

**VIRGIN ISLANDS**

**FINANCIAL INVESTIGATION AGENCY (AMENDMENT) ACT, 2021**

**ARRANGEMENT OF SECTIONS**

*Section*

- 1... Short title and commencement.
- 2... Section 2 amended.
- 3... Section 3 repealed and substituted.
- 4... Section 4 repealed and substituted.
- 5... New sections 4A and 4B inserted.
- 6... Section 5 amended.
- 7... Section 5A amended.
- 8... Section 5B amended.
- 9... New sections 5C to 5K inserted.
- 10.. Section 6 amended.
- 11.. Section 8 repealed and substituted.
- 12.. Section 11 amended.
- 13.. Section 12 amended.
- 14.. Section 15 amended.
- 15.. Section 17 amended.
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- 17.. Section 20 amended.
- 18.. Section 21 repealed and substituted.
- 19.. Section 22 repealed and substituted.
- 20.. Section 23 repealed and substituted.
- 21.. Section 24 amended.
- 22.. Schedule 1 amended.

No. of 2021

**Financial Investigation  
Agency(Amendment) Act, 2021**

**Virgin  
Islands**

**I Assent**

**Governor  
, 2021**

**VIRGIN ISLANDS**

**No. of 2021**

**A BILL** for

An Act to amend the Financial Investigation Agency Act, 2003 (No. 19 of 2003)) and for other matters connected therewith.

[*Gazetted* , 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and  
commencement.

1. (1) This Act may be cited as the Financial Investigation Agency (Amendment) Act, 2021.

(2) This Act shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint.

Section 2  
amended.  
No. 19 of 2003

2. Section 2 of the Financial Investigation Agency Act, 2003 (hereinafter referred to as “the principal Act”) is amended –

(a) in subsection (1) –

(i) by inserting in their appropriate alphabetical order, the following new definitions –

“DNFBP” means a designated non-financial business and profession that qualifies as a relevant person under regulation 2 of the Anti-money Laundering Regulations, 2008 or a business that is designated under the Non-Financial Business (Designation) Notice, 2008 and is –

- (a) established in accordance with the laws of the Virgin Islands;
- (b) required to comply with laws relating to money laundering, terrorist financing and proliferation financing and any related activity; and
- (c) supervised by the Agency under section 5C or pursuant to any other enactment;

“domestic competent authority” means the Attorney General’s Chambers, Governor’s Office, Financial Services Commission, International Tax Authority and such other authority the Governor may, by an Order published in the *Gazette*, designate as a domestic competent authority;

No. 12 of 2001

“financial institution” means any business or institution that is licensed, approved or authorised by the Commission under a financial services legislation, including the Financial Services Commission Act, 2001;

“Internet site”, in relation to the Agency, means the primary public access Internet site for the time being maintained by, or on behalf of, the Agency;

“money laundering” means the act of concealing, retaining, converting, transferring or in any other way moving funds acquired, directly or indirectly, from an unlawful activity or otherwise from an unlawful source, and –

No. 1 of 1997

- (a) relates both to a primary offence and any ancillary offence;
- (b) includes any activity or offence prescribed as money laundering under the Proceeds of Criminal Conduct Act, 1997 or any other enactment; and

No. 5 of 1992

- (c) includes drug money laundering as provided in section 2 (1) of the Drug Trafficking Offences Act, 1992.

“NPO” means a body of persons, whether incorporated or unincorporated, established solely or primarily for the promotion of charitable, religious, cultural, educational, social or fraternal purposes, or other activities or programmes for the benefit of the public, or a section of the public and which –

- (a) raises or disburses funds in pursuance of its objectives primarily within the Territory; and

(b) is subject to compliance with laws relating to money laundering, terrorist financing and proliferation financing and related activities;

“proliferation financing” means the provision or use of funds for the purpose of developing, producing, acquiring, possessing, transferring, transporting, exporting, stockpiling or using nuclear, radiological, biological or chemical weapons or systems;

“terrorism” means the use or threat of action where –

- (a) the action falls within the meaning specified in subsection (3);
- (b) the use or threat is designed to influence the government or to intimidate the public or a section of the public; and
- (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause;

“terrorist financing” means –

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

(ii) by deleting the definition of “financial offence” and substituting the following definition –

““financial offence” means an offence under any financial services legislation or an offence relating to money laundering (including drug money laundering), terrorist financing or proliferation financing and any related activity or the breach of any domestic or international sanction prescribed by or under any other enactment;”;

(iii) by deleting the definition of “Steering Committee”;

(iv) in the definition of “Board”, by deleting the words “in section 3 (2)” and substituting the words “in section 4A”;

(v) in the definition of “Chairman”, by deleting the words “in section 3 (2)” and substituting the words “in section 4A”;

(vi) in the definition of “Director”, by deleting the words “referred to in section 3 (3)” and substituting the words “appointed in accordance with paragraph 5 of Schedule 1”;

(vii) by deleting the definition of “suspicious transaction guidelines”;

(b) by repealing subsection (1A); and

(c) by adding after subsection (2), the following subsections –

“(3) An action relates to terrorism if it –

(a) involves serious violence against a person;

(b) involves serious damage to property;

(c) endangers a person’s life, other than that of the person committing the action; or

(d) creates a serious risk to the health or safety of the public or a section of the public.

(4) The use or threat of action falling within subsection (3) which involves the use of firearms or explosives is terrorism irrespective of whether paragraph (b) of the definition of “terrorism” is satisfied.

(5) For purposes of the definition of “terrorism” under the subsection (1) and of subsections (3) and (4) –

(a) action includes action outside the Virgin Islands;

(b) a reference to any person or property is a reference to any person, or property, wherever situated;

(c) a reference to public includes a reference to the public of a territory or country other than that of the Virgin Islands; and

(d) “government” means the Government of the Virgin Islands, or the government of a territory or country other than the Virgin Islands.”.

Section 3 repealed  
and substituted.

3. Section 3 of the principal is repealed and substituted by the following section –

“Establishment of the  
Agency.

3. (1) There is hereby established an agency to be known as the Financial Investigation Agency.

(2) The Agency shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name and may hold or dispose of property, enter into contracts and perform such acts as a body corporate may legally perform.”.

Section 4 repealed and substituted.

4. Section 4 of the principal is repealed and substituted by the following section –

“Functions and powers of the Agency.

4. (1) In addition to any other function that may be imposed on, or required of, the Agency under this or any other enactment, the Agency shall be responsible for collecting, receiving, investigating, analysing, exchanging and disseminating financial intelligence and other information which relates or may relate to –

- (a) a financial offence or the proceeds of a financial offence;
- (b) a request for legal assistance from an authority in a foreign jurisdiction which appears to the Agency to have the function of making such a request;
- (c) cooperation with a domestic competent authority pursuant to powers granted under this or any other enactment; or
- (d) cooperation with an international body of which the Agency is a member or with any member of such body, including the transmission of information through a system established by such body.

(2) Without limiting subsection (1) and notwithstanding any other law to the contrary, the Agency shall perform or exercise the following functions and powers –

- (a) receive, analyse and investigate any suspicious activity report or other disclosure made under the Proceeds of Criminal Conduct Act, 1997 or any other enactment which requires such a report or disclosure;

- (b) on its own volition or on the written request of a domestic competent authority, investigate or cause the investigation of any matter under a financial services legislation or other enactment relating to a financial offence or which is the subject of a request for legal assistance under this Act or pursuant to any other enactment;
- (c) receive all disclosures of information required to be made pursuant to any financial services legislation or other enactment which is relevant to the performance of its functions or pursuant to any other enactment relating to a financial offence, including information from any foreign financial investigation agency;
- (d) develop and implement a system for monitoring the effectiveness of its policies and procedures in relation to money laundering, terrorist financing and proliferation financing by maintaining statistics on –
  - (i) suspicious activity reports received, including reports transmitted to the Police Force;
  - (ii) the investigations undertaken with respect to money laundering, terrorist financing and proliferation financing and any related charges and convictions;
  - (iii) property frozen, seized and confiscated and the value of such property;
  - (iv) international requests for mutual legal assistance and other forms of cooperation, including the number of requests received,

disposed and outstanding in each year; and

- (v) such other matter as the Agency considers fit to maintain to strengthen the performance of its functions;
- (e) conduct operational analysis, which uses available and obtainable information to –
- (i) identify specific targets;
  - (ii) follow the trail of particular activities or transactions; and
  - (iii) determine links between the identified specific targets and possible proceeds of criminal conduct, money laundering, terrorist financing and proliferation financing and related trends and patterns;
- (f) conduct strategic analysis, which uses available and obtainable information, including data that may be provided by domestic competent authorities and foreign financial investigation agencies, to identify money laundering, terrorist financing and proliferation financing and related trends and patterns;
- (g) order in writing, whether on its own volition or upon receipt of a request from a domestic competent authority, foreign financial investigation agency or law enforcement agency, including the Police Force, any person to freeze the bank account of, or payment to, another person for a period not exceeding five working days if satisfied that the matter on which it is acting, or the request, relates to a financial offence or a suspicion of such an offence;



- (h) set standards, including providing forms, to be followed or used by persons making suspicious activity reports to the Agency under the Proceeds of Criminal Conduct Act, 1997 or other enactment;
- (i) require a financial institution, DNFBP, NPO or other person, in writing, to produce such documents or other information, excluding documents or other information subject to legal professional privilege, that the Agency considers relevant to the performance of its functions;
- (j) facilitate the sharing of financial intelligence and any related information with and amongst domestic competent authorities, law enforcement agencies and prosecutorial authorities, including any foreign financial investigation agency;
- (k) retain a record of all documents and other information it receives for a minimum period of five years;
- (l) subject to the provisions of this Act and such conditions as the Director may consider necessary to impose, provide documents and other information to the Commissioner of Police if the documents or other information appear to relate to the commission of an offence;
- (m) enter into a memorandum of understanding or similar arrangement with any domestic competent authority or law enforcement agency for purposes of facilitating law enforcement, including tracking, detecting, preventing and investigating criminal activity in the Territory and apprehending offenders;
- (n) subject to section 60 of the Virgin Islands Constitution Order, 2007 and

section 4B (1) (b) of this Act, enter into a memorandum of understanding or similar arrangement, in writing, with a foreign financial investigation agency which the Governor considers necessary or desirable for the performance of the functions of the Agency;

- (o) inform financial institutions, DNFBPs, NPOs and the public generally of their obligations under this Act and any other enactment in respect of which the Agency has responsibility and the measures they may take to comply with such obligations, including measures to track, detect, prevent and deter the commission of financial offences; and
- (p) perform such other functions and exercise such other powers as may be imposed or conferred on the Agency under any other enactment.

(3) For the purposes of –

- (a) subsection (2) (c), where information is disclosed to a domestic competent authority (other than the Agency) or a law enforcement agency, the domestic competent authority or law enforcement agency, as the case may be, shall share the disclosed information with the Agency promptly;
- (b) subsection (2) (g), an order issued by the Agency may be made on such terms and conditions as the Agency considers necessary;
- (c) subsection (2) (h), any standards set or forms provided shall be published in the *Gazette* and on the Internet site;
- (d) subsection (2) (i), the Agency may require documents and other information to be produced in such form as the Agency may prescribe in writing, and

such requirement includes a requirement to produce additional or supplementary documents and other information; and

(e) subsection (2) (k), the period of five years shall be deemed to commence from the date after the documents and other information are received by the Agency or, if an investigation has been commenced in relation to the documents or other information, from the date after the completion of the investigation.

(4) Subject to subsection (5), a financial institution, DNFBP, NPO or other person required to produce documents or other information under subsection (2) (i) shall produce such documents or other information within five working days.

(5) The Agency may, where it considers it appropriate and necessary, grant an extension of time under subsection (2) (g) or (4), but such extension of time shall not exceed five working days.

(6) A person who is aggrieved by an order of the Agency under subsection (2) (g) or to an extension of such time period for the purposes of subsection 2 (g) under subsection (5), may apply to the High Court to discharge the order and shall, at the same time as making the application, serve a notice of the application on the Agency which may appear or be represented with respect to such application.

(7) A person who fails to comply with an order under subsection (2) (g) or to produce documents or other information under subsection (2) (i) commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars or imprisonment for a term not exceeding two years or both.”.

New sections 4A and 4B inserted.

5. The principal Act is amended by inserting after section 4, the following sections –

“Establishment and composition of the Board.

4A. (1) There is established a Board of the Agency which shall comprise –

- (a) the Deputy Governor or a retired judge appointed by the Cabinet, as Chairman;
- (b) the Attorney General, as Deputy Chairman;
- (c) the Financial Secretary;
- (d) the Commissioner of Police;
- (e) the Commissioner of Customs;
- (f) the Managing Director of the Commission; and
- (g) the Director.

(2) If the Chairman of the Board is a retired judge, he or she shall be appointed for a period not exceeding five years and the appointment is renewable once.

(3) Schedule 1 shall have effect with respect to the meetings of the Board, the administration and proceedings of the Agency, the appointment and tenure of the Director and other matters therein specified in relation to the Agency.

Functions and powers of the Board.

4B. (1) The Board shall be responsible for setting the policy of the Agency and, in addition to any powers conferred by or under this Act, shall –

- (a) subject to section 13, approve the budget of the Agency; and
- (b) exercise supervisory functions over the Agency in relation to the power specified in section 4 (2) (n).

(2) The Board may appoint or delegate to the Director the power to appoint to the service of the Agency such qualified investigating officers as may be considered necessary and appropriate, and such officers shall have all the powers of police officers as if they were appointed under the Police Act or any related enactment governing the appointment of police officers.

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(3) Without prejudice to the generality of subsection (2), an investigating officer appointed under that subsection shall, in performing his functions under an enactment, other than this Act, the administration of which falls under the responsibility of a domestic competent authority, cooperate with that domestic competent authority to the extent necessary.”.

Section 5 amended. 6. Section 5 of the principal Act is amended by deleting the words “section 4 (3)” and substituting the words “section 4B (1)”.

Section 5A amended. 7. Section 5A of the principal Act is amended in subsection (2) (c), by deleting the words “foreign financial intelligence authority” and substituting the words “foreign financial investigation agency”.

Section 5B amended. 8. Section 5B of the principal Act is amended in subsection (1), by deleting the words “section 4 (2) (a)” and substituting the words “section 4 (2) (c)”.

New sections 5C to 5K inserted. 9. The principal Act is amended by inserting after section 5B, the following sections –

“Supervisory responsibility of the Agency. 5C. (1) The Agency shall exercise supervisory responsibility of a DNFBP for money laundering, terrorist financing and proliferation financing purposes.

(2) The Agency may exercise supervisory responsibility of an NPO for money laundering, terrorist financing and proliferation financing purposes for such period as may be necessary if it is satisfied that the NPO presents a money laundering, terrorist financing or proliferation financing risk.

(3) Every DNFBP shall register with the Agency and provide the names of persons with a significant interest or a controlling interest in the DNFBP, its directors and senior officers and the address or addresses at which it carries on business, including such additional information as the Agency may determine.

(4) Registration under subsection (3) shall take place only once, but each DNFBP shall immediately –

(a) re-register with the Agency whenever it changes its name;

(b) notify the Agency whenever the address at which it carries on business changes; and

- (c) notify the Agency whenever there is a change in its directors or senior officers or persons holding a significant interest or controlling interest.

(5) The Agency shall, upon the coming into force of this Act and by notice published in the *Gazette* and on the Internet site, provide a timeframe within which every DNFBP shall register with the Agency.

(6) The Agency shall, before or at the time of registering a DNFBP, satisfy itself that persons with a significant interest or a controlling interest in, or the directors and senior officers of, the DNFBP are fit and proper and, where the Agency determines that such fitness and propriety is absent in any particular case, it shall act in accordance with the powers granted under subsection (8) and the DNFBP shall, if not already registered, be treated as if it had been registered by the Agency.

(7) The Non-Profit Organisation Registration Board (NPORB) established under section 3 of the Non-Profit Organisations Act, 2012 shall –

- (a) within six months of the coming into force of this Act, provide the Agency with a list of all the NPOs registered with the NPORB, including the names of persons with a significant interest or a controlling interest in the NPOs, their directors, senior officers and addresses at which they carry on business;
- (b) within one month of the registration of a new NPO, provide the Agency with the name of the newly registered NPO, including the information required under paragraph (a);
- (c) immediately notify the Agency whenever –
  - (i) the address at which an NPO carries on business changes;
  - (ii) there is a change in the directors or senior officers of an NPO;

(iii) an NPO has a new person with a significant interest or a controlling interest in the NPO; and

(iv) an NPO is de-registered or otherwise ceases to carry on business.

(8) The Agency may, notwithstanding anything to the contrary contained in any other enactment, exercise the following powers in respect of a DNFBP or an NPO –

(a) require the DNFBP or NPO to remove a person with a significant interest or controlling interest, or change its director or senior officer, that the Agency considers not to be fit and proper and for the removal or change to be carried out within such period as the Agency determines, being not less than fourteen days;

(b) require the DNFBP or NPO to provide to the Agency a periodic report or declaration regarding the DNFBP's or NPO's compliance with any law relating to money laundering, terrorist financing or proliferation financing;

(c) issue an order declaring that a director, senior officer or other employee of the DNFBP or NPO is not fit and proper to hold such office and shall cease to hold any office within the DNFBP or NPO; and

(d) where the Agency exercises a power under paragraph (a) or (c) in respect of –

(i) a DNFBP, to notify the department of Government by which the DNFBP was licensed, registered, approved or recognised, of that fact in writing, or

(ii) an NPO, to notify the NPORB of that fact, in writing, without prejudice to any powers of the Agency under section 5J.

(9) Before exercising the power outlined in subsection (8) (a) or (c), the Agency shall first notify –

(a) in the case of subsection (8) (a), the DNFBP or NPO concerned, and

(b) in the case of subsection (8) (c), the DNFBP or NPO and the director, senior officer or other employee concerned,

of the Agency’s intention to exercise that power and invite the DNFBP or NPO, or the DNFBP or NPO and the director, senior officer or other employee, as the case may be, to make representations to the Agency within such period, being not less than seven days, as the Agency may determine providing reasons why the Agency should not exercise that power.

(10) The Agency shall consider any representations received under subsection (9) in exercising its powers under subsection (8) (c).

(11) Where a DNFBP or NPO fails to comply with a requirement under this section, it commits an offence and is liable to a penalty of one hundred dollars for each day that non-compliance with the requirement continues, up to a maximum of five thousand dollars.

(12) The Agency shall, by an Order published in the *Gazette* and on the Internet site, provide the criteria for assessing fitness and propriety for the purposes of this section.

(13) For the purposes of this section -

(a) “senior officer” means a person who holds a managerial position in a DNFBP or NPO or exercises powers akin to the holder of such a position;

(b) “significant interest” -

(i) in respect of a DNFBP (“the company”), means a holding or interest in the company or any holding company of the DNFBP held or owned by a person, either alone or with any other person and whether legally



or equitably, that entitles or enables the person, directly or indirectly to –

- (aa) control ten per cent or more of the voting rights of that company at a meeting of the company or of its members;
- (bb) a share of ten per cent or more in any distribution (if applicable) made by the company;
- (cc) a share of ten per cent or more in any distribution (if applicable) of the surplus assets of the company; or
- (dd) appoint or remove one or more directors of the company; and

(ii) in respect of an NPO, means a donation to the NPO of money exceeding, or any other asset whose value in monetary terms exceeds, twenty-five thousand dollars; and

(c) a person holds a controlling interest in a DNFBP or NPO if –

- (i) the person has an influence over the activities of any undertaking of the DNFBP or NPO without having a significant interest in the undertaking; or
- (ii) a director or senior officer of the DNFBP or NPO, as the case may be, is accustomed to acting on the instructions of the person.

Power to request documents and information.

5D. (1) Where the Agency considers it reasonably required for the purpose of discharging its functions or ensuring compliance with any laws relating to money laundering, terrorist financing or proliferation financing or any related activity, the Agency may, by notice in writing given to a person specified in subsection (2), require such person to –

- (a) provide specified information or information of a specified description; or

- (b) produce specified documents or documents of a specified description.
- (2) A notice under subsection (1) –
  - (a) may be issued to –
    - (i) a financial institution, DNFBP or NPO;
    - (ii) a former financial institution, DNFBP or NPO;
    - (iii) a person whom the Agency reasonably believes to be carrying on, or to have at any time carried on, business as a financial institution, DNFBP or NPO contrary to the laws of the Virgin Islands;
    - (iv) a person connected with a person specified in sub-paragraph (i), (ii) or (iii);
    - (v) a person reasonably believed to have the information or documents to which the notice relates;
  - (b) shall specify the place where and the period within which the information or document is to be provided or produced; and
  - (c) may require that the information is to be provided, or the documents are to be produced, to such person as may be specified in the notice.
- (3) The Agency may require any information provided pursuant to this section to be –
  - (a) provided in such form as the Agency may require; and
  - (b) verified or authenticated in such manner as the Agency may reasonably require.
- (4) The Agency may take copies or extracts of any document produced pursuant to this section.

(5) Where a person claims a lien on a document, the production of the document pursuant to this section is without prejudice to that lien.

Power to  
apply for  
search warrant.

5E. (1) Where –

- (a) a person who is issued a notice under section 5D, fails to comply or only partly complies with such notice,
- (b) the Agency is of the reasonable belief that if a notice is issued to a person under section 5D it would not be complied with or the documents or information to which the notice relates may be removed, tampered with or destroyed, or
- (c) the Agency is of the reasonable belief that –
  - (i) a money laundering, terrorist financing or proliferation financing offence has been or is being committed, or may be committed unless swift action is taken to prevent the commission of the offence,
  - (ii) there are documents, or there is information, on the premises of a person referred to in section 5D (2) which may reveal the commission of an offence, and
  - (iii) if a notice under section 5D is issued it would not be complied with or the documents or information to which the notice relates may be removed, tampered with or destroyed,

the Agency may, on oath sworn to on its behalf by an officer of the Agency, apply to a Magistrate for a search warrant.

(2) On receipt of an application under subsection (1), the Magistrate may authorise a named representative of the Agency, together with a police officer (if the named representative is not an investigating officer appointed under section 4B (2)) and any other person named in the warrant to –

- (a) enter the premises specified in the warrant at any time within one month from the date of the warrant;
- (b) 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) 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) require any person on the premises to provide an explanation of any document or information appearing to be a document or information of a type of which the warrant was issued or to state where such documents or information may be found; and
- (e) use such force as may be reasonably necessary to execute the warrant.

(3) Unless the court, on the application of the Agency, 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.

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

Examination  
under oath  
before a  
Magistrate.

5F. (1) Where the Agency considers it necessary to examine a person on oath, it may apply to a Magistrate to have that person examined before the Magistrate and to have the results of that examination transmitted to the Agency.

(2) Subject to subsections (3) and (4), on an application under subsection (1), the Magistrate may order the examination of a person under oath on such terms and conditions as the Magistrate considers fit.

(3) Where the Magistrate orders the examination of a person under subsection (2), that person may choose to be represented by a legal practitioner, and the proceedings of the examination shall be held in camera.

(4) An application to a Magistrate under subsection (1) shall be processed by the Magistrate within seven days of the application and the results of the examination shall be transmitted to the Agency within a reasonable period, not exceeding fourteen days, from the date of the examination.

Examination  
under oath by  
the Agency.

5G. (1) Where the Agency on reasonable grounds believes that a person (referred to in this section as “the examinee”) can provide information that is reasonably required for the purposes of discharging its functions or ensuring compliance with any laws relating to money laundering, terrorist financing or proliferation financing or any related activity, the Agency may, by notice in writing, require the examinee to attend before a specified investigating officer of the Agency to be examined under oath.

(2) A notice under subsection (1) shall state –

(a) the general nature of the matters on which the examinee is to be examined;

(b) the date, time and place of the examination; and

(c) the entitlement of the examinee to be represented by a legal practitioner in accordance with subsection (5).

(3) Any change in the matters required to be stated in the notice under subsection (2) shall be confirmed by the Agency to the examinee in writing.

(4) The investigating officer is entitled to administer an oath to the examinee for the purposes of this section, notwithstanding that the investigating officer may not otherwise be entitled to administer an oath.

(5) An examinee may be represented at the examination by a legal practitioner of his or her choice who may, at such times as the investigating officer determines –

(a) address the investigating officer; and

(b) examine the examinee on any matters on which the investigating officer has examined the examinee.

(6) Subject to subsection (7), an examination under this section shall be in camera.

(7) The investigating officer may in his discretion permit to be present at the examination –

(a) any other officer or employee of the Agency and any other person that, in the opinion of the investigating officer, is essential to the examination; and

(b) any person whom the examinee requests to be present.

(8) The investigating officer shall cause a written record to be made of the examination and shall, within a reasonable period following the examination, provide a written copy of the record to the examinee, subject to such conditions (including a condition as to disclosure of the record or any part thereof or information relating thereto) as the investigating officer may impose.

(9) A person commits an offence if –

(a) having received a notice under subsection (1), he or she fails or refuses to submit to examination in accordance with the notice; or

(b) having been issued with a record of an examination pursuant to subsection (8), he fails to comply with any condition imposed by the investigating officer.

(10) A person who commits an offence under subsection (9) is liable to a penalty of a fine not exceeding ten thousand dollars.

Register of  
DNFBPs

5H. (1) The Agency shall prepare and maintain a register of DNFBPs.

(2) The register prepared and maintained under subsection (1) may be inspected by any person during normal working hours, subject to the payment of such fee as the Agency may determine.

(3) Notwithstanding subsection (2), the Agency may, if it considers it necessary and not to be against the public interest, publish the register prepared and maintained under subsection (1) on its Internet site and in such other medium as it may consider fit.

Power to  
issue directive.

5I. (1) The Agency may, where it considers it necessary to ensure compliance or remedy a contravention by a DNFBP, NPO or any other person in respect of which the Agency has jurisdiction under this Act or any other enactment, relating to money laundering, terrorist financing or proliferation financing or any related activity, issue a directive –

(a) outlining the subject matter of compliance or contravention;

(b) providing a timeframe within which compliance must be achieved or contravention must be remedied; and

(c) requiring that the Agency be notified, within seven days of the end of the time stipulated pursuant to paragraph (b), of the action taken to ensure compliance or the remedy effected to prevent contravention.

(2) Where a person against whom a directive has been issued under subsection (1) fails to comply with the directive, the Agency may take enforcement action against the person in accordance with section 5J.

Power to take  
enforcement  
action.

5J. (1) Where a person –

(a) breaches a provision of this Act or any other enactment relating to money laundering, terrorist financing or proliferation financing,

(b) is no longer considered by the Agency to be fit and proper pursuant to an Order made under section 5C (10), or

- (c) fails to comply with a directive issued by the Agency under section 5I,

the Agency may take enforcement action against the person in accordance with subsection (2).

(2) Where the Agency is entitled to take enforcement action against any person, it may impose one or more of the following sanctions –

- (a) issue a warning to the person in such manner and with such conditions as the Agency considers fit;
- (b) recommend to the Government department or institution by which the person is licensed, registered, approved, authorised or otherwise established to suspend, revoke or withdraw the person's licence, registration, approval, authorisation or other form by which the person is established; and
- (c) impose an administrative penalty in the amount prescribed under this Act or any other enactment or, where a penalty is not prescribed, in an amount not exceeding seventy-five thousand dollars, having regard to the nature, extent, gravity and recurrence of the breach necessitating imposition of the administrative penalty.

(3) Notwithstanding anything contained in any enactment or otherwise not provided for in such enactment, a recommendation received from the Agency in accordance with subsection (2) (b) shall be treated as sufficient ground to take the action recommended.

(4) A recommendation by the Agency for a suspension under subsection (2) (b) shall specify a period of suspension not exceeding thirty days, but the Agency may, if it considers it to be in the public interest, recommend an extension of the suspension for a further period or periods of up to another thirty days.



(5) The Agency shall, before taking any enforcement action against a person in accordance with subsection (2), give written notice to the person stating –

- (a) the type of enforcement action the Agency intends to take against the person;
- (b) the grounds upon which the Agency intends to take the enforcement action; and
- (c) that unless the person, by written notice filed with the Agency within a period of fourteen days from the date of the notice, shows good reason why the Agency should not take the intended enforcement action, the Agency will proceed to take the enforcement action without any further notice to the person.

(6) Where the Agency receives a written notice under subsection (4) (c), it shall consider the reason or reasons given therein and determine whether or not to take the intended enforcement action.

(7) Where the Agency takes enforcement action in accordance with this section, it may publish the name of the person against whom enforcement action has been taken and the type of enforcement action taken, on the Internet site for a period of at least twelve months.

(8) Where the Agency, pursuant to an enforcement action, imposes an administrative penalty in accordance with subsection (2) (c), the administrative penalty shall be collected and paid by the Agency into the Financial Investigation Agency Asset Fund established under section 12 for use by the Agency.

Power to compound an offence.

5K. (1) Where a person commits an offence under this Act for which the penalty prescribed is or includes a fine, the Agency may, subject to this section, impose a fine by accepting from the person not less than one-half of the penalty fine prescribed.

(2) The Agency shall, before imposing a fine under subsection (1) –

- (a) notify the person of the offence the person has committed;

(b) advise the person of the Agency’s intention to impose a specified fine; and

(c) invite the person to indicate whether or not he agrees to the imposition of the fine.

(3) Where, pursuant to subsection (2), a person agrees to the imposition of a fine by the Agency, the Agency shall, by notice addressed to the person, impose the intended fine which shall be paid within twenty-one days from the date of the notice.

(4) Where the person fails to pay a fine under subsection (3) or disagrees with the imposition of a fine under subsection (2) (c), the person may be prosecuted for the offence.”.

(5) A fine imposed by virtue of this section shall be paid into the Financial Investigation Agency Asset Fund established under section 12 for use by the Agency.

Section 6 amended. 10. Section 6 of the principal Act is amended by deleting the words “the Agency, the Board or Steering Committee” and substituting the words “the Agency or the Board”.

Section 8 repealed and substituted. 11. Section 8 of the principal Act is repealed and substituted by the following section –

“Protection against civil or criminal liability.

8. (1) No proceeding for breach of banking, professional or other confidentiality may be instituted against any person, including any director, board member or employee of a financial institution, DNFB or NPO, who in good faith transmits information or submits a report to the Agency in compliance with any –

(a) financial services legislation;

(b) provision of the Proceeds of Criminal Conduct Act, 1997 relating to the reporting of a suspicious activity;

(c) enactment relating to the provision of mutual legal assistance;

(d) directive or request given or made by the Agency in accordance with powers exercised under this Act or any other enactment; or

(e) other matter relating to the investigation and detection of a financial offence.

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(2) No civil, disciplinary or criminal action may be brought against any person, including any director, board member or employee of a financial institution, DNFB or NPO, who in good faith transmits information or submits a report in compliance with any of the matters specified in subsection (1) (a) to (e).

Section 11 amended.

12. Section 11 of the principal Act is amended by adding immediately after subsection (2), the following new subsection:

“(3) Where the Agency’s annual report is not laid on the table of the House of Assembly within the time frame provided in subsection (2), the Agency may publish the annual report in a manner it considers fit.”

Section 12 amended.

13. Section 12 of the principal Act is amended –

(a) in subsection (3), by inserting before the words “House of Assembly”, the word “the”; and

(b) in subsection (4), by inserting before the words “Financial Investigation Agency Asset Fund”, the word “The”.

Section 15 amended.

14. Section 15 of the principal Act is amended in subsection (2), by deleting the words “Chief Minister” and substituting the word “Premier”.

Section 17 amended.

15. Section 17 of the principal Act is amended by repealing subsection (1) and substituting the following subsection –

“(1) The Board may appoint or delegate to the Director the power to appoint such officers, employees and agents as may be considered necessary and proper for the administration, management and performance by the Agency of its functions under this Act.”.

Section 19 amended.

16. Section 19 of the principal Act is amended -

(a) by repealing subsection (2) and substituting the following subsection –

“(2) Without prejudice to the generality of subsection (1), regulations made under that subsection may –

(a) require financial institutions, DNFBPs and NPOs to –

(i) establish and maintain procedures relating to training, keeping records and making reports;

- (ii) keep and maintain statistical data on activities relating to money laundering, terrorist financing and proliferation financing; and
  - (iii) comply with any matter not provided in this Act or other enactment relating to money laundering, terrorist financing and proliferation financing and any related activity;
- (b) provide additional guidance to financial institutions, DNFBPs, NPOs and other persons with respect to matters relating to –
- (i) the submission of suspicious activity reports under the Proceeds of Criminal Conduct Act, 1997 or other enactment; and
  - (ii) compliance with their obligations under the laws concerning money laundering, terrorist financing and proliferation financing and related activities;
- (c) make provision for the implementation of any bilateral or multilateral agreement or treaty extended or applicable to the Territory as may be consistent with the functions of the Agency;
- (d) create criminal offences triable summarily for failure to comply with the regulations and provide penalties in that regard;
- (e) provide for the imposition by the Agency of administrative penalties on persons that contravene a provision of the regulations or fail to comply with a directive issued by the Agency under such regulations; and
- (f) prescribe any other matter required or permitted by this Act to be prescribed.”; and

(b) by adding after subsection (2), the following subsection –

“(3) An administrative penalty paid to the Agency under regulations made in accordance with subsection (2) shall be paid into the Financial Investigation Agency Asset Fund established under section 12 for use by the Agency.”.

Section 20  
amended.

17. Section 20 of the principal Act is amended –

(a) in the marginal note, by deleting the word “Commission” and substituting the word “Agency”;

(b) in subsection (1) –

(i) by deleting the opening paragraph and substituting the following opening paragraph–

“Subject to section 21, the Agency may from time to time and in such manner as it considers fit, issue guidelines in respect of a financial institution or any DNFBP, NPO or other person required to make a suspicious activity report pursuant to the Proceeds of Criminal Conduct Act, 1997 or other enactment”; and

(ii) in paragraph (a), by adding after the word “Act”, the words “or any enactment relating to a financial offence”;

(c) by repealing subsections (2) and (3); and

(d) by repealing subsection (4) and substituting the following subsection –

“(4) Without limiting subsection (1), guidelines issued under that subsection may relate to one or more types of financial institutions, DNFBPs, NPOs or other persons, and such guidelines may make different provisions for

–

(a) different types of financial institutions, DNFBPs, NPOs or other persons; and

(b) different transactions.”; and

(e) by adding after subsection (4), the following subsection –

“(5) A court may, in interpreting any matter relating to this Act or any other enactment with respect to a function or power of the Agency or an obligation or other matter relating to a financial institution, DNFBP, NPO or other person required to make a suspicious activity report pursuant to the Proceeds of Criminal Conduct Act, 1997 or other enactment, have regard to guidelines issued under this section in so far as the guidelines are relevant to that matter.”.

Section 21  
repealed and

18. Section 21 of the principal Act is repealed and substituted by the following new section –

substituted.

“Consulting on 21. (1) Before issuing any proposed guidelines under  
guidelines. section 20, the Agency –

- (a) may publish in the *Gazette* and on the Internet site, notice of its intention to issue the guidelines, inviting financial institutions, DNFBPs and NPOs that are likely to be affected by the guidelines to provide comments and suggestions in respect of the guidelines within such period as the Agency may determine;
- (b) may consult with such other institutions and committees as it considers relevant to the finalisation and issuing of the guidelines;
- (c) may take into account and, where it considers it necessary, adopt or adapt, guidelines issued by another institution in relation to the subject matters of the guidelines it intends to issue under section 20; and
- (d) shall, where a notice of intention to issue guidelines is published in accordance with paragraph (a) or consultation is held in accordance with paragraph (b), consider all comments and suggestions received in finalising the guidelines.

(2) Nothing contained in subsection (1) prevents the Agency from adopting any additional means of publishing the guidelines it intends to issue under section 20 or of consulting with persons likely to be affected by the guidelines.

(3) For the avoidance of doubt, this section applies equally in respect of any amendment the Agency intends to effect to guidelines it has issued under section 20.

Section 22  
repealed and  
substituted.

19. Section 22 of the principal Act is repealed and substituted by the following section –

“Publication of 22. (1) The Agency shall, upon finalising the guidelines it  
final guidelines. intends to issue under section 20 –

- (a) publish the guidelines on the Internet site; and

(b) make copies of the guidelines available to any person upon request and at such cost as the Agency may determine.

(2) Any monies received from making copies of any guidelines available under subsection (1) (b) shall be paid into the Financial Investigation Agency Asset Fund established under section 12 for use by the Agency.”.

Section 23  
repealed and  
substituted.

20. Section 23 of the principal Act is repealed and substituted by the following section –

“Review of guidelines. 23. (1) The Agency shall, whenever it considers it necessary, review any guidelines issued under section 20.

(2) The provisions of section 21 shall apply in relation to any review of guidelines carried out in accordance with subsection (1).”.

Section 24  
amended.

21. Section 24 of the principal Act is amended in subsection (3) by deleting the words “Steering Committee” and substituting the word “Agency”.

Schedule 1  
amended.

22. Schedule 1 of the principal Act is amended –

(a) in paragraph 4, by deleting the words “or the Steering Committee”; and

(b) in sub-paragraph (1) of paragraph (6), by deleting the word “officer” and substituting the word “office”.

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

Speaker.

Clerk of the House of Assembly.

## **OBJECTS AND REASONS**

The purpose of this Bill is to effect necessary amendments to the Financial Investigation Agency Act, 2003 (Act No. 19 of 2003) to update and streamline the provisions of the Act. In particular, the Bill aims to empower the Financial Investigation Agency (FIA) to enable it to better perform in meeting the AML/CFT obligations attributable to it in readiness for the next CFATF mutual evaluation of the Virgin Islands (currently slated for 2021).

In essence, the Bill introduces new definitions relating to money laundering, terrorism and terrorist financing and proliferation financing to better articulate these functions of the FIA. The Bill also defines a Financial Institution (FI), Designated Non-Financial Business and Profession (DNFBP) and Non-Profit Organisation (NPO) to map out the FIA's jurisdiction over these entities in defined circumstances.

In addition, the Bill redefines the role and functions of the FIA to accord fully with those of a financial intelligence unit. In this respect, the FIA's supervisory powers in relation to DNFBPs are outlined; such powers extend to NPOs but in relation to those that are considered to pose money laundering, terrorist financing or proliferation financing risks, as generally most NPOs are viewed as presenting a low risk in that regard. In order to ensure the effectiveness of the FIA (as required under the FATF Recommendations), the institution is being given reasonable powers to better execute its mandate through the process of requesting relevant documents and information, examining persons under oath (including before a Magistrate), issuing necessary directives, taking enforcement action as considered necessary and compounding an offence instead of taking the route of prosecution before the courts.

The overall aim of the Bill is to strengthen the functioning and efficiency of the FIA to deliver, on behalf of the Territory, some of the enforcement and international cooperation obligations outlined in the FATF 40 Recommendations. It is believed that the amendments outlined in the Bill will provide the necessary regime for a more efficient and effective FIA. Accordingly, the Honourable Members of the House of Assembly are invited to consider and approve the Bill.

Attorney General