

M O N T S E R R A T

NO. 8 OF 2010

FINANCIAL SERVICES COMMISSION (AMENDMENT) ACT 2010

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Section 2 amended
3. Section 4 amended
4. Section 16 amended
5. Section 34 amended
6. Section 35 amended
7. Section 39 amended
8. Part 6 repealed and replaced
9. Section 46 amended

I ASSENT

Peter Waterworth
GOVERNOR

DATE: 15.4.2010

M O N T S E R R A T

NO. 8 OF 2010

AN ACT TO AMEND THE FINANCIAL SERVICES COMMISSION ACT 2008 (NO. 3 OF 2008).

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—

Short title

1. This Act may be cited as the Financial Services Commission (Amendment) Act 2010.

Interpretation

Section 2 amended

2. Section 2 of the Financial Services Commission Act (hereinafter referred to as “the Act”) is amended—

(a) by deleting the definition of “Anti-money Laundering Regulations” and substituting the following definitions:

“**Anti-money Laundering and Terrorist Financing Code**” means a Code issued under section 176 of the Proceeds of Crime Act, 2010;

“**Anti-money Laundering and Terrorist Financing Regulations**”, means the Anti-money Laundering and

Terrorist Financing Regulations, made under the Proceeds of Crime Act, 2010;”;

- (b) by deleting the definition of “financial services enactment” and substituting the following:

“**financial services enactment**” means a registry enactment or a regulatory enactment;”;
- (c) in the definition of “**registry enactment**”, by inserting after the words “prescribed as a registry enactment”, the words “, together with any subsidiary legislation made under that enactment”;
- (d) in the definition of “**regulatory enactment**”, by inserting after “prescribed as a regulatory enactment”, the words “, together with any subsidiary legislation made under that enactment”; and
- (e) by deleting the definition of “**regulated person**”.

Section 4 amended

3. Section 4(1)(c) of the Act is amended by deleting “regulated persons with the Anti-money Laundering Regulations” and substituting “financial institutions with the Anti-money Laundering and Terrorist Financing Regulations, the Anti-money Laundering and Terrorist Financing Codes”.

Section 16 amended

4. Section 16(1) is amended by deleting paragraph (a) and substituting the following:

- “(a) all fees, charges and penalties payable under this Act and the financial services enactments, including administrative penalties imposed by the Commission under Part 6, but excluding penalties imposed by a court for the commission of an offence;”.

Section 34 amended

5. Section 34 of the Act is amended—

- (a) in subsection (1)—
 - (i) in paragraph (b), by inserting “and” after the semi-colon;
 - (ii) in paragraph (c), by deleting “; and” and substituting a full stop; and
 - (iii) by deleting paragraph (d); and
- (b) by deleting subsection (3) and substituting the following—

“(3) A compliance visit may be undertaken for the following purposes:

 - (a) the supervision of financial services business carried on in or from within Montserrat; and
 - (b) monitoring and assessing the person’s compliance with his obligations under the Anti-money Laundering and Terrorist Financing Regulations, the Anti-money Laundering and Terrorist Financing Codes and such other Acts, regulations, codes or guidelines relating to

money laundering or the financing of terrorism as may be prescribed for the purposes of section 4(1)(c).”.

Section 35 amended

6. Section 35(1)(a)(ii) of the Act is deleted and the following substituted—

“(ii) has contravened or is in contravention of a provision of the Anti-money Laundering and Terrorist Financing Regulations, a provision of an Anti-money Laundering and Terrorist Financing Code or a provision of any other Act, regulations or code relating to money laundering or the financing of terrorism prescribed for the purposes of section 4(1)(c).”.

Section 39 amended

7. Section 39 of the Act is amended—

- (a) in the chapeau of subsection (1), by deleting the words “, a regulated person that is not a financial institution”;
- (b) in subsection (1)(a), by inserting “or” after the semi-colon at the end of subparagraph (ii);
- (c) by deleting paragraph (b); and
- (d) in paragraph (c), by deleting “, any other regulated person” and renumbering it as paragraph (b).

Part 6 repeal and replaced

8. Part 6 is repealed and the following substituted—

“PART 6

DISCIPLINARY ACTION

Interpretation for this Part

42. For the purposes of this Part—

- (a) “**disciplinary violation**” means a contravention of:
 - (i) a provision of this Act, or of a regulatory enactment, prescribed as a disciplinary violation;
 - (ii) a provision of a Regulatory Code specified in the relevant Regulatory Code as a disciplinary violation;
 - (iii) a provision of the Anti-money Laundering and Terrorist Financing Regulations specified in those Regulations as a disciplinary violation;
 - (iv) a provision of an Anti-money Laundering and Terrorist Financing Code specified in the relevant Code as a disciplinary violation; or
 - (v) a provision of any other Act, regulations or code relating to money laundering or the financing of terrorism prescribed for the purposes of section

4(1)(c), specified in that Act, those regulations or that code as a disciplinary violation; and

- (b) the imposition of an administrative penalty becomes final on:
 - (i) the payment by the financial institution of the penalty;
 - (ii) the date when, in accordance with section 44A(5), the financial institution is considered to have committed the disciplinary violation; or
 - (iii) if the financial institution appeals the notice under section 48, the dismissal of the appeal, provided that the time for any further appeal has expired.

Commission may take disciplinary action

43. (1) The Commission may take disciplinary action against a financial institution under this section if it is satisfied that the financial institution has committed a disciplinary violation.

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

(3) The administrative penalty imposed on a financial institution in respect of a disciplinary violation shall not exceed the sum specified:

- (a) in the case of a contravention specified in section 42(a)(i), in the regulations;
- (b) in the case of a contravention specified in section 42(a)(ii), in the relevant Regulatory Code;
- (c) in the case of a contravention specified in section 42(a)(iii), in the Anti-money Laundering and Terrorist Financing Regulations;
- (d) in the case of a contravention specified in section 42(a)(iv), in the relevant Anti-money Laundering and Terrorist Financing Code; or
- (e) in the case of a contravention specified in section 42(a)(v), in the relevant Act, regulations or code.

(4) A violation that is committed or continued on more than one day constitutes a separate violation for each day on which it is committed or continued.

(5) The Commission shall not take disciplinary action against a financial institution in respect of a disciplinary violation committed more than two years prior to the date upon which it sends a notice to the financial institution under section 44.

(6) For greater certainty, a disciplinary violation is not an offence and, accordingly, section 32 of the Penal Code does not apply in respect of a disciplinary violation.

(7) If the conduct or omission that constitutes a disciplinary violation also constitutes an offence, the taking of disciplinary action against a

financial institution does not prevent the financial institution being also prosecuted for the offence.

Notice of intention to take disciplinary action

44. (1) If it intends to take disciplinary action against a financial institution, the Commission shall send a notice of its intention to the financial institution which:

- (a) sets out the alleged disciplinary violation and the relevant facts surrounding the violation;
- (b) sets out the amount of the penalty that it intends to impose for the violation; and
- (c) advises 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 disputing the facts of the alleged disciplinary violation or the amount of the administrative penalty or both.

Disciplinary action

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

- (a) the disciplinary violation in respect of which the notice is issued;
- (b) the date on which notice of intention to take disciplinary action in respect of that violation was sent to the financial institution;
- (c) the amount of the administrative penalty for the violation, which shall not exceed the amount specified in the notice sent under section 44;
- (d) a date, not less than 28 days after the date of the penalty notice, by which the financial institution must pay the penalty to the Commission; and
- (e) that if the financial institution does not pay the penalty or exercise their rights of appeal under section 48, it will be considered to have committed the violation and that it is liable for the penalty set out in the notice.

(2) 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.

(3) 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 or appeal the notice under section 48.

(4) If the financial institution pays the administrative penalty, it is considered to have committed the violation and the disciplinary action is over.

(5) A financial institution that neither pays the administrative penalty nor appeals the notice within 28 days is considered to have committed the disciplinary violation and is liable for the penalty.

(6) If the Commission imposes an administrative penalty on a financial institution, the Commission shall, after the imposition of the penalty has become final, advertise the imposition of the penalty by publication in the *Gazette*.

(7) The regulations may provide for—

- (a) the procedures to be adopted by the Commission when taking disciplinary action against a financial institution; and
- (b) the determination of, or the method of determining, the amount of the administrative penalty for a disciplinary violation.

Recovery of administrative penalties

44B. (1) An administrative penalty imposed under this Part constitutes a debt to the Commission and may be recovered in the Court.

(2) The Commission may, after the imposition of a penalty has become final, issue a certificate certifying the unpaid amount of any debt referred to in subsection (1) and the registration of the certificate in the Court has the same effect as a judgment of the Court for a debt of the amount specified in the certificate together with the costs of registration.”

Amendment of section 46

9. Section 46(f) of the Act is amended by deleting “Money Laundering Reporting Authority established under the Proceeds of Crime Act” and substituting “Reporting Authority established under the Proceeds of Crime Act, 2010”.

Teresina Bodkin
SPEAKER

Passed the Legislative Council this 6th day of April, 2010.

Judith Jeffers
CLERK OF COUNCILS