

**M O N T S E R R A T**

**NO. 3 OF 2008**

**THE FINANCIAL SERVICES COMMISSION ACT 2008**

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I ASSENT

H. A. Fergus  
Governor

DATE:29.10.08

**M O N T S E R R A T**

**NO. 3 OF 2008**

An Act to continue and preserve the Financial Services Commission established under the Financial Services Commission Act (**Cap. 11.02**), to provide for the functions and powers of the Commission and to provide for the supervision and regulation by the Commission of financial services business.

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council of Montserrat and by the Authority of the same as follows:-

**PART I**  
**PRELIMINARY PROVISIONS**

**Short title**

1. This Act may be cited as the Financial Services Commission Act, 2008.

**Interpretation.**

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

“**Anti-Money Laundering Regulations**” means the Anti-Money Laundering Regulations made under the Proceeds of Crime Act, 1999;

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

“**Chairman**” means the Chairman of the Board appointed under section 5(2) and includes any director acting as Chairman;

“**Commission**” means the Financial Services Commission established under the former Act and preserved and continued under this Act in accordance with section 3;

“**Commissioner**” means the person appointed as Commissioner under section 10;

“**connected person**” is to be construed in accordance with the regulations;

“**Court**” means the High Court;

“**director**” means the Commissioner or an individual appointed to be a director under section 5;

“**document**” means a document in any form and includes—

- (a) any writing or printing on any material,
- (b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form;
- (c) any storage medium, including discs and tapes,
- (d) books and drawings, and
- (e) a photograph, film, tape, negative or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced,

and without limiting the generality of the foregoing, includes any Court application, order and other legal process and any notice;

**“financial crime”**, includes an offence involving—

- (a) money laundering;
- (b) the financing of terrorism; or
- (c) misconduct in, or misuse of information relating to, a financial market;

**“financial institution”** means a person who holds a licence;

**“financial services business”** means—

- (a) a business or activity for which a licence is required; or
- (b) a business or activity that is prescribed as a financial services business;

**“financial services enactment”** means an Act prescribed as a financial services enactment together with any subsidiary legislation made under that Act;

**“foreign regulatory authority”** means an authority in a jurisdiction outside Montserrat which exercises a regulatory function;

**“former Act”** means the Financial Services Commission Act (Cap. 11.02);

**“Governor”** means the Governor acting in his discretion;

**“licence”** means an authorisation, licence, registration or recognition issued or granted under a regulatory enactment;

**“prescribed”** means prescribed by the regulations;

**“registry enactment”** means a financial services enactment prescribed as a registry enactment;

**“regulated person”** has the meaning ascribed to it in the Anti-Money Laundering Regulations;

**“regulations”** means regulations made under section 49;

**“Regulatory Code”** means a Code issued by the Commission under section 50 or under a regulatory enactment;

**“regulatory enactment”** means a financial services enactment prescribed as a regulatory enactment;

**“regulatory function”** means—

- (a) a function corresponding or similar to a function exercised by the Commission; or

- (b) a function that, in the opinion of the Commission, relates to the supervision or regulation of companies or financial services business;

**“unauthorised financial services business”** has the meaning specified in subsection (2).

(2) A person carries on unauthorised financial services business if he carries on an activity for which a licence is required without having either—

- (a) the appropriate licence; or  
(b) the benefit of an exemption provided for in a regulatory enactment.

(3) For the purposes of the definition of “financial crime” in subsection (1), **“offence”** includes an act or omission which would be an indictable offence if it had taken place in Montserrat.

(4) The regulations shall make provision for determining whether, for the purposes of this Act, a person is connected with another person.

## PART 2

### THE FINANCIAL SERVICES COMMISSION

#### **Continuation of Financial Services Commission as body corporate**

3. (1) The Financial Services Commission established under the former Act is preserved and continues to be a body corporate for the purposes of this Act.

(2) The repeal of the former Act does not prejudice or affect—

- (a) the corporate identity of the Commission;  
(b) any decisions made or actions taken by the Commission prior to the commencement of this Act;  
(c) the assets, rights or obligations of the Commission;  
(d) the transfer of any functions to the Commission under section 9 of the former Act; or  
(e) the commencement or continuation of proceedings by or against the Commission.

(3) The Commission has perpetual succession and a common seal and may sue and be sued in its corporate name.

(4) The regulations may make provision for the administration of the Commission.

#### **Functions of the Commission.**

4. (1) The functions of the Commission are—

- (a) to supervise financial institutions in accordance with this Act, the regulatory enactments and the Regulatory Codes and to administer the registry enactments;  
(b) to consider and determine applications for licences;

- (c) to monitor compliance by regulated persons with the Anti-Money Laundering Regulations and such other Acts, regulations, codes or guidelines relating to money laundering or the financing of terrorism as may be prescribed;
- (d) to monitor financial services business carried on in or from within Montserrat and to take action against persons carrying on unauthorised financial services business;
- (e) to monitor the effectiveness of the regulatory enactments in providing for the supervision and regulation of financial services business carried on in or from within Montserrat to internationally accepted standards;
- (f) to advise the Governor and Executive Council on matters relating to financial services business;
- (g) to make such recommendations to the Governor and Executive Council as it considers appropriate concerning—
  - (i) the amendment or revision of the financial services enactments or any other Act relating to financial services business, companies or partnerships;
  - (ii) the enactment of new legislation relating to financial services business, companies or partnerships; and
  - (iii) proposals made otherwise than by the Commission in respect of matters specified in subparagraphs (i) and (ii).
- (h) to maintain contact and develop relations with persons engaged in financial services business in or from within Montserrat with a view to—
  - (i) encouraging the development of high professional standards within the financial services industry; and
  - (ii) promoting industry codes of conduct;
- (i) to maintain contact and develop relations with foreign regulatory authorities, international associations of regulatory authorities and other international associations or groups relevant to its functions and to provide regulatory assistance to foreign regulatory authorities in accordance with this or any other Act;
- (j) to provide such information and advice to financial institutions and the public, or any section of the public, concerning financial services business as it considers appropriate;
- (k) to discharge such other functions as may be assigned to it under this or any other Act.

(2) In discharging its functions, the Commission may take into account any matter which it considers to be appropriate but shall, in particular, have regard to the desirability of—

- (a) protecting the public, whether within or outside Montserrat, against financial loss arising out of the dishonesty, incompetence, malpractice or insolvency of persons engaged in financial services business in Montserrat;

- (b) protecting and enhancing the reputation of Montserrat as a financial services centre; and
- (c) deterring financial crime and other unlawful activities relating to financial services.

(3) For the purposes of subsection (2)(a), “the public” includes customers and potential customers of persons engaged in financial services business in or from within Montserrat.

### **The Board and the appointment of directors**

5. (1) The Commission has a Board of directors which consists of the Commissioner, as an *ex officio* director, and between two and five other individuals appointed by the Governor, after consultation with the Financial Secretary and the Commissioner—

- (a) at least one of whom shall have experience in the supervision of financial services business;
- (b) at least one of whom shall be a person who is practising as a solicitor, barrister, auditor or actuary in Montserrat or who has experience of financial services business in Montserrat; and
- (c) no more than one of whom shall be a Public Officer.

(2) The Governor shall appoint one of the directors to be the Chairman of the Board.

(3) A person is disqualified from appointment as a director if he—

- (a) is a member of the Legislative Council;
- (b) is an undischarged bankrupt; or
- (c) has been convicted of an indictable offence or any offence involving dishonesty.

(4) A previous appointment as a director does not affect a person’s eligibility for appointment under this section unless he is removed as a director under section 8(2) or would have been removed under that section but for his resignation.

(5) In making appointments to the Board, the Governor shall ensure that the individuals appointed—

- (a) are fit and proper; and
- (b) have knowledge, experience or expertise that is relevant to the functions of the Commission.

(6) The appointment of a director shall be published in the *Gazette*.

### **Functions of the Board**

6. (1) The Board is the governing body of the Commission.

(2) The principal functions of the Board are—

- (a) to establish the policy of the Commission and monitor and oversee its implementation;
- (b) to monitor and oversee the management of the Commission by the Commissioner with the objective of ensuring that—



- (i) the resources of the Commission are utilised economically and efficiently;
  - (ii) adequate internal financial and management controls are in place;
  - (iii) the Commission is operated in accordance with principles of good governance; and
  - (iv) the Commission fulfils its statutory obligations and properly discharges its functions; and
- (c) to approve the financial estimates and annual work plan of the Commission for submission to the Financial Secretary and the Governor respectively, to approve the Commission's financial statements and to appoint a suitably qualified person to audit the Commission's financial statements.

(3) In establishing the policy of the Commission, the Board shall have regard to such general directions as may be given to the Commission by the Governor.

(4) Schedule 2 provides for the proceedings of the Board.

#### **Terms of appointment of directors**

7. (1) Subject to this section, the terms of appointment of a director shall be determined by the Governor.

(2) The appointment of a director shall be for a term of not less than one or more than four years.

(3) Subject to subsection (5), directors shall be paid such remuneration, allowances and expenses by the Commission as may be determined by the Governor.

(4) A director does not act as a delegate of any Government, commercial, financial or other interest with whom he may be connected and shall not accept, or act on, directions from any person or authority in respect of his duties as a director.

(5) Except as provided in subsection (6), the Commissioner shall not be paid any remuneration or allowances for attending Board meetings, but he may be paid any reasonable expenses that he incurs in attending a Board meeting.

(6) The Commissioner may be paid a reasonable allowance for attending any Board meetings held outside Montserrat.

#### **Resignation and removal of directors**

8. (1) A director may at any time resign by giving written notice to the Governor and his resignation is effective upon receipt of the notice by the Governor.

(2) The Governor may, after consultation with the Financial Secretary and the Commissioner, by written notice, remove a director from office if he is satisfied that the director—

- (a) has, without the consent of the other directors, been absent from three or more consecutive Board meetings;

- (b) has become bankrupt, that his estate has been sequestrated or that he has made an arrangement with, or granted a trust deed in favour of, his creditors;
- (c) is or becomes disqualified from being appointed as a director under section 5(3);
- (d) has, or is about to have, an interest that is likely to prejudicially affect the exercise and performance by him of his functions as a director on an on-going basis, or that is contrary to the interests of the Commission or to the interests of Montserrat, or is liable to be removed as a director under section 9(7);
- (e) is in material breach of any term or condition of his appointment; or
- (f) is otherwise unable or unfit to discharge his functions as a director.

(3) A majority of the directors may recommend to the Governor that one of the directors should be removed.

(4) A decision to make a recommendation to the Governor under subsection (3) may only be made at a meeting called for the purpose of making such a recommendation, or for purposes including making such a recommendation.

(5) The notice of a meeting called under subsection (4) shall state that the purpose of the meeting is, or the purposes of the meeting include, the making of a recommendation to the Governor for the removal of a director.

(6) A notice issued by the Governor under subsection (2) shall be advertised in the *Gazette*.

(7) If a director dies, resigns, is removed from or otherwise vacates his office prior to the expiry of the term for which he has been appointed, the Governor shall appoint a new director to replace him and section 5 shall apply to the appointment.

(8) An appointment of a director under subsection (7) may be for the unexpired period of the term of office of the director in whose place he is appointed or for a new term of not less than one or more than four years.

(9) This section does not apply to the Commissioner whose resignation and removal from office shall be governed by his contract of employment with the Commission.

### **Disclosure of Interest**

9. (1) A director who has any direct or indirect personal, professional, business or pecuniary interest in any matter which falls to be considered by the Board shall on each and every occasion on which the matter comes before the Commission, as soon as reasonably practicable, complete a written declaration of interest in such form as may be approved by the Board and submit it to the Chairman.

(2) Subject to subsections (3) and (4), a director who has declared an interest under subsection (1) shall withdraw from any meeting whilst the matter in respect of which he has declared an interest is being considered by the Board and shall not express any view or take part in any vote concerning the matter.

(3) Where, in the opinion of the Chairman, the matter that falls to be considered by the Board is a matter of general policy applicable to financial

institutions generally, or to financial institutions of a particular type or category, the Chairman may permit a director who has declared an interest under subsection (1) to participate in the meeting, to express his views and to vote on any resolution concerning the matter.

(4) The Board may permit a director who has declared an interest under subsection (1) to participate in the meeting and to express his views.

(5) The director concerned shall withdraw from the meeting whilst the Board considers and determines whether to exercise its power under subsection (4).

(6) The Chairman shall draw to the attention of the Board prior to its consideration of any matter in respect of which a declaration was made –

- (a) the declaration of interest that he has received;
- (b) any decision that he has made under subsection (3).

(7) A director who fails to make a declaration of interest as required under subsection (1) or who makes a false or misleading statement in such a declaration—

- (a) commits an offence; and
- (b) is liable to be removed as a director;

unless he proves that he was not aware of the interest or, as the case may be, that he did not know, or with the exercise of reasonable diligence could not have discovered, that the statement was false or misleading.

### **Appointment of Commissioner**

**10. (1)** The Governor shall, after consultation with the Minister of Finance and the Financial Secretary, appoint a Commissioner on such terms and conditions as he considers appropriate.

(2) The Governor shall not appoint a person as Commissioner unless he is satisfied that the person is fit and proper and has the appropriate qualifications and experience to undertake the duties of Commissioner.

(3) The Commissioner is an employee of the Commission.

(4) The Commissioner is the chief executive officer of the Commission and, subject to the general direction of the Board, is responsible for—

- (a) the administration and operation of the Commission;
- (b) the discharge of the Commission's functions and the exercise of its powers;
- (c) the appointment, management and supervision of the Commission's employees;
- (d) the discharge of such functions and the exercise of such powers as may be assigned to, or conferred on, him by this or any other Act or that may be delegated to him by the Board.

(5) In discharging his functions and exercising his powers, the Commissioner shall use his best endeavours to ensure that—

- (a) the resources of the Commission are utilised economically and efficiently;

- (b) adequate internal financial and management controls are in place;
- (c) the Commission is operated in accordance with principles of good governance; and
- (d) the Commission fulfils its statutory obligations and properly discharges its functions.

(6) Where, due to the illness or temporary incapacity of the Commissioner, he is unable to discharge his functions under this Act, or where the Commissioner is absent from Montserrat for a period exceeding two weeks, the Governor may, after consulting with the Financial Secretary and having regard to subsection (2), appoint another person to act in his place during such illness, incapacity or absence from Montserrat.

### **General powers**

11. Subject to this and any other Act, the Commission may do all things necessary for, or reasonably ancillary or incidental to, the discharging of its functions, the carrying out of its duties and the exercise of its powers under this or any other Act, including—

- (a) acquiring, holding, dealing with and disposing of real and personal property or any interest therein;
- (b) contracting with any person for the supply to, or by, the Commission of any goods, services or personnel;
- (c) employing such persons, including advisors and consultants, as the Commission considers necessary on such terms as to remuneration, expenses, pensions, and other conditions of service as it considers appropriate;
- (d) establishing and maintaining such schemes or making such other arrangements as it considers appropriate for the payment of pensions and other benefits in respect of its officers and employees;
- (e) drawing up and implementing codes for regulating the terms of service, discipline, benefits and training of the Commission's employees;
- (f) paying expenses properly incurred by the Commission;
- (g) opening and maintaining bank accounts within or outside Montserrat;
- (h) entering into such contracts of insurance as it considers appropriate;
- (i) investing any of its funds that are not immediately required for the discharge of its functions;
- (j) publishing, in such manner as it considers appropriate, such information relating to its functions and its activities as it thinks fit;
- (k) entering into memoranda of understanding with regulatory agencies within and outside Montserrat for the purposes of discharging its functions; and
- (l) making rules for its administration and the conduct of its proceedings that are not inconsistent with this Act.

**Common seal**

**12. (1)** The Commission shall have a common seal, which shall be officially and judicially noticed.

**(2)** The common seal of the Commission shall not be affixed to any instrument except in the presence of the Commissioner and one other director.

**(3)** Any such instrument as is referred to in sub-section (2) shall be authenticated by the signature of the person or persons so present as witnesses to the sealing.

**Immunity**

**13. (1)** No person to whom this section applies shall be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any function or duty or the exercise or purported exercise of any power under this Act or any other enactment unless it is shown that the act or omission was in bad faith.

**(2)** This section applies to—

*(a)* the Commission;

*(b)* a director or a member of a committee of the Board;

*(c)* an employee of the Commission; and

*(d)* a person authorised by the Commission to perform any duty or exercise any power on behalf of the Commission.

**Exemption from work permit requirement**

**14.** A person who is employed by the Commission, whether on a permanent or contractual basis, who would be required to obtain a work permit pursuant to section 21 of the Immigration Act is exempted from applying for and holding a work permit for the purpose of his employment with the Commission.

**General provisions**

**15. (1)** Subject to subsection (2), anything permitted or required to be done by the Commission may be done by any director or any employee of the Commission who is authorised for that purpose by the Commission either generally or specifically.

**(2)** Subsection (1) does not apply to the issue of the Regulatory Code or to any notice to amend, add to or replace the Code.

**(3)** The Board may adopt procedures for the administration and proceedings of the Commission that are not inconsistent with this Act.

**(4)** If at any time it appears to the Governor that the Commission has failed to comply with any of the provisions of this or any other enactment or regulation, the Governor, in consultation with the Financial Secretary, may by notice in writing require the Commission to make good the default within such time as may be specified in the notice.

**(5)** If the Commission fails to comply with the notice issued under subsection (4), the Attorney General may apply to the High Court for an order requiring the Commission to remedy the default specified and the Court may make such order on the application as it thinks fit, including an order directing the

directors, or one or more directors, to take such action as it considers appropriate to remedy the default.

(6) Service of any process or notice on the Commission under this Act or any other enactment may be effected by leaving it with the Commissioner or a director at, or sending it by registered post addressed to, the principal office of the Commission.

(7) No execution, distress or attachment shall be issued against the property of the Commission.

### PART 3

#### FINANCIAL AND REPORTING PROVISIONS

##### **Funds and resources of the Commission**

**16. (1)** The funds and resources of the Commission are—

- (a) all fees, charges and penalties, excluding penalties imposed by a court, payable under this Act and the financial services enactments;
- (b) such fees, charges or penalties payable under any other Act that may be assigned to the Commission;
- (c) such sums of monies as may, from time to time, be voted upon by the Legislative Council for the purposes of the Commission;
- (d) money paid and property provided to the Commission by way of grants, fees, charges, rent, interest and any other income derived from the investment of the Commission's funds;
- (e) money derived from the disposal of or dealing with real or personal property held by the Commission;
- (f) money borrowed by the Commission in accordance with this Act; and
- (g) any money or other property not specified in paragraphs (a) to (f) that is lawfully received or made available to the Commission.

(2) All funds and resources received by the Commission shall be paid into a bank account opened by the Commission for that purpose with a bank licensed under the Banking Act (Cap. 11.03).

(3) The Commission may charge a fee in respect of costs reasonably incurred in the performance of its duties under this or any other Act.

##### **Reserve fund**

**17. (1)** The Commission shall establish a reserve fund into which, subject to subsection (3), it shall pay moneys—

- (a) representing the Commission's operating surplus, calculated in accordance with the regulations; and
- (b) that are otherwise required by the regulations to be paid into the reserve fund.

(2) The Commission shall expend money from the reserve fund only for such purposes as may be permitted by the regulations.

(3) As soon as reasonably practicable after the Commission has submitted estimates to the Financial Secretary under section 20, the Commission, the Minister of Finance and the Financial Secretary shall jointly determine whether the amount standing to the credit of the reserve fund as at the last day of the previous financial year exceeds the Commission's reasonable reserve requirements, taking into account its estimated capital expenditure, and, if so, the amount of the excess ("the reserve surplus").

(4) The amount standing to the credit of the reserve fund as at the last day of the previous financial year is deemed not to exceed the Commission's reasonable reserve requirements unless it exceeds a sum equal to twice the Commission's expected recurrent expenditure for the financial year to which the estimates relate.

(5) The Financial Secretary shall provide written notification to the Governor of the determination made by the Commission and the Financial Secretary under subsection (3) and shall provide the Governor with such information concerning the determination as he requires.

(6) Within fourteen days of a joint determination being made, the Commission shall pay the amount of the reserve surplus, if any, to the Government for payment into the Consolidated Fund.

(7) The regulations—

- (a) may specify circumstances in which the Commission may expend money from the reserve fund only with the prior approval of the Governor;
- (b) may provide for the investment by the Commission of monies in the reserve fund;
- (c) and may otherwise provide for the operation of the reserve fund.

### **Borrowing powers**

**18. (1)** The Commission may, with the approval of the Minister of Finance and the Financial Secretary and to the extent that it considers it necessary to discharge its functions—

- (a) borrow money by way of loan, advance or overdraft; and
- (b) obtain goods and services on credit.

(2) Notwithstanding subsection (1), the approval of the Minister of Finance and the Financial Secretary is not required provided that the total value of—

- (a) all money borrowed by the Commission by way of loan, advance or overdraft, and
- (b) all goods and services obtained by the Commission on credit;

does not exceed \$50,000.

(3) The Commission may, with the approval of the Minister of Finance and the Financial Secretary, give security over the whole or any part of its assets for the repayment of money borrowed or credit obtained under this section and the Government may act as guarantor in respect of any such transaction.

**Financial Year**

**19.** The financial year of the Commission shall be 1<sup>st</sup> January to 31<sup>st</sup> December of each year.

**Preparation of estimates and work program**

**20. (1)** The Commission shall, not later than one month after the commencement of each financial year, prepare and submit to the Financial Secretary in respect of that financial year, estimates of—

- (a) its expected recurrent and capital expenditure, and
- (b) its expected revenue arising from any source.

**(2)** The Commission shall provide the Financial Secretary with such further information and explanations in relation to the estimates as he may require.

**(3)** The Commission shall, not later than one month after the commencement of each financial year, prepare and submit to the Governor a work program containing a description of the work and activities that it plans to undertake in the year, excluding routine activities.

**(4)** The Commission shall provide the Governor with such further information and explanations in relation to the work program as he may require.

**Financial records and financial statements**

**21. (1)** The Commission shall—

- (a) keep proper records of its income and other receipts and expenditure; and
- (b) ensure that—
  - i) all money received is properly brought to account,
  - ii) all payments are correctly made and properly authorised, and
  - iii) adequate control is maintained over its property and over the incurring of liabilities by the Commission.

**(2)** The financial records kept under subsection (1) shall—

- (a) be sufficient to show and explain the Commission's transactions;
- (b) enable the Commission's financial position to be determined with reasonable accuracy at any time; and
- (c) be sufficient to enable financial statements to be prepared and audited in accordance with this section.

**(3)** Within three months after the end of each financial year, the Commission shall prepare financial statements containing—

- (a) a statement of the assets and liabilities of the Commission at the end of the financial year, including a statement of the sum standing to the credit of the reserve fund established under section 17;
- (b) a statement of the revenue and expenditure of the Commission during the financial year, including and separately detailing expenditure from the reserve fund during the financial year;



- (c) a statement of the Commission's revenue and expenditure for the purposes of determining its surplus or deficit for the financial year in accordance with section 17;
- (d) such other financial statements for the financial year as may be specified by the Governor; and
- (e) proper and adequate explanatory notes to the financial statements.

### **Audit of financial statements and annual report**

**22. (1)** The financial statements prepared by the Commission under section 21 shall, within four months after the end of the financial year, be audited and certified by an auditor to be appointed annually by the Commission.

**(2)** The auditor of the Commission shall be a person or firm qualified under the regulations to act as the auditor of the Commission.

**(3)** The auditor shall prepare a report of his audit of the Commission's financial statements which shall include statements as to whether, in his opinion—

- (a) he has obtained all the information and explanations necessary for the purposes of the audit;
- (b) the Commission has complied with its obligations under section 21;
- (c) the Commission's financial statements are in agreement with its financial records;
- (c) to the best of his information and according to the explanations given to him, the Commission's financial statements give a true and fair view—
  - i) in the case of the statement of assets and liabilities, of the Commission's financial position as at the end of the financial year, and
  - ii) in the case of the statement of revenue and expenditure, of the surplus or deficit for that financial year; and
- (d) whether, in his opinion the Commission has discharged with diligence its obligations in relation to the collection of its revenues.

**(4)** Within three months of the completion of the audit of its financial statements, the Commission shall prepare and submit to the Minister of Finance—

- (a) a written report of its operations for that financial year (the annual report); and
- (b) a copy of the audited financial statements, which shall include the report of the auditor on the financial statements.

**(5)** The Minister of Finance shall, as soon as reasonably practicable after their receipt, lay a copy of the annual report and the audited financial statements, together with the auditor's report, on the table of the Legislative Council.

**(6)** As soon as reasonably practicable after they have been tabled before the Legislative Council, the Commission shall cause its annual report and financial statements to be published in the prescribed manner.

**(7)** After their publication, the Commission shall make copies of its annual report and financial statements available to any member of the public who

requests a copy upon payment of a reasonable charge to be determined by the Commission.

### **Exemption from taxes etc**

**23.** The Commission is exempt from the payment of all taxes, levies and licence fees on its income and operations and from the payment of all taxes, duties and rates on its property and documents.

## PART 4

### INFORMATION GATHERING AND COOPERATION WITH FOREIGN REGULATORY AUTHORITIES

#### **Power to require information and production of documents**

**24. (1)** Where reasonably required by the Commission for the discharge of its functions under this or any other Act, the Commission may, by notice in writing given to a person specified in subsection (2), require him—

- (a) to provide specified information or information of a specified description; or
- (b) to produce specified documents or documents of a specified description.

**(2)** A notice under subsection (1)—

- (a) may be issued to—
  - i) a financial institution,
  - ii) a person who at any time has been a financial institution, but that has ceased to be a financial institution;
  - iii) a person who the Commission reasonably believes to be carrying on, or to have at any time carried on, unauthorised financial services business,
  - iv) a person connected with a person specified in subparagraph (i), (ii) or (iii), or
  - v) in the case of a notice requiring the production of documents, any person who the Commission reasonably believes is in possession of the documents; and
- (b) may require that the information is to be provided to, or the documents are to be produced to, such person as may be specified in the notice; and
- (c) shall specify the place where, and the period within which, the information or documents shall be provided or produced.

**(3)** The Commission may require—

- (a) any information provided under this section to be provided in such form; and
- (b) any information provided or document produced under this section to be verified or authenticated in such manner;

as it may reasonably specify.

(4) The Commission may take copies or extracts of any document produced under this section.

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

#### **Application to Court to set notice aside**

**25. (1)** A person who receives a notice issued by the Commission under section **24** may apply to the Court to have the notice set aside.

(2) An application under subsection (1) must be made within the specified time period.

(3) On the hearing of an application under subsection (1), the Court may confirm, set aside or modify the notice issued by the Commission and make any interim or other order that it thinks fit.

(4) The Commission shall be entitled to appear and be heard on the hearing of an application made under subsection (1).

(5) For the purposes of this section and section **26**, the “specified time period” is the period of three business days commencing on the day that a person receives a notice issued by the Commission under section **24**.

#### **Effect of application under section 25.**

**26. (1)** An application to the Court under section **25** does not relieve a person from compliance with the notice issued by the Commission under section **24**.

(2) Subsection (3) applies where—

(a) the person who has received a notice issued under section **24** gives written notice to the Commission that he intends to apply to the Court to have the notice set aside; or

(b) if written notice is not given under paragraph (a), an application made under section **25(1)** is served on the Commission;

provided that the notice is given, or the application is served, within the specified time period.

(3) Where this subsection applies, notwithstanding section **46**, the Commission shall not disclose to any other person any information provided, or documentation produced, to it in compliance with the notice to which the application or intended application relates—

(a) unless required or permitted to do so by the Court, whether on the application of the Commission or otherwise; or

(b) as permitted by subsection (4).

(4) The Commission may disclose information or documentation to which subsection (3) relates if it has reasonable grounds for believing that the immediate disclosure of the information or documentation is necessary—

(a) to protect and preserve assets, or the value of assets, that are in jeopardy; or

(b) to assist in the prevention of the commission of an offence, whether in or outside Montserrat.

(5) For the purposes of subsection (4), “offence” includes an act or omission which would be an indictable offence if it had taken place in Montserrat.

(6) Where a person gives the Commission written notice under subsection (2)(a), subsection (3) ceases to have effect if that person does not serve the application to which the notice relates on the Commission within the specified time period.

(7) Subsection (3) ceases to have effect on the application first being heard by the Court.

(8) Nothing in this section affects the disclosure of any information or documentation by the Commission prior to the receipt of a notice under subsection (2)(a) or the service of the application under subsection (2)(b).

### **Examination under oath**

**27. (1)** Where, in connection with a notice given under section 24, the Commission considers it necessary to examine a person on oath, the Commission may apply to a Magistrate to have that person examined before the Magistrate and to have the results of that examination transmitted to the Commission.

(2) On an application under subsection (1), the Magistrate may order the examination of a person under oath on such terms and conditions as he considers fit.

### **Search warrant**

**28. (1)** A Magistrate may issue a search warrant under this section if he is satisfied on information on oath or affirmation given on behalf of the Commission that there are reasonable grounds for believing that one or more of the conditions specified in subsection (2) have been satisfied.

(2) The conditions referred to in subsection (1) are—

(a) that a person has failed to fully comply with a notice of the Commission issued under section 24(1) within the time period specified in the notice and that on the premises specified in the warrant—

- (i) there are documents that have been required to be produced, or
- ii) there is information that has been required to be provided; or

(b) that—

- (i) a notice could be issued by the Commission under section 24(1) against a person, and
- (ii) there are documents, or there is information, on the premises specified in the warrant in respect of which a notice under section 24(1) could be issued, and
- (iii) if a notice under section 24(1) was to be issued, it would not be fully complied with or the documents or information to which the notice related would be removed, tampered with or destroyed; or

(c) that—

- (i) an offence under this Act or a financial services enactment has been, is being or may be committed by a person, and

- (ii) there are documents, or there is information, on the premises specified in the warrant that evidence the commission of the offence, and
- (iii) if a notice under section 24(1) was to be issued, it would not be complied with or the documents or information to which the notice related would be removed, tampered with or destroyed.

(3) A warrant issued under this section shall authorise a named representative of the Commission, together with a police officer and any other person named in the warrant—

- (a) to enter the premises specified in the warrant at any time within one week from the date of the warrant;
- (b) to search the premises and take possession of any documents or information appearing to be documents or information of a type in respect of which the warrant was issued or to take, in relation to such documents or information, any other steps which appear to be necessary for preserving or preventing interference with them;
- (c) to take copies of, or extracts from, any documents or information appearing to be documents or information of a type in respect of which the warrant was issued;
- (d) to require any person on the premises to provide an explanation of any document or information appearing to be documents or information of a type in respect of which the warrant was issued or to state where such documents or information may be found; and
- (e) to use such force as may be reasonably necessary to execute the warrant.

(4) Unless the Court otherwise orders, any document of which possession is taken under this section may be retained—

- (a) for a period of three months; or
- (b) if within that period proceedings for a criminal offence, to which the document is relevant, are commenced against any person, until the conclusion of those proceedings.

(5) In this section, “premises” includes a vehicle, vessel or aircraft.

### **Duty to cooperate**

29. (1) The Commission shall take such steps as it considers appropriate to cooperate with—

- (a) foreign regulatory authorities; or
- (b) other persons, in or outside Montserrat, who have functions in relation to the prevention or detection of financial crime.

(2) Co-operation may include the sharing of documents and information which the Commission is not prevented by this or any other enactment from disclosing.

### **Provision of assistance to foreign regulatory authorities**

30. (1) Subject to subsection (2), the Commission may, on the written request of a foreign regulatory authority—

- (a) exercise the power conferred on it by section **24**;
- (b) appoint one or more competent persons as examiners to investigate any matter; or
- (c) disclose information, or provide documentation, in its possession or obtained under paragraphs (a) or (b) to the foreign regulatory authority.

(2) The Commission shall not exercise the power conferred on it by subsection (1) unless it is of the opinion that the information or documentation to which the request relates, or the investigation is sought, is reasonably required by the foreign regulatory authority for the purposes of its regulatory functions.

(3) An examiner appointed under subsection (1)(b) shall have the powers of an examiner appointed under section **39**.

(4) In deciding whether or not to exercise the power conferred on it by subsection (1), the Commission may take into account, in particular—

- (a) whether corresponding assistance would be given to the Commission in the country or territory of the foreign regulatory authority concerned;
- (b) whether the request relates to the breach of a law, or other requirement, which has no close parallel in Montserrat or involves the assertion of a jurisdiction not recognised by Montserrat;
- (c) the seriousness of the case and its importance to persons in Montserrat;
- (d) whether the information or documentation is relevant to the enquiries to which the request relates; and
- (e) whether it is otherwise appropriate in the public interest to provide the assistance sought.

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

(6) If a foreign regulatory authority fails to comply with a requirement of the Commission made under subsection (5), the Commission may refuse to provide the assistance sought by the foreign regulatory authority.

(7) The Commission may decide that it will not, on the request of a foreign regulatory authority, exercise its powers under this section unless—

- (a) it is satisfied that any information provided to the foreign regulatory authority will not be used in any criminal proceedings against the person providing it, other than proceedings for an offence under section 31(2) or for an offence of perjury or any equivalent offence;
- (b) the foreign regulatory authority undertakes to make such contribution towards the cost of exercising its powers as the Commission considers appropriate; and
- (c) it is satisfied that the foreign regulatory authority is subject to adequate legal restrictions on further disclosure of the information and documents and that it will not, without the written permission of the Commission—

- (i) disclose information or documents provided to it to any person other than an officer or employee of the authority engaged in prudential supervision; or
- (ii) take any action on information or documents provided to it.

### **Privileged documents and information**

**31. (1)** A person shall not be required to disclose information or produce, or permit the inspection of, a document under section **24** if he would be entitled to refuse to disclose the information or to produce, or permit the inspection of, the document on the grounds of legal professional privilege in legal proceedings.

**(2)** For the purposes of this section, information or a document comes to an attorney in privileged circumstances if it is communicated or given to him—

- (a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;
- (b) by, or by the representative of, a person seeking legal advice from the adviser; or
- (c) by any person—
  - (i) in contemplation of, or in connection with, legal proceedings, and
  - (ii) for the purposes of those proceedings.

**(3)** Information or a document shall not be treated as coming to an attorney in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

**(4)** Notwithstanding subsection (1), an attorney may be required, pursuant to a power under this Part, to provide the name and address of his client.

### **Offences**

**32. (1)** A person commits an offence if, without reasonable excuse he fails to comply with a notice issued under section **24(1)**.

**(2)** A person who in purported compliance with a notice issued by the Commission under section **24(1)**—

- (a) provides information which he knows to be false or misleading in a material respect; or
- (b) recklessly provides information which is false or misleading in a material respect;

commits an offence.

**(3)** A person who, for the purpose of obstructing or frustrating compliance with a notice issued by the Commission under section **24(1)** destroys, mutilates, defaces, hides or removes a document commits an offence.

## PART 5

## COMPLIANCE AND ENFORCEMENT

**Compliance officers**

**33. (1)** A financial institution shall appoint or designate a fit and proper individual approved by the Commission as its compliance officer.

**(2)** Without limiting section 50, a Regulatory Code may provide for—

- (a)* the standards of compliance expected of financial institutions;
- (b)* the individuals who may act as the compliance officer for a financial institution;
- (c)* the factors that the Commission will take into account in considering the suitability of a person as a compliance officer;
- (d)* the functions and responsibilities of a compliance officer; and
- (e)* the preparation by financial institutions of a compliance manual and the matters to be included in such a manual.

**(3)** The Commission may, by notice in writing to a financial institution, revoke its approval of an individual as the financial institution's compliance officer.

**(4)** Where the Commission issues a notice under subsection (3), the financial institution shall appoint or designate another individual as its compliance officer in accordance with this section.

**Compliance visits**

**34. (1)** This section applies to—

- (a)* a financial institution;
- (b)* a person who at any time has been a financial institution, but that has ceased to be a financial institution;
- (c)* a subsidiary or holding company of a financial institution or former financial institution; and
- (d)* a regulated person who is not a financial institution or a former financial institution.

**(2)** The Commission may, for a purpose or purposes specified in subsection (3)—

- (a)* inspect the premises and the business, whether in or outside Montserrat, including the procedures, systems and controls, of a person to whom this section applies;
- (b)* inspect the assets, including cash, belonging to or in the possession or control of a person specified in subsection (1)(a), (b) or (c);
- (c)* examine and make copies of documents belonging to or in the possession or control of a person to whom this section applies that, in the opinion of the Commission, relate to the carrying on of financial services business by that person; and



- (d) seek information and explanations from the officers, employees, agents and representatives of a person to whom this section applies, whether verbally or in writing, and whether in preparation for, during or after a compliance visit.
- (3) A compliance visit may be undertaken for the following purposes—
- (a) in the case of a person specified in paragraphs (a), (b) or (c) of subsection (1)—
- (i) the supervision of financial services business carried on in or from within Montserrat; and
- (ii) monitoring and assessing the person's compliance with his obligations under the Anti-Money Laundering Regulations and such other Acts, regulations, guidelines or codes relating to money laundering or the financing of terrorism as may be prescribed for the purposes of section 4(1)(c);
- (b) in the case of a person specified in paragraph (d) of subsection (1), monitoring and assessing the person's compliance with his obligations under the Anti-Money Laundering Regulations and such other Acts, regulations, guidelines or codes relating to money laundering or the financing of terrorism as may be prescribed for the purposes of section 4(1)(c).
- (4) Subject to subsection (5), the Commission shall give not less than five days notice of its intention to exercise its powers under subsection (2).
- (5) Where it appears to the Commission that the circumstances so justify, the Commission may exercise its powers under subsection (2) without giving notice of its intention to do so.
- (6) Subject to subsection (7), the Commission may, upon the request of a foreign regulatory authority, permit the authority to take part in a compliance visit undertaken by the Commission under this section.
- (7) In deciding whether or not to permit a foreign regulatory authority to take part in a compliance visit under this section, the Commission may take into account, in particular, whether in its opinion—
- (a) the participation of the foreign regulatory authority—
- (i) is necessary for the effective supervision of the person to be subject to the compliance visit, or its subsidiary or holding company, and
- (ii) is not contrary to the public interest; and
- (b) the foreign regulatory authority is subject to adequate legal restrictions on further disclosure and that it will not, without the written permission of the Commission—
- (i) disclose information obtained or documents examined or obtained during the compliance visit to any person other than an officer or employee of the authority engaged in prudential supervision, or
- (ii) take any action on information obtained or documents examined or obtained during the compliance visit.

(8) Subject to subsection (4), a person to whom this section applies shall permit any employee of the Commission or person appointed by the Commission for the purpose to have access during reasonable business hours to any of its business premises to enable that person to undertake a compliance visit.

### **Enforcement action**

**35. (1)** The Commission may take enforcement action against a financial institution if—

- (a) in the opinion of the Commission, the financial institution—
  - (i) has contravened or is in contravention of this Act, a regulatory enactment or a Regulatory Code,
  - (ii) has contravened or is in contravention of the Anti-Money Laundering Regulations or of such Acts, regulations, guidelines or codes relating to money laundering or the financing of terrorism as may be prescribed for the purposes of section 4(1)(c),
  - (iii) is carrying on, or is likely to carry on, business in a manner detrimental to the public interest or to the interest of any of its customers or creditors,
  - (iv) is or is likely to become insolvent,
  - (v) has failed to comply with a directive given to it by the Commission,
  - (vi) is in breach of any term or condition of its licence,
  - (vii) is not a fit and proper person to hold a licence, or
  - (viii) has provided the Commission with any false, inaccurate or misleading information, whether on making application for a licence or subsequent to the issue of the licence;
- (b) the financial institution is compulsorily wound up, passes a resolution for voluntary winding up or is dissolved;
- (c) a receiver has been appointed in respect of the financial services business carried on by the financial institution or possession has been taken of any of its property by or on behalf of the holder of a debenture secured by a registered charge;
- (d) in the opinion of the Commission—
  - (i) a person having a share or interest in the financial institution, whether equitable or legal, or any director, officer or key employee of the financial institution is not a fit and proper person to have an interest in or be concerned with the management of a financial institution, as the case may be, or
  - (ii) the financial institution, or its subsidiary or holding company, has refused or failed to co-operate with the Commission on a compliance visit conducted by the Commission under section 34; or
- (e) the Commission is entitled to take enforcement action under a provision in a regulatory enactment.

(2) If the Commission is entitled to take enforcement action under subsection (1) it may exercise one or more of the following powers—

- (a) revoke or suspend the financial institution's licence under section **36**;
- (b) apply for a protection order under section **37**;
- (c) issue a directive under section **38**;
- (d) appoint an examiner to conduct an investigation under section **39**;
- (e) appoint a qualified person under section **40**;
- (f) in the case of a financial institution that is a company incorporated under the Companies Act, apply to the Court for the winding up of the licensee under section 379 of that Act;
- (g) in the case of a financial institution that is a company incorporated under the International Business Companies Act, apply to the Court for the liquidation and dissolution of the company under section 110 of that Act.

#### **Revocation or suspension of licence**

**36. (1)** The Commission may at any time revoke or suspend a financial institution's licence if—

- (a) it is entitled to take enforcement action against the financial institution under section **35**;
- (b) the financial institution has failed to commence or ceased to carry on the financial services business for which it was licensed; or
- (c) the financial institution applies to the Commission for its licence to be revoked.

(2) Subject to subsection (3), the period of suspension of a licence under subsection (1) shall not exceed 90 days.

(3) If it is satisfied that it is in the public interest to do so, the Court may, on the application of the Commission, extend the period of suspension of a licence under this section for one or more further periods not exceeding 90 days each.

(4) Subject to subsection (6), before suspending or revoking a licence under paragraphs (a) or (b) of subsection (1), the Commission shall give written notice to the financial institution stating—

- (a) the grounds upon which it intends to suspend or revoke the licence; and
- (b) that unless the financial institution, by written notice filed with the Commission, shows good reason why its licence should not be suspended or revoked, the licence will be suspended or revoked on a date not less than 14 days after the date of the notice.

(5) If, on the application of the Commission, the Court is satisfied that it is in the public interest or the interests of any of the customers or creditors of a financial institution that subsection (4) should not have effect or that the period referred to in paragraph (b) of that subsection should be reduced, it may so order.

(6) An application under subsection (5) may be made on an ex parte basis or upon such notice as the Court may require.

### **Protection order**

**37. (1)** Where the licence of a financial institution is, or is about to be, revoked or suspended, or where the Commission is entitled to take enforcement action against a financial institution under section 35, the Commission may apply to the Court for a protection order.

(2) On an application made under subsection (1), the Court may make such order as it considers necessary to protect or preserve the business or property of the financial institution, or the interests of its customers, creditors or the public including—

- (a) an order preventing the financial institution or any other person from transferring, disposing of or otherwise dealing with property belonging to him or in his custody or control;
- (b) an order appointing an administrator to take over and manage the financial services business then carried on by the financial institution or carried on by him immediately before the revocation or suspension of the licence, as the case may be;
- (c) in the case of a company, an order that the financial institution be wound up by the Court or subject to the supervision of the Court under the Companies Act; and
- (d) an order granting the Commission a search warrant.

(3) Without limiting subsection (2)(b), an order made under that subsection shall specify the powers of an administrator, which may include the powers of a financial institution under this Act or of a liquidator under the Companies Act and may—

- (a) require an administrator to provide security to the satisfaction of the Court;
- (b) fix and provide for the remuneration of the administrator;
- (c) require such persons as it considers necessary to appear before the Court for the purposes of giving information or producing records concerning the financial institution or the business carried on by the financial institution.

(4) An order made under subsection (2)(b) shall make provision for reports to be submitted by the administrator to the Court and to the Commission.

(5) The Court may on its own motion or on the application of the Commission or the administrator—

- (a) give directions to the administrator concerning the exercise of his powers;
- (b) vary the powers of the administrator; or
- (c) terminate the appointment of the administrator.

(6) An application under subsection (1) may be made—

- (a) on an ex parte basis or upon such notice as the Court may require; and

- (b) before the Commission has given notice of intention to revoke a licence under section 36(4).

### Directives

38. Where the Commission is entitled to take enforcement action against a financial institution, the Commission may issue a directive —

- (a) imposing a prohibition, restriction or limitation on the financial services business that may be undertaken by the financial institution, including—
  - (i) that the financial institution shall cease to engage in any class or type of business, or
  - (ii) that the financial institution shall not enter into any new contracts for any class or type of business;
- (b) requiring that any director, key employee or person having functions in relation to a financial institution be removed and replaced by another person acceptable to the Commission;
- (c) requiring the financial institution to take such other action as the Commission considers may be necessary to protect the property of, or in the custody, possession or control of, the financial institution or to protect customers or creditors or potential customers or creditors of the financial institution.

### Appointment of examiner

39. (1) The Commission may appoint one or more competent persons as examiners to conduct an investigation on its behalf with respect to a financial institution, a regulated person that is not a financial institution or a person carrying on unauthorised financial services business where—

- (a) in the case of a financial institution—
  - (i) the Commission is entitled to take enforcement action against the financial institution under section 35, or
  - (ii) it has suspended or revoked the licence of the financial institution;
- (b) in the case of a regulated person, not being a financial institution, it appears to the Commission that the regulated person is in breach of his obligations under the Anti-Money Laundering Regulations and such other Acts, regulations, guidelines or codes relating to money laundering or the financing of terrorism as may be prescribed for the purposes of section 4(1)(c); or
- (c) in the case of a financial institution, any other regulated person or a person carrying on unlicensed financial services business, the Commission is of the opinion that it is desirable to appoint an examiner—
  - (i) in the interests of the customers or potential customers of the person,
  - (ii) in the public interest, or
  - (iii) to safeguard the reputation of Montserrat.

(2) The matters investigated by an examiner appointed under subsection (1) may include one or more of the following in respect of the person being investigated—

- (a) the nature, conduct or financial condition of his business;
- (b) a particular aspect of that person's business; and
- (c) the ownership or control of that person.

(3) An examiner shall submit a report of his investigation to the Commission.

(4) Subject to subsection (5), an examiner appointed under this section shall have the powers of the Commission under section 24.

(5) The Commission may give directions to the examiner concerning any one or more of the following—

- (a) the scope of the investigation;
- (b) the period for the conduct of the investigation; and
- (c) the manner in which the examiner shall report to him.

(6) An examiner appointed under subsection (1) may, if he considers it necessary for the purposes of his investigation, also investigate the business of any person who is, or at any relevant time has been—

- (a) a member of the group of which person under investigation is a part; or
- (b) a partnership of which the person under investigation is a partner.

(7) Regulations made under section 49 may provide for—

- (a) the notice to be given to a person to be investigated under this section;
- (b) the conduct of an investigation; and
- (c) the powers of an inspector appointed under this section.

### **Appointment of qualified person**

**40. (1)** This section applies to—

- (a) a financial institution; or
- (b) a subsidiary or holding company of a financial institution.

(2) The Commission may, by notice in writing given to a person to whom this section applies, require him to provide the Commission with a report by a person with relevant professional skills on, or on any aspect of, the person's business and affairs.

(3) The Commission may require the report provided under subsection (2) to be in such form as may be specified in the notice.

(4) The person appointed to make a report required by the Commission under subsection (2) shall be a person—

- (a) nominated or approved by the Commission; and
- (b) appearing to the Commission to have the skills necessary to make a report on the matter concerned.

(5) Any person who is providing, or who at any time has provided, services to a person to whom this section applies in relation to a matter on which a report is required, shall give the person appointed to prepare the report all such assistance as he may reasonably require.

### **Public statements**

**41. (1)** Where the Commission is entitled to take enforcement action against a financial institution, the Commission may issue a public statement in such manner as it considers fit setting out the reasons for the enforcement action and the enforcement action that it intends to take, or has taken, against the financial institution.

(2) Where it considers it in the public interest to do so, the Commission may issue a public statement in such manner as it considers fit relating to a person who is carrying on, or who in the opinion of the Commission is likely to carry on, unlicensed financial services business.

(3) Where a public statement is to be issued under this section in relation to a financial institution, the Commission shall give that person seven days written notice of its intention to issue the public statement and the reasons for the issue of the statement.

(4) If, on the application of the Commission, the Court is satisfied that it is in the public interest or in the interests of any of the customers or creditors of a financial institution or former financial institution that subsection (3) should not have effect or that the period referred to in that subsection should be reduced, it may so order.

(5) An application under subsection (4) may be made on an ex parte basis or upon such notice as the Court may require.

## PART 6

### DISCIPLINARY ACTION

#### **Commission may take disciplinary action**

**42. (1)** For the purposes of this Part “disciplinary offence” means a contravention of—

- (a) a provision of this Act, or of a regulatory enactment, specified in the regulations; or
- (b) a provision of a Regulatory Code for which a penalty is provided.

(2) The Commission may take disciplinary action against a financial institution under this section where it is satisfied that the financial institution has committed a disciplinary offence.

(3) The Commission takes disciplinary action against a financial institution by imposing a financial penalty on it.

(4) The penalty imposed on a financial institution in respect of a disciplinary offence shall not exceed the sum specified—

- (a) in the case of a contravention referred to in subsection (1)(a), in the regulations; or

(b) in the case of a contravention referred to in subsection (1)(b), in the Regulatory Code.

(5) The Commission shall not take disciplinary action against a financial institution in respect of a disciplinary offence committed more than two years prior to the date upon which it sends a notice to the financial institution under section 43.

#### **Notice of intention to take disciplinary action**

**43. (1)** Where it intends to take disciplinary action against a financial institution, the Commission shall send a notice of its intention to the financial institution—

- (a) specifying—
  - (i) the alleged disciplinary offence, and
  - (ii) the amount of the penalty that it intends to impose; and
- (b) advising the financial institution of his right to make written representations to the Commission in accordance with subsection (2).

(2) A financial institution that receives a notice under subsection (1) may, within 28 days of the date upon which he receives the notice, send written representations to the Commission—

- (a) denying that he has committed the alleged disciplinary offence; or
- (b) providing reasons that he considers justify the imposition of a lower penalty.

#### **Disciplinary action**

**44. (1)** After the expiration of 28 days from the date that it sent a notice under section 43 to a financial institution, the Commission may take disciplinary action against that financial institution by sending him a penalty notice stating—

- (a) the disciplinary offence in respect of which the notice is issued;
- (b) the date on which notice of intention to take disciplinary action in respect of that offence was sent to the financial institution;
- (c) the amount of the penalty imposed; and
- (d) a date, not less than 14 days after the date of the penalty notice, by which the penalty shall be paid to the Commission.

(2) The penalty imposed in a penalty notice shall not exceed the amount specified in the notice of intention sent under section 43.

(3) Before taking disciplinary action against a financial institution under subsection (1), the Commission shall consider any written representations that it has received from the financial institution and, where it receives such representations, it must provide reasons for the action that it takes.

(4) A financial institution that receives a penalty notice under subsection (1) shall pay the penalty stated to the Commission on or before the date specified in the notice.

(5) A financial institution that contravenes subsection (4) commits an offence.



(6) Where the Commission takes disciplinary action against a financial institution, it shall advertise the disciplinary action taken by publication in the *Gazette*.

(7) The regulations may provide for the procedures to be adopted by the Commission when taking disciplinary action against a financial institution.

## PART 7

### GENERAL

#### **Restrictions on disclosure of information**

**45. (1)** Subject to section 46, for the purposes of this section, “protected information” means information which—

- (a) relates to the business or other affairs of any person, and
- (b) is acquired by a person falling within subsection (2), for the purposes of, or in the discharge of, its or his functions under this Act or a financial services enactment, and includes any information that is obtained from a foreign regulatory authority or a law enforcement authority.

**(2)** Subsection (1)(b) applies to the following persons—

- (a) the Commission;
- (b) a director, including the Commissioner;
- (c) an employee of the Commission;
- (d) a person appointed as an examiner under section 39;
- (e) a person appointed as a qualified person under section 40;
- (f) any other person acting under the authority of the Commission;
- (g) an employee of a person specified in paragraphs (d) to (f).

**(3)** Information is not protected information—

- (a) if the information is or has been available to the public from any other source; or
- (b) where the information is disclosed in a summary or in statistics expressed in a manner that does not enable the identity of particular persons to whom the information relates to be determined.

**(4)** Subject to section 50, protected information shall not be disclosed by a recipient of that information, without the consent of—

- (a) the person from whom he obtained the information; and
- (b) if different, the person to whom it relates.

**(5)** For the avoidance of doubt, the Confidential Information Act (Cap. 11.25) does not apply to the Commission with respect to any protected information.

**(5)** Any person who contravenes this section commits an offence.

**Gateways for the disclosure of information**

**46.** Section 45 does not apply to a disclosure—

- (a) required or permitted by any Court of competent jurisdiction in Montserrat;
- (b) required or permitted by this or any other Act;
- (c) to the Governor;
- (d) to a law enforcement agency in Montserrat;
- (e) to any person for the purpose of discharging any function or exercising any power under this Act or a financial services enactment, in either case whether the function or power is of the person disclosing the information or of the Commission or the Board;
- (f) to the Money Laundering Reporting Authority established under the Proceeds of Crime Act;
- (g) made by the Commission to a foreign regulatory authority upon the written request of that authority in accordance with section 30.

**Advertising**

**47. (1)** A financial institution shall not issue, or cause or permit to be issued, any advertisement, statement, brochure or other similar document which is misleading or which contains an incorrect statement of fact.

**(2)** If the Commission is of the opinion that any advertisement, statement, brochure or other similar document issued, or to be issued, by or on behalf of a financial institution is misleading, contains an incorrect statement of fact, breaches a Regulatory Code or is contrary to the public interest, it may—

- (a) direct the financial institution in writing not to issue the document or to withdraw it; or
- (b) authorise the financial institution in writing to issue the document with such changes as the Commission may specify.

**(3)** A financial institution that issues or causes or permits to be issued an advertisement, statement, brochure or other similar document intending it to mislead or knowing that it contains an incorrect statement of fact, commits an offence.

**(4)** A financial institution that issues or causes or permits to be issued an advertisement, statement, brochure or other similar document contrary to a direction or authorisation of the Commission under subsection (2) commits an offence.

**(5)** The Commission may, in a Regulatory Code, provide for the issue, form and content of advertisements issued by or on behalf of financial institutions.

**Appeals**

**48. (1)** Subject to subsection (2), a person who is aggrieved by a decision of the Commission made under this Act or a financial service enactment may, within 28 days of the date of the decision, apply to the Court for leave to appeal against the decision.

(2) An appeal against the refusal of the Commission to grant a licence or against a decision of the Commission to grant a licence subject to conditions, may only be made on a question of law.

(3) Unless the Court otherwise determines, an application for leave to appeal, an appeal and an application for judicial review, does not operate as a stay of the decision of the Commission in respect of which the application or appeal is made.

(4) Upon hearing an appeal, the Court may—

(a) dismiss the appeal; or

(b) remit the matter back to the Commission for further consideration with such directions as it may consider fit.

### **Regulations**

49. The Governor in Council may, after consultation with the Commission, make regulations generally for giving effect to the provisions of this Act and specifically for prescribing any thing required or permitted to be prescribed by this Act.

### **Commission may issue Regulatory Codes**

50. (1) The Commission may, by publication in the Gazette, issue a Regulatory Code or Codes for the purpose of establishing sound principles for the conduct of financial services business.

(2) A Regulatory Code may make different provision in relation to persons, cases or circumstances of different descriptions.

(3) The Commission may, by notice published in the *Gazette*, amend, add to or replace a Regulatory Code.

(4) Before publishing a notice under subsection (3) the Commission shall—

(a) ensure that a draft of the proposed amendment, addition to or replacement of the Code is sent to, or can reasonably be expected to come to the notice of, every financial institution affected by the notice specifying the period within which written representations are to be provided to the Commission; and

(b) consider such written representations as it may receive.

(5) The Commission complies with its obligations under subsection (4)(a) in respect of a financial institution by sending a copy of the notice to any professional or trade association in Montserrat of which the licensee is a member.

(6) The failure of the Commission to comply with its obligations under subsection (4) shall not invalidate the amendment of, the addition to or the replacement of the Code, whether in respect of a financial institution that did not receive the required notice or generally.

(7) Without limiting subsection (1)—

(a) a Regulatory Code may provide for penalties not exceeding \$5000.00 for the breach of a provision of the Code; and

(b) the regulations may prescribe matters that shall be, or may be, provided for in the Regulatory Codes.

**Guidelines**

**51. (1)** The Commission may issue Guidelines with respect to the procedures to be followed by and the conduct expected of financial institutions in the operation of their licensed businesses and with respect to any other matter concerning this Act.

**(2)** The Guidelines may make different provision in relation to different persons, circumstances or cases.

**(3)** The Commission must publish the Guidelines and any amendments thereto in the *Gazette*.

**(4)** Failure to follow guidelines issued under this section shall not, of itself, render a person liable to proceedings of any kind, but such failure may be taken into account by the Court or the Commission, as the case may be, in determining whether there has been a contravention of this Act, a regulatory enactment or a Regulatory Code.

**(5)** Without limiting subsection (1) the regulations may prescribe matters that shall be, or may be, provided for in Guidelines.

**Offence provisions**

**52.** A person who, with intent to deceive or for any purpose of this Act or a financial services enactment, provides any information, makes any representation or submits any return that he knows to be false or materially misleading or does not believe to be true commits an offence.

**Punishment of Offences**

**53. (1)** A person who commits an offence under this Act is liable on summary conviction—

- (a)* if an individual, to the penalty stated against the relevant offence in column 4 of Schedule 1; or
- (b)* if not an individual, to the penalty stated against the relevant offence in column 3 of Schedule 1;

and, in either case, to the daily default fine (if any) stated in column 5 of Schedule 1 for each day during which the default continues.

**(2)** Where an offence under this Act is committed by a body corporate, a director or officer who authorized, permitted or acquiesced in the commission of the offence also commits an offence and is liable on summary conviction—

- (a)* if an individual, to the penalty stated against the relevant offence in column 4 of Schedule 1; or
- (b)* if not an individual, to the penalty stated against the relevant offence in column 3 of Schedule 1;

and, in either case, to the daily default fine (if any) stated in column 5 of Schedule 3 for each day during which the default continues.

**(3)** Where an offence under this Act is committed by a body corporate and its affairs are managed by its members, subsection (2) applies to a member of that body corporate as if he was a director of the body corporate.

## PART 8

## MISCELLANEOUS

**Amendments**

**54. (1)** The Financial Services Commission Act, (Cap. 11.02) is repealed.

**(2)** The Acts set out in Column 2 of Schedule 3 are amended in the manner and to the extent set out opposite in Column 3.

## SCHEDULE 1

(Section 53)

**OFFENCES UNDER THIS ACT**

<u>Column 1</u> Section of Act creating offence	<u>Column 2</u> General nature of offence	<u>Column 3</u> Penalty (corporate body)	<u>Column 4</u> Penalty (individual)
<b>9(7)</b>	Director failing to make declaration of interest	\$10,000	\$ 10,000 (and 3 months imprisonment)
<b>32(1)</b>	Person failing to comply with notice issued under section <b>24(1)</b>	\$5,000	\$5,000 (and 1 month imprisonment)
<b>32(2)</b>	Person, in purported compliance with notice issued under section <b>24(1)</b> provides information he knows to be false or misleading or recklessly provides information which is false or misleading	\$10,000	\$10,000 (and 3 months imprisonment)
<b>32(3)</b>	Person destroying, mutilating, defacing, hiding or removing document to obstruct or frustrate compliance with notice issued under section <b>24(1)</b>	\$25,000	\$25,000 (and 6 months imprisonment?)
<b>44(5)</b>	Financial institution contravening section <b>44(4)</b> (Failure to pay penalty	\$5,000	\$5,000 (and 1 month imprisonment)

	notice by due date)		
<b>45(5)</b>	Person contravening section <b>45</b> (Restrictions on disclosure of information)	\$10,000	\$10,000 (and 3 months imprisonment)
<b>47(3)</b>	Financial institution issuing or causing or permitting to be issued an advertisement, statement, brochure etc intending it to mislead or knowing that it contains an incorrect statement of fact	\$10,000	\$10,000 (and 3 months imprisonment)
<b>47(4)</b>	Financial institution issuing or causing or permitting to be issued an advertisement etc contrary to direction or authorisation of Commission	\$10,000	\$10,000 (and 3 months imprisonment)
<b>52</b>	Person making false or materially misleading representation or return	\$25,000	\$25,000 (and 6 months imprisonment?)

## SCHEDULE 2

*(Section 6)*

## PROCEEDINGS OF BOARD

1. The Board shall meet at least once each quarter at such time and place as may be designated by the Chairman.
2. The Chairman, or in his absence the Deputy Chairman, shall call a special Board meeting upon receiving a written request to do so signed by any three directors. A special meeting must be called for a date no later than 14 days after the date of receipt of the written request.
3. The Chairman shall preside at every Board meeting at which he is present. If the Chairman is absent, the directors shall elect one of the directors present, other than the Commissioner, to act as Chairman.
4. Two directors constitute a quorum.
5. Decisions at Board meetings are determined by a majority of the directors present. In the event of an equality of votes, the Chairman has a casting vote.
6. The Board may appoint a director or a senior officer of the Commission to act as its secretary.
7. Notwithstanding anything in this Schedule, the Chairman may, in respect of any matter that he considers urgent or otherwise exceptional, make

arrangements for a decision of the Board to be taken on the matter through a process of consultation without the need for an actual meeting.

8. The Board may establish such committees as it considers appropriate to assist in the discharge of the functions of the Commission and may assign to the committees such functions as it may determine

9. A committee of the Board may include persons who are not directors but—

(a) the Chairman of each committee shall be a director; and

(b) the majority of the members of each committee shall be directors.

10. Subject to paragraph 11, the members of a committee of the Board may be paid an attendance allowance if the Board considers it appropriate.

11. An employee of the Commission may, if the Board considers it appropriate, be paid a reasonable allowance for attending a meeting of a committee of the Board held outside Montserrat but shall not otherwise be paid any allowance for attending a meeting of a committee of the Board.

12. No act or proceeding of the Board is invalid by reason only of any vacancy amongst the directors or by any defect in the appointment of any of them.

13. The Board shall establish rules of procedure for its conduct and proceedings that are not inconsistent with this Schedule.

### SCHEDULE 3

#### (Section 54)

#### ACTS AMENDED

NO.	ACT	EXTENT OF AMENDMENT
1.	Company Management Act (Cap. 11.26)	1. In section 2(1), in the definition of “ <b>Commission</b> ”, insert after “ <b>Financial Services Commission Act</b> ”, the words “(Cap. 11.02) and continued under the Financial Services Commission Act, 2008”.
		2. In section 4(1) <ul style="list-style-type: none"> <li>(a) insert after the words “<b>carry on</b>”, the words “, or hold himself out as carrying on,”; and</li> <li>(b) delete the words “under section 8”.</li> </ul>
		3. Repeal sections 8, 9, 9A, 10, 15, 19, 22 and 24.
2.	Exchange of Information Act (Cap. 11.16)	1. In section 2, <ul style="list-style-type: none"> <li>(a) in the definition of “Commission”, insert after “Financial Services Commission Act”, the words “(Cap. 11.02) and continued under the Financial Services Commission Act, 2008”;</li> <li>(b) in the definition of “foreign regulatory authority”, insert after the words “functions of”, the words “the Commission or”; and</li> </ul>

		<p>(c) in the definition of “regulatory function”, insert after the words “functions of”, the words “the Commission or”.</p> <p>2. Repeal sections 4, 5, 6 and (7).</p> <p>3. In section 8,</p> <p style="padding-left: 40px;">(a) delete the words “the Commission” and substitute “a regulatory authority”;</p> <p style="padding-left: 40px;">(b) delete the words “Commission’s authority” and substitute “authority of a regulatory authority”.</p> <p>4. Repeal section 9.</p> <p>5. In the Schedule, delete the words “The Commission”.</p>
3.	Insurance Act, 2001	In section 9(1), by inserting after the words “carry on”, the words “, or purport to carry on,”.
4.	International Banking and Trust Companies Act, 2006	<p>1. In section 2(1)</p> <p style="padding-left: 40px;">(a) in the definition of “Commission”, by deleting the words “as appointed under the Financial Services Commission Act (Cap. 11.02)” and substituting the words “established under the Financial Services Commission Act (Cap. 11.02) and continued under the Financial Services Commission Act, 2008”; and</p> <p style="padding-left: 40px;">(b) repeal the definitions of “Commissioner” and “foreign regulatory authority”.</p> <p>2. In section 5(1)</p> <p style="padding-left: 40px;">(a) by inserting after the words “carry on”, the words “, or hold himself out as carrying on”; and</p> <p style="padding-left: 40px;">(b) delete the words “under section 20”.</p> <p>3. In section 12, delete the word “Commissioner” and substitute “Commission”.</p> <p>4. In section 14(1)</p> <p style="padding-left: 40px;">(a) by inserting after the words “carry on”, the words “, or hold himself out as carrying on”; and</p> <p style="padding-left: 40px;">(b) delete the words “under section 20”.</p> <p>5. In the heading immediately before section 20, delete the words “<i>Revocation, Suspension and</i>”</p> <p>6. Repeal sections 20, 21, 36 and 37.</p> <p>7. In section 38, delete the word “Commissioner” and substitute “Commission”.</p> <p>8. Repeal section 39.</p> <p>9. In section 44(2), delete the word “Commissioner” and substitute “Commission”.</p> <p>10. In section 45(1), (2), (3) and (4), delete the word “Commissioner” in each place it occurs and substitute “Commission”.</p> <p>11. Repeals sections 46 and 47.</p> <p>12. In section 48(1), delete “, revocation or suspension”.</p>



		13. In section 49, repeal subsections (2) and (3).
		14. In section 51(1) and (4), delete the word “Commissioner” in each place it occurs and substitute “Commission”.
		15. In section 52(2)(b) and (c), delete the words “a Commissioner” in each place where they occur and substitute “the Commissioner”.
<b>5.</b>	International Banking and Trust Companies Regulations, 2006	1. In regulation 4(1), (2), (5), (7), (8), (10), (11) and (12), delete the word “Commissioner” in each place it occurs and substitute “Commission”.
		2. In regulation 5(1), (3), (4), (5), (6), (7) and (8), delete the word “Commissioner” in each place it occurs and substitute “Commission”.
		3. Repeal regulation 6.
<b>6.</b>	Anti-Money Laundering Regulations, 2005	In regulation 2(1), in paragraph (b) of the definition of “regulated person”, insert after the word “relevant”, the word “financial”.

Joseph Meade  
SPEAKER

Passed the Legislative Council this 1st day of October, 2008.

Judith Jeffers  
CLERK OF COUNCILS