country;
 - (ii) by the government of the country; or
 - (iii) by persons resident or incorporated in the country;
- (b) the Agency reasonably believes that there is a risk that terrorist financing or money laundering activities are being carried on

- (i) in the country,
- (ii) by the government of the country, or
- (iii) by persons resident or incorporated in the country,

and that this poses a significant risk to the interests of the Virgin Islands or the United Kingdom; or

- (c) the Agency reasonably believes that
 - (i) the development or production of nuclear, radiological, biological or chemical weapons in the country or systems for their delivery; or
 - (ii) the doing in the country of anything that facilitates the development or production of any of the weapons referred to in subparagraph (i),

poses a significant risk to the interests of the Virgin Islands or the United Kingdom.

(2) For the purposes of subsection (1) (b) and (c), the question as to whether or not an activity mentioned in that subsection constitutes a significant risk to the Virgin Islands or the United Kingdom is a matter to be determined by the Agency acting in consultation with the Governor.

REQUIREMENTS IN RELATION TO DIRECTIONS

Imposing requirements.

6. (1) Where the Agency gives a direction pursuant to section 3, it may impose any of the requirements outlined in sections 7, 8, 9 and 10 in relation to transactions or business relationships with

- (a) a person carrying on business in the country concerned;
 - (b) the government of the country; or
 - (c) a person resident or incorporated in the country.
- (2) A direction may further impose requirements in relation to
- (a) a particular person that falls under subsection (1);
 - (b) a description or class of persons under subsection (1); or

- (c) all persons falling under subsection (1).
- (3) A direction may make different provision in relation to
- (a) different descriptions or classes of designated persons; and
 - (b) different descriptions of transaction or business relationship.
- (4) The requirements imposed by a direction must be proportionate, having regard to the conditions mentioned in section 5 (1) (a) or, as the case may be, the risk mentioned in section 5 (1) (b) or (c), to the interests of the Virgin Islands or the United Kingdom.
- Customer due diligence.
7. (1) A direction given by the Agency may require a relevant person to undertake enhanced customer due diligence measures
- (a) before entering into a transaction or business relationship with a designated person; and
 - (b) during a business relationship with that designated person.
- (2) The direction may do either or both of the following:
- (a) impose a general obligation to undertake enhanced customer due diligence measures;
 - (b) require a relevant person to undertake specific measures identified or described in the direction.
- (3) A direction requiring a relevant person to undertake enhanced customer due diligence measures pursuant to subsection (1) or perform any requirement or undertaking under subsection (2) is without prejudice to the relevant person's obligations or liabilities in relation to the same matters, where applicable, under the Anti-money Laundering Regulations, 2008 or the Anti-money Laundering and Terrorist Financing Code of Practice, 2008.

S.I. No. 12
of 2008
S.I. No. 13
of 2008

- (4) For the purposes of this section,
- (a) “enhanced customer due diligence measures” means measures to
 - (i) establish the identity of the designated person;
 - (ii) obtain information about
 - (aa) the designated person and their business; and

- (bb) the source of their funds; and
- (iii) assess the risk of the designated person being involved in relevant activities; and
- (b) “relevant activities” means
- (i) money laundering;
- (ii) terrorist financing; or
- (iii) proliferation.

Ongoing monitoring.

8. (1) A direction given by the Agency may require a relevant person to undertake enhanced ongoing monitoring of any business relationship with a designated person.

- (2) The direction may do either or both of the following:
- (a) impose a general obligation to undertake enhanced ongoing monitoring;
- (b) require a relevant person to undertake specific measures identified or described in the direction.

(3) For the purposes of this section, “enhanced ongoing monitoring” of a business relationship means

- (a) keeping up-to-date information and documents obtained for the purposes of enhanced customer due diligence measures; and
- (b) scrutinising transactions undertaken during the course of the business relationship and, where appropriate, the source of funds for those transactions, to ascertain whether the transactions are consistent with the relevant person’s knowledge of the designated person and their business.

Systematic reporting.

9. (1) A direction given by the Agency may require a relevant person to provide such information and documents relating to transactions and business relationships with designated persons, as may be specified in the direction.

(2) A direction imposing the requirement referred to in subsection (1) shall specify how the direction is to be complied with, including

- (a) the person to whom the information and the documents are to be provided; and

- (b) the period within which, or intervals at which, the information and documents are to be provided.

(3) The power conferred by this section is not exercisable in relation to information or documents in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

(4) The exercise of the power conferred by this section and the provision of information under it is not otherwise subject to any restriction on the disclosure of information, whether imposed by statute or otherwise.

Restricting or ceasing business.

10. Where the Agency gives a direction, it may require a relevant person not to enter into or continue to participate in

- (a) a specified transaction or business relationship with a designated person;
- (b) a specified description of transactions or business relationships with a designated person; or
- (c) any transaction or business relationship with a designated person.

PROCEDURES AND LICENSING IN RELATION TO DIRECTIONS

General directions: how given.

11. (1) A direction that is given to

- (a) a description or class, of persons operating in the financial sector, or
- (b) all persons operating in the financial sector,

shall be contained in an order made by the Agency and shall, subject to subsection (3), have effect from the date of the making of the order.

(2) If the order made under subsection (1) contains requirements of a kind mentioned in section 10, the Agency shall forthwith transmit a copy of the order to the Attorney General who shall as soon as practicable lay the order before the House for approval.

(3) If, following the laying of the order, the House fails to approve the order within twenty-eight days from the date of laying, the order shall cease to have effect.

(4) An order that ceases to have effect in accordance with subsection (3) shall not affect anything done under the order.

(5) An order to which subsection (2) does not apply is subject to a negative resolution of the House.

(6) In calculating the period specified in subsection (3), account shall not be taken of the period when the House is prorogued or dissolved.

Specific directions:
notification and duration of direction.

12. (1) This section applies in relation to a direction that is given to a particular person.

(2) Where the Agency gives a direction, it shall give notice of the direction to that particular person.

(3) The direction, if not previously revoked and whether or not varied, ceases to have effect at the end of the period of one year beginning with the day on which the direction is given.

(4) The application of subsection (3) is without prejudice to the giving of a further direction by the Agency.

(5) The Agency may vary or revoke the direction at any time.

(6) Where the direction to a particular person is varied or ceases to have effect, whether on revocation or otherwise, the Agency shall give notice of that fact to that particular person.

General directions:
publication and duration of direction.

13. (1) This section applies to an order containing directions under section 11.

(2) The Agency shall take such steps as it considers appropriate to publicise an order made under this Act.

(3) An order

(a) revoking a previous order, or

(b) varying a previous order so as to make its provisions less onerous,

shall be transmitted by the Agency to the Attorney General who shall as soon as practicable lay the order before the House of Assembly.

(4) The order, if not previously revoked and whether or not varied, ceases to have effect at the end of the period of one year beginning with the day on which it was made.

(5) The application of subsection (4) is without prejudice to the making of a further order by the Agency.

(6) Where the order is varied or ceases to have effect, whether on revocation or otherwise, the Agency shall take such steps as it considers appropriate to publicise that fact.

Directions
restricting or
ceasing
business:
exemption by
licence.

14. (1) This section applies where a direction contains requirements of a kind mentioned in section 10.

(2) The Agency may grant a licence to exempt acts specified in the licence from the requirements mentioned in section 10.

(3) A licence granted by the Agency may be

- (a) general or granted to a description or class of persons or to a particular person;
- (b) subject to conditions as the Agency may specify in the licence; or
- (c) of indefinite duration or subject to an expiry date.

(4) The Agency may at any time vary or revoke a licence issued under this section.

(5) Where the Agency grants, varies or revokes a licence, it shall,

- (a) in the case of a licence granted to a particular person, give notice of the grant, variation or revocation to that particular person; and
- (b) in the case of a general licence or a licence granted to a description or class of persons, take such steps as it considers appropriate to publicise the grant, variation or revocation of the licence.

ENFORCEMENT: INFORMATION POWERS

Power to require **15.** (1) An enforcement officer may by notice to a relevant person require the information or relevant person to documents.

- (a) provide information as may be specified in the notice; or
- (b) produce documents as may be so specified

in such form and verified or authenticated in such manner as may be required.

(2) An enforcement officer may exercise powers under this section only if the information or documents sought to be obtained as a result are reasonably required in connection with the exercise by the Agency of its functions under this Act.

(3) Where an enforcement officer requires information to be provided or documents to be produced under this section,

- (a) the notice shall set out the reasons why the enforcement officer requires the information to be provided or the documents to be produced; and
- (b) the information shall be provided or the documents produced
 - (i) before the end of the period determined to be reasonable, as may be specified in the notice; and
 - (ii) at such place as may be so specified.

(4) In relation to a document that is in electronic form, the power to require the production of the document includes a power to require the production of a copy of the document in legible form or in a form from which the document can readily be produced in visible and legible form.

(5) An enforcement officer may take copies of, or make extracts from, any document that is produced under this section.

(6) The production of a document shall not affect any lien which a person has on the document.

- Powers of entry and inspection without a warrant, etc.
- 16.** (1) Where an enforcement officer has reasonable cause to believe that any premises are being used by a relevant person in connection with the relevant person's business activities, the enforcement officer may, on producing evidence of authority, at any reasonable time
- (a) enter and inspect the premises;
 - (b) observe the carrying on of business activities by the relevant person;
 - (c) inspect any document found on the premises; and
 - (d) require any person on the premises to provide an explanation of any document or to state where it may be found.
- (2) An enforcement officer may take copies of, or make extracts from, any document found pursuant to subsection (1).

(3) An enforcement officer may exercise powers under this section only if the information or document sought to be obtained as a result is reasonably required in connection with the exercise by the Agency of its functions under this Act.

(4) In this section, “premises” means any premises other than premises used only as a dwelling.

Entry to premises under warrant. **17.** (1) A Magistrate or Justice of the Peace may issue a warrant under this section if he or she is satisfied on information on oath given by an enforcement officer that there are reasonable grounds for believing that any set of conditions outlined in subsection (2), (3) or (4) is satisfied.

(2) The first set of conditions is that

- (a) there is on the premises specified in the warrant, a document in relation to which a requirement could be imposed under section 15 (1) (b); and
- (b) if the requirement under section 15 (1) (b) were to be imposed,
 - (i) it would not be complied with; or
 - (ii) the document to which it relates would be removed, tampered with or destroyed.

(3) The second set of conditions is that

- (a) a person on whom a requirement has been imposed under section 15 (1) (b) has failed, wholly or in part, to comply with it; and
- (b) there is on the premises specified in the warrant, a document that has been required to be produced.

(4) The third set of conditions is that

- (a) an enforcement officer has been obstructed in the exercise of a power under section 16; and
- (b) there is on the premises specified in the warrant a document that could be inspected under section 16 (1) (c).

(5) A Magistrate or Justice of the Peace may issue a warrant under this section if he or she is satisfied on information on oath given by an enforcement officer that there are reasonable grounds for suspecting that

- (a) an offence under this Act has been, is being or is about to be committed by a relevant person; and
 - (b) there is on the premises specified in the warrant a document relevant to whether that offence has been, is being or is about to be committed.
- (6) A warrant issued under this section shall authorise an enforcement officer to
- (a) enter the premises specified in the warrant;
 - (b) search the premises and take possession of anything that appears to be a document specified in the warrant or to take, in relation to that document, any other steps which may appear to be necessary for preserving it or preventing interference with it;
 - (c) take copies of, or extracts from, any document specified in the warrant;
 - (d) require any person on the premises to provide an explanation of any document which appears to be of the kind specified in the warrant or to state where the document may be found; and
 - (e) use such force as may reasonably be necessary.

Restrictions on powers. **18.** (1) This section applies in relation to the powers conferred by sections 15, 16 and 17.

(2) The powers referred to in subsection (1) are not exercisable in relation to information or documents in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

(3) The exercise of the powers referred to in subsection (1) and the provision of information or production of documents under those powers is not otherwise subject to any restriction on the disclosure of information, whether imposed by statute or otherwise.

Failure to comply with information requirement. **19.** (1) If on an application made by the Agency it appears to the High Court that a person (“the information defaulter”) has failed to do something that he or she was required to do under section 15 (1), the High Court may make an order under this section.

(2) An order made under this section may require the information defaulter to do either or both of the following:

- (a) to do the thing that he or she had failed to do within such period as may be specified in the order;

- Power to impose civil penalties.
- (b) to take such steps to remedy the consequences of the failure as may be so specified.
- (3) If the information defaulter is a body corporate, a partnership or an unincorporated body of persons that is not a partnership, the order may require any officer of the body corporate, partnership or unincorporated body who is, wholly or partly responsible for the failure, to meet such costs of the application as may be specified in the order.

ENFORCEMENT: CIVIL PENALTIES

20. (1) The Agency may, subject to subsection (2), impose a penalty of such amount as it considers appropriate on a person who fails to comply with a requirement imposed by

- (a) a direction under this Act, or
- (b) a condition of a licence under section 14,

and for this purpose, “appropriate” means effective, proportionate and dissuasive.

(2) The Agency shall not impose a penalty if it is satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

(3) In deciding whether to impose a penalty for failure to comply with a requirement, the Agency shall consider whether the person followed any relevant guidance which was at the time

- (a) issued by the Agency, Commission or other supervisory body or by a professional body whose members, whether wholly or partly, operate in the financial sector; and
- (b) published in a manner approved by the Agency, Commission or other supervisory body or by the professional body as suitable in its opinion to bring the guidance to the attention of persons likely to be affected by it.

(4) A person on whom a penalty is imposed under this section is not liable to be proceeded against for an offence under section 23 in respect of the same failure.

(5) A penalty imposed by the Agency pursuant to this section shall not exceed forty thousand dollars, unless such higher penalty is presented to and confirmed by the High Court.

(6) Where the Agency presents a higher penalty to the High Court for confirmation, the High Court may

- (a) confirm the penalty imposed by the Agency; or
- (b) vary the penalty as it considers appropriate, having regard to the seriousness of the failure.

(7) A penalty imposed by the Agency under this section is payable to the Agency for its use and is recoverable in civil proceedings as a debt due to the Agency.

Duty to issue
penalty notice. **21.** (1) The Agency shall, before imposing a penalty against a person under section 20, give notice to the person

- (a) stating its intention to impose the penalty;
- (b) stating the reasons for the intention to impose the penalty;
- (c) stating the amount proposed to be imposed as penalty; and
- (d) inviting the person to make any representation he or she wishes.

(2) A notice issued under subsection (1) shall require the person to whom it relates to submit his or her representation (if any) within a period of twenty-eight days from the date indicated on the notice.

(3) Where the Agency receives a representation under this section, it shall consider the representation and

- (a) confirm the amount of the proposed penalty;
- (b) vary the penalty to be imposed in such manner as it considers fit; or
- (c) withdraw the penalty proposed to be imposed.

(4) Where the Agency varies or withdraws a proposed penalty under paragraph (b) or (c), as the case may be, it may take further steps (if any) in consequence of the variation or withdrawal as it considers appropriate.

(5) The Agency shall notify the person of its decision under subsection (3) and, where it varies or withdraws the proposed penalty, of the further steps (if any) it has taken in relation to the person.

(6) Where the Agency imposes a penalty under subsection (3) (a) or (b), it shall require the person to pay to the Agency the penalty imposed within such period as the Agency may determine.

(7) Where the Agency varies a penalty under subsection (3) (b), the application of subsection (6) is without prejudice to any further steps that the Agency may take under subsection (5).

(8) Where the Agency does not receive a representation in relation to a notice it has issued under this section, it shall proceed to impose such penalty as it considers appropriate.

(9) A notice issued under this section may, at the written request of the person against whom it is issued, be extended by the Agency for a period not exceeding an additional seven days.

Right of appeal.

22. (1) A person who is aggrieved by a decision of the Agency imposing a penalty under section 20 may appeal the decision to the Board.

- (2) After hearing an appeal brought under subsection (1), the Board may
- (a) set aside the decision of the Agency;
 - (b) confirm the decision of the Agency; or
 - (c) vary the decision of the Agency in a manner it considers fit.

(3) For the purposes of this section, “Board” means the Board of the Agency established under section 3 (2) of the Financial Investigation Agency Act, 2003.

(4) A person who is dissatisfied with the decision of the Board may appeal to the High Court, and the High Court may on an appeal brought before it

- (a) set aside the decision of the Board;
- (b) confirm the decision of the Board; or
- (c) vary the decision of the Board in a manner it considers fit.

ENFORCEMENT: OFFENCES

Failure to comply with requirement imposed by a direction.

23. (1) Subject to subsection (2), a person who fails to comply with a requirement imposed by a direction under this Act commits an offence.

(2) A person does not commit an offence under subsection (1) if he or she took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

(3) In deciding whether a person has committed an offence under this section, the court shall consider whether the person followed any relevant guidance that was at the time

- (a) issued by the Agency, Commission or other supervisory body or by a professional body whose members, whether wholly or partly, operate in the financial sector; and
- (b) published in a manner approved by the Agency, Commission or other supervisory body or by the professional body as suitable in its opinion to bring the guidance to the attention of persons likely to be affected by it.

(4) A person who commits an offence under subsection (1) is liable

- (a) on summary conviction, to a fine not exceeding fifty thousand dollars; or
- (b) on conviction on indictment, to a fine not exceeding seventy thousand dollars or imprisonment for a term not exceeding three years or both.

(5) A person who is convicted of an offence under this section is not liable to a penalty under section 20 in respect of the same offence.

Offences in
in connection
with licences.

24. (1) A person commits an offence if he or she, for the purpose of obtaining a licence under section 14,

- (a) provides information that is false in a material respect or a document that is not what it purports to be; and
- (b) knows that, or is reckless as to whether, the information is false or the document is not what it purports to be.

(2) A person who commits an offence under subsection (1) is liable on conviction on indictment to a fine not exceeding seventy thousand dollars or imprisonment for a term not exceeding three years or both.

Extra-territorial
application of
offences.

25. (1) An offence under this Act may be committed by a person acting in the course of a business in the financial sector although the conduct which gives rise to the offence takes place wholly or partly outside the Virgin Islands.

(2) Nothing contained in this section affects any criminal liability arising otherwise than under this section.

Time limit for summary proceedings.	<p>26. An offence under this Act that is triable summarily shall be tried</p> <ul style="list-style-type: none"> (a) at any time within three years after the commission of the offence; or (b) within twelve months after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions to justify the proceedings comes to his or her knowledge.
Liability of officers of bodies corporate, etc.	<p>27. (1) Where an offence under this Act committed by a body corporate is shown to</p> <ul style="list-style-type: none"> (a) have been committed with the consent or connivance of an officer of the body corporate, or (b) be attributable to any neglect on the part of any such officer, the officer as well as the body corporate commit an offence and are liable to be proceeded against and punished accordingly. <p>(2) Where an offence under this Act committed by a partnership is shown to</p> <ul style="list-style-type: none"> (a) have been committed with the consent or connivance of a partner, or (b) be attributable to any neglect on the part of a partner, the partner as well as the partnership commit an offence and are liable to be proceeded against and punished accordingly. <p>(3) Where an offence under this Act committed by an unincorporated association (other than a partnership) is shown to</p> <ul style="list-style-type: none"> (a) have been committed with the consent or connivance of an officer of the association, or (b) be attributable to any neglect on the part of any such officer, the officer as well as the association commit an offence and are liable to be proceeded against and punished accordingly. <p>(4) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.</p>

- (5) In this section,
- (a) “officer”,
- (i) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity; and
- (ii) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such a capacity; and
- (b) “partner” includes a person purporting to act as a partner.

Proceedings against unincorporated bodies. **28.** (1) Proceedings under this Act that are alleged to have been committed by a partnership or an unincorporated association shall be brought in the name of the partnership or association and not in that of its members.

(2) Section 25 of the Interpretation Act relating to the service of documents have effect in relation to proceedings for an offence under this Act as if the partnership or association were a body corporate.

(3) A fine imposed on the partnership or association on its conviction for an offence is to be paid out of the funds of the partnership or association.

GENERAL PROVISIONS

- Report to Parliament. **29.** (1) The Agency shall, within a period of six months after the end of each year,
- (a) prepare a report about its exercise during that year of its functions under this Act; and
- (b) transmit a copy of the report to the Attorney General.
- (2) The Attorney General shall, within a period of three months after receipt of a report under subsection (1) (b), lay the report before the House.
- (3) Subsection (1) shall not apply in relation to a year if no direction under this Act was in force at any time in that year.
- (4) In calculating the period specified in subsection (2), account shall not be taken of the period when the House is prorogued or dissolved.

Monitoring
persons
operating in
the financial
sector.

30. (1) The Agency and the Commission shall take appropriate measures to monitor persons operating in the financial sector for the purpose of securing compliance by those persons with the requirements of any directions given under this Act.

(2) For the purposes of ensuring effective monitoring by the Commission of persons operating in the financial sector, the Agency shall provide the Commission with a copy of any direction it gives in relation to those persons.

(3) In performing its functions under this Act in relation to a direction given by it, the Agency may seek the assistance of any person or authority and may authorise the person or authority to perform such task on behalf of the Agency as the Agency may prescribe.

(4) Nothing contained in subsection (3) includes the giving of a direction under this Act.

Assistance in
preparing
guidance.

31. The Agency shall provide such assistance as may reasonably be required by the Commission or other supervisory body or by a professional body whose members operate in the financial sector in drawing up guidance that, when issued and published, would be relevant guidance for the purposes of sections 20 (3) and 23 (3).

Notices.

32. (1) A notice required under this Act may be given to a person,

- (a) by posting it to the person's last known address;
- (b) by leaving it for him or her with some adult person at his or her usual or last known place of abode or business; or
- (c) where the person is a body corporate, partnership or unincorporated association,
 - (i) by posting it to the registered or principal office of the body corporate, partnership or association; or
 - (ii) by delivering it to the secretary or clerk of the body corporate, partnership or association at the registered or principal office of the body corporate, partnership or association.

(2) Where under this Act the Agency is under a duty to give a notice to a person but does not have an address for the person, it shall cause the notice to be published in the *Gazette* and in at least three issues of a newspaper published and circulating in the Virgin Islands.

(3) The form of a notice issued under this section shall be such as the Agency may determine.

Exercise of powers under this Act and S.I. No. 13 of 2008.	33. Where, in relation to a money laundering or terrorist financing activity, a power referred to in this Act may be exercised under this Act and the Anti-money Laundering and Terrorist Financing Code of Practice, 2008 (“the Code of Practice”), the power shall be exercised under either this Act or the Code of Practice, but not under both.
Immunity from liability.	34. Neither the Agency nor an enforcement officer shall be liable for anything done by the Agency or enforcement officer in good faith in exercise of the powers conferred by this Act.
Power to amend section 2 (2).	<p>35. (1) The Cabinet may, on the advice of the Agency, by Order amend section 2 (2) to extend the scope of persons operating in the financial sector.</p> <p>(2) An Order made under subsection (1) shall</p> <ul style="list-style-type: none"> (a) be published in the <i>Gazette</i>; and (b) be subject to a negative resolution of the House.
Application to the Crown.	<p>36. (1) Subject to subsection (2), this Act binds the Crown.</p> <p>(2) The Crown shall not be criminally liable on account of any contravention of this Act.</p>
Regulations.	37. The Cabinet may make Regulations for the effective carrying out of the provisions of this Act.

Passed by the House of Assembly this 29th day of September, 2009.

(Sgd) ROY HARRIGAN,
Speaker.

(Sgd) JOANN HODGE,
Acting Deputy Clerk of the House of Assembly.