

SAINT VINCENT AND THE GRENADINES
FINANCIAL SERVICES AUTHORITY ACT 2011
ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

SECTION

1. Short title and commencement
2. Interpretation

PART II

FINANCIAL SERVICES AUTHORITY

3. Establishment of Financial Services Authority
4. Seal of the Authority
5. Functions of the Authority
6. Administration of specified enactments
7. Core guiding principles
8. Powers of the Authority
9. Power to examine unlicensed person
10. Guidelines
11. Publication of information
12. Executive Director
13. Staff
14. Appointment of experts
15. Advisory committees
16. Duty to take oath

17. Non-disclosure of information and documents
18. Protection from liability
19. Delegation
20. Ministerial directions

PART III

REPORTING REQUIREMENTS, RESTRICTIONS, EXAMINATIONS AND ENFORCEMENT

21. Submission of information
22. Request for information
23. Annual audit
24. Appointment of auditor by the Authority
25. Authority may request information from auditor
26. Examinations
27. Production of documents and information
28. Investigations
29. Powers and responsibilities of examiner and investigator
30. No liability for disclosing information
31. Offence of not producing information
32. Prescribed remedial action
33. Failure to take remedial action
34. Tampering with evidence
35. Obstruction
36. Examination expenses

37. Cancellation or suspension of licence
38. Application for freezing order
39. Exchange of information with Financial Intelligence Unit
40. Prohibition on advertising likely to mislead
41. Establishment of Appeal Tribunal
42. Appeal to Tribunal
43. Procedure of Tribunal

PART IV

FINANCIAL PROVISIONS RELATING TO THE AUTHORITY

44. Funds and resources of the Authority
45. Application of funds and resources
46. Investment of funds and resources
47. Borrowing power of Authority
48. Financial year
49. Annual business plan
50. Authority obligated to implement business plan
51. Accounts
52. Audit by Director of Audit and report to House
53. Exemption from taxation

PART V**MISCELLANEOUS**

- 54. Fees
- 55. Offences by officers of bodies corporate
- 56. Fixed penalty offences
- 57. Regulations
- 58. Amendment of Schedule 2, 3 or 5
- 59. Consequential amendment of enactments
- 60. Transitional provision relating to appeals
- 61. Dissolution, savings and transitional
- 62. Repeal

SCHEDULES



SAINT VINCENT AND THE GRENADINES

ACT NO. OF 2011
I ASSENT

[]

Governor-General

AN ACT to establish the Financial Services Authority to regulate certain entities and businesses in the financial sector and to provide for related matters.

[]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows:

PART I

PRELIMINARY

1. (1) This Act may be cited as the Financial Services Authority Act 2011. Short title and commencement

(2) This Act comes into operation on such day as the Governor-General may appoint by Proclamation published in the *Gazette* and different days may be appointed for different provisions of this Act.

2. In this Act – Interpretation

“affiliate” in relation to a financial entity or registered entity means –

- (a) a company which is or has at any relevant time been –
 - (i) a holding company or subsidiary of the financial entity or registered entity;
 - (ii) a subsidiary of a holding company of the financial entity or registered entity; or
 - (iii) a holding company of a holding company or a subsidiary of a subsidiary of the financial entity or registered entity;
- (b) any company over which the financial entity or registered entity has control;
- (c) any company over which the financial entity or registered entity and any person associated with the financial entity or registered entity has control;
- (d) any company which has common ownership with the financial entity or registered entity; or
- (e) any company which has the same beneficial owner and share common management and inter-linked businesses with the financial entity or registered entity;

“auditor” means a person who is qualified to practise in Saint Vincent and the Grenadines and includes a partnership of auditors;

“Authority” means the Financial Services Authority established under section 3;

“business plan” for a financial year, means –

- (a) the business plan approved under section 49; and
- (b) all amendments to the business plan approved under that section,

for the financial year;

- “Central Bank” means the Eastern Caribbean Central Bank established under Article 3 of the Agreement set out in the Schedule to the Eastern Caribbean Central Bank Act; Cap. 95
- “credit union” has the meaning assigned to it by section 2 of the Co-operatives Societies Act; Cap. 451
- “customer” in relation to a financial entity means a depositor, shareholder, investor and policy holder as well as any person who has a similar financial interest in the financial entity or registered entity;
- “director” in relation to the Authority means a person appointed to be a director of the Authority under Schedule 1; Schedule 1
- “document” includes a record or information of any kind which is stored in electronic format;
- “examiner” means a person appointed pursuant to section 26;
- “Executive Director” means the Executive Director of the Authority appointed by the Authority under section 12;
- “family member” in relation to a person, means the person’s father, mother, brother, sister, child, grandchild or spouse;
- “financial entity” means –
- (a) an entity or business which is governed by any of the Acts set out in Schedule 2; Schedule 2
 - (b) a credit union;
- “Financial Intelligence Unit” means the Financial Intelligence Unit established under the Financial Intelligence Unit Act; Cap. 174

“financial services” means –

- (a) the services governed by the specified enactments;
- (b) the services provided by a credit union in accordance with the Co-operatives Societies Act;

Cap. 451

“financial year” means the financial year as determined in accordance with section 48;

“guidelines” means the guidelines issued under this Act;

“investigator” means a person authorised to conduct an investigation pursuant to section 28;

“licence” includes a permit, permission, authorisation, registration or recognition issued or granted under a registry legislation or the specified enactments;

“Minister” means the Minister to whom responsibility for finance is assigned;

“registered entity” means an entity or business which is governed by any of the Acts set out in Schedule 3;

“registry legislation” means the Acts set out in Schedule 3 and any subsidiary legislation made under those Acts;

Schedule 3

“Regulations” means Regulations made under this Act;

“regulatory authority” means an authority which, in Saint Vincent and the Grenadines or a country or territory outside Saint Vincent and the Grenadines, performs duties corresponding to any duties of the Authority or functions as a supervisory authority of a bank;

“specified enactments” means –

- (a) the Acts specified in Schedule 2 and any subsidiary legislation made under those Acts; and

Schedule 2

- (b) the Co-operative Societies Act and the subsidiary legislation made under that Act in so far as the those enactments relate to a credit union; Cap 451

“spouse” includes –

- (a) a single woman who is living together with a single man as his wife; and
 (b) a single man who is living together with a single woman as her husband;

“Tribunal” means the Financial Services Authority Appeal Tribunal established under section 41.

PART II

FINANCIALSERVICESAUTHORITY

3. (1) There is established an authority to be known as the Financial Services Authority. Establishment of Financial Services Authority
- (2) The Authority –
- (a) is a body corporate with perpetual succession;
- (b) has a common seal;
- (c) may enter into contracts;
- (d) may sue and be sued;
- (e) may acquire, hold and dispose of real and personal property; and
- (f) may do and suffer such acts and things as bodies corporate may lawfully do and suffer.
- (3) Schedule 1 has effect with respect to the constitution of the Authority and otherwise in relation thereto. Schedule 1
4. (1) The seal of the Authority shall be kept in the custody of the Executive Director and may be affixed to documents pursuant to a Seal of the Authority

resolution of the Authority in the presence of the Chairperson or Deputy Chairperson of the Authority or any other director.

(2) The seal of the Authority shall be authenticated by the signature of the Chairperson or Deputy Chairperson of the Authority or any other director.

(3) All documents other than those required by law to be under seal and all decisions of the Authority may be signified under the hands of the Executive Director.

Functions of the Authority

5. (1) The Authority shall –
- (a) be responsible for the administration of the specified enactments including the licensing of financial entities;
 - (b) be responsible for the administration of the registry legislation including the licensing of registered entities;
 - (c) supervise and regulate the operations of financial entities;
 - (d) promote stability, public awareness and public confidence in the operations of financial entities;
 - (e) establish standards for institutional strengthening, for the control and management of risk in the financial services sector and for the protection of customers of financial entities as well as creditors and the public;
 - (f) issue guidelines in accordance with section 10;
 - (g) monitor and ensure compliance by financial entities and registered entities, and by such other persons who are subject to them, with such Acts, regulations, codes or guidelines relating to money laundering or the financing of terrorism as may be prescribed;
 - (h) assist in the investigation of any offence against the laws of Saint Vincent and the Grenadines or the

laws of another State which has requested assistance on the basis that it has reasonable grounds to believe has or may have been committed by a financial entity;

- (i) provide technical assistance and advice to any government agency in relation to its responsibilities under any law to supervise, regulate or monitor any business operating in Saint Vincent and the Grenadines;
- (j) advise the Minister in respect of matters relating to this Act;
- (k) do such other things as are necessary to effectively carry out the purposes of this Act; and
- (l) perform such other functions assigned to it under this Act or under any other enactment.

(2) In discharging its functions under this Act, the Authority shall take such steps as it considers appropriate to co-operate with the Central Bank or any regulatory authority and the Financial Intelligence Unit.

(3) Subsection (2) does not override any restrictions that would otherwise apply to the Authority by law or confer any powers on the Authority that it would not otherwise have.

(4) For the purpose of this section, "government agency" means a Ministry, Department of Government or a statutory authority.

6. (1) The Authority shall administer the specified enactments with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the provisions of this Act.

Administration of
specified enactments

(2) Notwithstanding subsection (1), where there is any conflict between this Act and the specified enactments, the provisions of this Act shall apply.

7. In exercising any of its functions, the Authority may take into account any matter which it considers appropriate but shall in particular have regard to -

Core guiding
principles

- (a) the reduction of the risk to the public of financial loss due to dishonesty, incompetence or malpractice by or through the imprudence of persons providing financial services in or from within Saint Vincent and the Grenadines;
- (b) the protection and enhancement of the reputation and integrity of Saint Vincent and the Grenadines in financial matters;
- (c) the need to counter financial crime both in Saint Vincent and the Grenadines and elsewhere;
- (d) the protection and fair treatment for customers of financial entities;
- (e) the stability and security of the financial services sector in Saint Vincent and the Grenadines;
- (f) the competitive and innovative financial services sector in Saint Vincent and the Grenadines including a choice of organisational options;
- (g) proportionate, risk based regulation.

Powers of the
Authority

8. (1) Subject to this Act, the specified enactments or registry legislation, the Authority may—

- (a) give directives –
 - (i) to ensure compliance with this Act, the Regulations or guidelines or to ensure compliance with any of the specified enactments; and
 - (ii) to ensure that a financial entity is being properly managed and remains financially sound;
- (b) investigate the affairs of a financial entity or registered entity in accordance with this Act;
- (c) suspend or cancel the licence of a financial entity or registered entity;

- (d) seize the management and control of a financial entity or registered entity, appoint a manager or take any other necessary action for the purpose of protecting the interests of customers of financial entities or registered entities, as well as creditors and the public and ensuring that the financial entity or registered entity remains financially sound;
- (e) reorganise or wind up a financial entity or registered entity in accordance with the specified enactments, registry legislation or any other applicable enactment or law;
- (f) exempt any financial entity or registered entity from any requirement under this Act or any requirement under the guidelines where in the opinion of the Authority it is necessary to do so; and
- (g) exercise such other powers as are necessary to enable it to effectively discharge its functions under this Act.

(2) A financial entity or registered entity or an affiliate of a financial entity or registered entity that is aggrieved by any action taken by the Authority pursuant to subsection (1) (a), (c), (d) or (e) may within thirty days of the receipt of written notification of the decision, appeal to the Tribunal.

(3) A person appointed under subsection (1) (d) shall be paid by the Authority such remuneration as the Authority may determine and the remuneration shall be charged to the financial entity or registered entity concerned.

(4) A directive given under this section must be in writing and must give the person to whom it is issued a reasonable time for compliance.

(5) Any person to whom a directive is given pursuant to this section shall comply with the directive.

(6) No person shall knowingly hinder or prevent compliance with a directive given pursuant to this section.

(7) Any person who contravenes subsection (5) or (6) commits an offence and is liable on summary conviction to a fine of twenty-five thousand dollars or to imprisonment for a term of one year or to both such fine and imprisonment, and in addition where a time period is specified for compliance, to a further fine of three thousand dollars for each day during which the person fails to comply with the directive.

Power to examine
unlicensed person

9. (1) Where the Authority has reasonable grounds to believe that a person is committing an offence by providing a financial service without a licence, the Authority may cause an examination to be made of that person and the provisions of this Act shall apply *mutatis mutandis* for the purposes as if the person was licensed under any of the specified enactments.

(2) A person who holds funds from providing financial services without a licence shall repay those funds in accordance with the direction of the Minister.

Guidelines

10. (1) The Authority may, after consultation with financial entities, issue guidelines to financial entities and their affiliates for the purpose of –

- (a) establishing codes of conduct to guide the financial services sector;
- (b) modernising the financial services sector;
- (c) promoting international standards and best practices;
- (d) the detection, prevention and deterrence of money laundering; and
- (e) the detection of funds allocated or used for the financing of terrorism.

(2) Where the Authority intends to make any substantive modification to the guidelines, the Authority shall consult with the financial entities.

(3) The Authority –

- (a) shall make the guidelines and all amendments to the guidelines available for inspection by the public;
- (b) may at such intervals as the Authority determines, review any guidelines for the time being in force; and
- (c) shall publish in the *Gazette* the guidelines issued under this section and any amendment to the guidelines.

(4) A financial entity or an affiliate of a financial entity shall comply with the guidelines.

(5) Where a financial entity or its affiliate fails to comply with the guidelines, the Authority may give a directive under section 8 (1) to ensure compliance with the guidelines.

11. (1) The Authority may –

- (a) publish in the *Gazette*, in a local newspaper with general circulation in Saint Vincent and the Grenadines and on an Internet site maintained by or on behalf of the Authority, and in such form as may be appropriate, any information which the Authority considers to be of public interest; and
- (b) require financial entities to publish any information or data which, in the opinion of the Authority, is in the public interest.

(2) Where the Authority publishes information under subsection (1) –

- (a) no information in respect of the affairs of a particular customer of a financial entity shall be published; and
- (b) no individual transactions of a particular customer of a financial entity shall be identified in the publication.

Publication of
information

(3) Nothing in this section shall be construed as prohibiting the publication of information where the information could be disclosed in accordance with this Act or any other law.

Executive Director

12. (1) The Authority shall, with the approval of the Minister, appoint a suitably qualified person as the Executive Director of the Authority at such remuneration and on such terms and conditions as may be agreed on.

(2) In the exercise of his functions under this Act, the Executive Director shall render his services exclusively to the Authority and is answerable to the Authority for his acts and decisions.

(3) Except in the case of an appointment under subsection (4), the Executive Director shall not hold any other appointment or engage in any other occupation, which in the opinion of the Authority, is likely to interfere with the proper performance of his functions under this Act, or is prejudicial to the interests of the Authority.

(4) Where the office of Executive Director is vacant or the Executive Director is absent or incapacitated, the Authority shall, after consultation with the Minister, appoint a person who may be a director, as a temporary Executive Director for a period not exceeding ninety days or for the duration of the absence or incapacitation whichever is less.

(5) The Executive Director shall perform all the functions entrusted to him under this Act and such functions as may be conferred on him by the Authority.

(6) The Executive Director is *ex-officio* a director of the Authority but shall have no right to vote in affairs of the Authority.

Staff

13. (1) The Authority may employ such staff as the Authority considers necessary for the performance of the functions of the Authority.

(2) Staff appointed under subsection (1) shall perform the functions assigned to him by the Executive Director.

(3) Notwithstanding subsection (1), the Authority may, subject to such conditions as may be specified by it in writing, delegate

to the Executive Director the power to employ, suspend, dismiss or remove staff which the Authority may employ under that subsection.

(4) Staff employed under this section shall not hold any other appointment or engage in any other occupation, which in the opinion of the Authority, is likely to interfere with the proper performance of his functions under this Act, or is prejudicial to the interests of the Authority.

14. The Authority may appoint such experts as it considers necessary to assist the Authority in the performance of its functions.

Appointment of experts

15. (1) The Authority may, for the purpose of carrying out the functions of the Authority, establish advisory committees to give advice to the Authority on such matters relating to the Authority's functions as the Authority may determine.

Advisory committees

(2) The Authority may appoint a person as a member of an advisory committee established under subsection (1), whether or not the person is a director, officer or employee of the Authority for such period as the Authority may determine.

(3) An advisory committee established under subsection (1) shall keep a record of any recommendation the advisory committee makes to the Authority.

(4) The recommendation of an advisory committee established under subsection (1) shall be considered by the Authority but is not binding on the Authority.

16. (1) A director, an officer or an employee of the Authority shall, prior to assuming office with the Authority, take the oath of confidentiality set out in Schedule 4.

Duty to take oath
Schedule 4

(2) The oath of confidentiality referred to in subsection (1) shall be taken before a magistrate or a justice of the peace.

(3) The Executive Director shall keep a record of all oaths of confidentiality taken pursuant to this section.

17. (1) Subject to subsection (2), a director, an officer, an employee, an agent or an adviser of the Authority shall not disclose

Non-disclosure of information and documents

any information relating to –

- (a) the business or affairs of the Authority;
- (b) any application for a licence made to the Authority under any specified enactment or registry legislation;
- (c) the business or affairs of a financial entity or registered entity; or
- (d) the affairs of a customer of a financial entity or registered entity,

that the director, officer, employee, agent or adviser obtained in the course of his duties or in the exercise of the Authority's functions under this Act or any other law.

(2) Subsection (1) does not apply to a disclosure –

- (a) for the purpose of sharing information pursuant to any law in force in Saint Vincent and the Grenadines;
- (b) for the purpose of sharing information with the Financial Intelligence Unit in accordance with section 39;
- (c) for the purpose of sharing information in order to comply with any international obligation of Saint Vincent and the Grenadines;
- (d) lawfully required or permitted by any court of competent jurisdiction in Saint Vincent and the Grenadines;
- (e) in respect of the business or affairs of a financial entity or registered entity or of a customer of a financial entity or registered entity, with the consent of the financial entity or registered entity or the customer which consent has been voluntarily given;
- (f) for the purpose of enabling or assisting the Authority in exercising a function conferred on it under this Act or any other law;

- (g) lawfully made to a person with a view to the institution of, or for the purpose of –
- (i) criminal proceedings whether within or outside Saint Vincent and the Grenadines;
 - (ii) disciplinary proceedings, whether within or outside Saint Vincent and the Grenadines, relating to the exercise by an attorney-at-law, auditor, accountant, valuer or actuary of his professional duties; or
 - (iii) disciplinary proceedings relating to the discharge of duties by a director, officer or employee of the Authority.
- (h) for the purpose of any legal proceedings in connection with the winding-up or dissolution of a financial entity or registered entity; or
- (i) for the appointment or duties of a receiver of a financial entity or registered entity .

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for two years or to both.

18. No action or other proceeding shall lie against the State, Minister, Authority, or any director, officer, employee or agent of the Authority for or in respect of an act done or omitted to be done in good faith pursuant to this Act.

Protection from liability

19. (1) The Authority may by instrument in writing delegate any power or function conferred on it by this Act to any director, including the Executive Director, or to any senior officer of the Authority except the power conferred on it by this section.

Delegation

(2) A delegation under subsection (1) –

- (a) may be subject to such conditions, qualifications and exceptions as may be set out in the instrument of delegation; and

- (b) shall not preclude the Authority from exercising the power or performing the function delegated.

Ministerial
directions

20. (1) The Minister may, after consultation with the Chairperson of the Authority, give written directions of a general nature as to the policy to be followed by the Authority in the performance of its functions as appear to the Minister to be necessary in the public interest and the Authority shall act in accordance with those directions within a reasonable time.

(2) The Minister may at any time request the Authority to provide him with information concerning any aspect of its administration under this Act and the Authority shall provide the information.

PART III

REPORTING REQUIREMENTS, RESTRICTIONS, EXAMINATIONS AND ENFORCEMENT

Submission
information

21. (1) Every financial entity shall furnish to the Authority within one month of the end of each calendar quarter, financial statements and any other information necessary for the understanding of the financial statements.

(2) In addition to the furnishing of the financial statements pursuant to subsection (1), every financial entity shall furnish to the Authority at such time as the Executive Director may fix in writing, such time being reasonable in all the circumstances and in such manner as may be specified, the following information relating to its business operations –

- (a) any information relating to the financial statements or any information relating to the financial returns of the financial entity;
- (b) any information the Authority considers necessary in respect of any affiliate of the financial entity; and
- (c) any information, records or documents the Authority considers necessary for the purpose of carrying out its functions under section 5 (1) (c).

(3) Where a financial entity fails without reasonable excuse to comply with a direction under subsection (2) any director, manager secretary or other similar officer of the financial entity commits an offence and is liable on conviction on indictment to a fine of one hundred thousand dollars or to imprisonment for one year or to both.

22. (1) When it considers it necessary to do so, the Authority may by notice in writing given to – Request information for

- (a) a financial entity or registered entity;
- (b) an affiliate of a financial entity or registered entity;
- (c) a former financial entity or registered entity;
- (d) a person connected with a person specified in paragraph (a), (b) or (c); or
- (e) a person reasonably believed to have the documents to which the notice relates,

request at such time and place and in such manner as the Authority fixes, such time being reasonable in all the circumstances, all books, minutes, vouchers, invoices, contracts and other documents and records relating to the assets, liabilities and business generally of the person concerned and the person to whom the notice is given shall give the Authority such information concerning the affairs and business of the person concerned as the Authority may request.

(2) Where a person specified in subsection (1) fails without reasonable excuse to comply with a request made by the Authority under that subsection that person commits an offence and is liable on conviction to a fine of one hundred thousand dollars or to imprisonment for one year or to both.

23. (1) A financial entity shall appoint an auditor annually to conduct an audit of that financial entity. Annual audit

(2) An auditor may not be appointed by a financial entity for the purposes of this section, unless that auditor is approved by the Authority as having the capacity and resources to satisfactorily audit that particular financial entity.

(3) A former director or former officer or employee of a financial entity shall not be eligible for appointment as an auditor of the financial entity within a period of three years after the termination of his term as a director, officer or employee.

(4) A director, officer, employee or agent of a financial entity or other person having a substantial interest in a financial entity shall not be eligible for appointment as an auditor of the financial entity.

(5) A financial entity shall give notice in writing to the Authority if –

- (a) it fails to appoint an auditor; or
- (b) it intends to terminate the appointment of its auditor,

and shall in the notice state the reason for its failure to appoint an auditor or for the intention to terminate the appointment as the case may be.

(6) An auditor of a financial entity shall forthwith give written notice to the Authority where that auditor –

- (a) resigns before the expiration of his term of office; or
- (b) does not seek re-appointment.

(7) It is the duty of –

- (a) the auditor appointed under subsection (1) to submit a report to the shareholders and directors of the financial entity; and
- (b) the financial entity to submit to the Authority a copy of the audited annual financial statements and a copy of the report referred to in paragraph (a).

(8) It is the duty of the auditor to note in his report and to report to the Authority without delay any instances where the operations of the financial entity might not in his opinion be in compliance with the requirements of this Act, the Regulations, the guidelines or the specified enactments.

(9) Where in the course of an audit an auditor has reason to believe that a crime involving fraud, theft or any other offence involving dishonesty or money laundering or the financing of terrorism has been, is being or is likely to be committed, the auditor shall without delay report the matter to the financial entity and the Authority.

24. (1) Where a financial entity –

- (a) fails to appoint an auditor under section 23 (1); or
- (b) terminates the appointment of its auditor without appointing a replacement,

Appointment of
auditor by the
Authority

the Authority may appoint an auditor who shall have all the powers of an auditor appointed by the financial entity under section 23 (1) to carry out the audit, and shall fix the remuneration to be paid to the auditor by the financial entity.

(2) Where the Authority is not satisfied with the annual financial statements or the report of the auditor appointed by a financial entity, the Authority may appoint another auditor to conduct an independent audit and shall fix the remuneration to be paid to the auditor by the financial entity.

(3) Subsections (8) and (9) of section 23 shall apply to an auditor appointed under this section.

25. (1) The Authority may, when it considers it necessary to do so, request in writing, information obtained in the course of an audit from the auditor of a financial entity.

Authority may
request information
from auditor

(2) An auditor shall, within fourteen days of the request referred to in subsection (1), submit the information requested to the Authority.

(3) An auditor who fails without reasonable excuse to submit the information requested in accordance with this section commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars or to imprisonment for one year or to both.

26. (1) The Authority may, if it considers it necessary, cause an examination to be made into the affairs of –

Examinations

- (a) a financial entity;
- (b) an affiliate of a financial entity;
- (c) a former financial entity; or
- (d) a person connected with a person specified in paragraph (a), (b) or (c).

(2) An examination under this section may be conducted by any officer of the Authority or by any person authorised by it –

- (a) to determine whether the provisions of this Act, the Regulations or the guidelines as well as the provisions of the specified enactments are being complied with or have been complied with;
- (b) to determine whether the provisions of the Proceeds of Crime and Money Laundering (Prevention) Act and the guidelines relating thereto are being complied with or have been complied with;
- (c) to determine whether a financial entity is in a sound financial condition; or
- (d) for any other reason which in the opinion of the Authority is necessary for the purposes of due diligence or in the interest of the customers of a financial entity.

Cap. 181

(3) Where necessary, the Authority may in respect of any person specified in subsection (1) request any information from the appropriate authorities in any country or territory outside Saint Vincent and the Grenadines.

Production of documents and information

27. An auditor, officer or employee of a person specified in section 26 (1) shall produce for an examiner at such time as the examiner fixes, such time being reasonable in all the circumstances, all books, minutes, cash, securities, vouchers, invoices, contracts and other documents and records relating to the assets, liabilities and business generally of the person concerned and shall give the examiner such information concerning the affairs and business of the person concerned as the examiner may request orally or in writing.

28. (1) The Authority may, where the Authority considers it to be necessary, authorise a suitably qualified person to conduct an investigation into the affairs of a financial entity or registered entity.

Investigations

(2) Where an investigation is being conducted under this Act, an investigator may –

- (a) request information from the financial entity or registered entity; or
- (b) make enquiries into the operations of the financial entity or registered entity from –
 - (i) a former auditor, former director, former officer or former employee of the financial entity or registered entity;
 - (ii) a person possessing or likely to possess information in respect of the operations of the financial entity or registered entity by reason of that person's connections or association with the financial entity or registered entity; or
 - (iii) a person with whom the financial entity or registered entity conducts business.

29. (1) Before conducting an examination or an investigation, the examiner or investigator shall produce evidence of his authorisation to all persons concerned.

Powers and responsibilities of examiner and investigator

(2) An examiner or an investigator may seize any document, record or other information which in his opinion is necessary for the purposes of the examination or investigation.

(3) An examiner or investigator may keep for a reasonable period any document, record or other information seized by the examiner or investigator under subsection (2) and shall upon request of the person from whom the document, record or other information was seized, provide copies of the document, record or other information to such person.

(4) An examiner or an investigator shall submit a full report of the examination or the investigation as the case may be, to the Executive Director at the conclusion of the proceedings and to the board of directors of a financial entity or registered entity as the case may be.

No liability for disclosing information

30. Any person who is required under this Act to make any disclosure for the purposes of an examination, an investigation or for any other purpose shall not by reason of making that disclosure be regarded as being in breach of any enactment, rule of law, agreement or professional code of conduct to which that person is subject and no civil, criminal or disciplinary proceedings shall lie against him in respect thereof.

Offence of not producing information

31. Where –

- (a) any document or record requested by an examiner or an investigator is not produced within a reasonable time; or
- (b) any information requested is not given to the examiner or the investigator within a reasonable time,

the person who is required to give the information commits an offence and is liable on summary conviction to a fine of sixty thousand dollars or to imprisonment for one year or to both and, in addition, to a further fine of three thousand dollars for each day during which the offence continues.

Prescribed remedial action

32. (1) Where the Authority is of the opinion that an examination of a financial entity indicates that the financial entity –

- (a) is carrying on business in an unlawful manner;
- (b) is in an unsound financial condition or is likely to be in such a condition; or
- (c) has inadequate internal controls or systems,

the Authority, after service of notice in writing may –

- (i) require the financial entity to immediately take such remedial measures as the Authority considers necessary; or

(ii) with the approval of the Minister—

- A. appoint a person who, in the opinion of the Authority, has had training and experience in the business of the financial entity concerned to advise the financial entity on the action to be taken to remedy the situation; or
- B. suspend the licence of the financial entity for a period not exceeding three months.

(2) A person appointed under subsection (1) (ii) shall be paid by the Authority such remuneration as the Authority may determine and the remuneration shall be charged to the financial entity concerned.

(3) A financial entity that is required to take remedial measures or whose licence is suspended under this section may, within twenty one days of the service of the notice under subsection (1), make representation in writing to the Authority as to why the Authority should not take the action intended.

(4) Where a financial entity is dissatisfied with the decision of the Authority after representation is made under subsection (3), the financial entity may, within thirty days after it is notified of the Authority's decision, appeal to the Tribunal.

(5) Where the Authority is of the opinion that the operations of an office of a financial entity outside Saint Vincent and the Grenadines present a threat to the financial entity the Authority may, in such time as is reasonable in all the circumstances, by notice in writing —

- (a) require the financial entity to make such changes in the operations of the office as are considered necessary; or
- (b) require the financial entity to close the office.

(6) A financial entity may appeal to the Tribunal where that financial entity is aggrieved by a decision of the Authority under subsection (5).

- Failure to take remedial action
33. (1) The Authority may cancel the licence of a financial entity where –
- (a) the financial entity fails within a reasonable time to take remedial measures within the period specified; or
 - (b) the financial entity fails within a period of suspension –
 - (i) to desist from the conduct which resulted in the suspension; or
 - (ii) to take any action required by the Authority.
- (2) The Authority shall, before cancelling the licence of a financial entity under subsection (1), give notice in writing to the financial entity setting out the reasons for the intended action and the financial entity, may within fourteen days after it is notified of the decision, make representation in writing to the Authority as to why the Authority should not take the action intended.
- (3) A financial entity that is dissatisfied with any decision taken under subsection (2) after representation is made to the Authority may, within thirty days of the receipt of the notification, apply to the Tribunal for an order requiring the Authority to revoke the decision to cancel the licence of the financial entity and the Tribunal may make such order as it thinks fit in the circumstances.
- Tampering with evidence
34. Any person who –
- (a) destroys, falsifies, conceals or disposes of; or
 - (b) causes or permits the destruction, falsification, concealment or disposal of,
- any document, information or other thing that the person knows or ought reasonably to know is relevant to an examination or investigation conducted under this Act, commits an offence and is liable on conviction on indictment to a fine of one hundred thousand dollars or to imprisonment for five years or to both.

- | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|
| <p>35. Any person who –</p> <p>(a) obstructs the carrying out by an auditor or an examiner of the auditor's or the examiner's proper function under this Act; or</p> <p>(b) in any way obstructs an examination or investigation conducted under this Act,</p> <p>commits an offence and is liable on conviction on indictment to a fine of two hundred thousand dollars or to imprisonment for five years or to both.</p> | <p>Obstruction</p> |
| <p>36. The Authority may impose such charges as are necessary to meet the expenses relating to an examination under this Act on the person who is being examined or where the examination is sought by interested persons those persons may be required to meet the expenses.</p> | <p>Examination expenses</p> |
| <p>37. (1) The Authority may, after consultation with the Minister, cancel the licence of a financial entity or registered entity where in the opinion of the Authority –</p> <p>(a) a financial entity or registered entity is not maintaining high standards of financial probity or following sound business practices;</p> <p>(b) a financial entity has committed a serious breach of this Act, the Regulations, a specified enactment or any Act or regulations relating to money laundering or the financing of terrorism; or</p> <p>(c) a registered entity has committed a serious breach of a registry legislation or any Act or regulations relating to money laundering or the financing of terrorism.</p> <p>(2) Where the Authority intends to cancel the licence of a financial entity or registered entity under subsection (1) the Authority shall give notice in writing to the financial entity or registered entity setting out the reasons for the intended action and give the financial entity or registered entity a reasonable opportunity to show cause why the licence should not be cancelled.</p> | <p>Cancellation or suspension of licence</p> |

(3) Where the Authority cancels the licence of a financial entity or registered entity under subsection (1), the Authority shall give notice in writing to the financial entity or registered entity.

(4) A financial entity or registered entity that is aggrieved by the cancellation of its licence under subsection (1) may within thirty days of the receipt of the notification under subsection (3) appeal to the Tribunal.

(5) Where the Authority cancels the licence of a financial entity or registered entity under this section and there is no appeal or the appeal is disallowed, notice of the cancellation shall be published in the *Gazette*, in a local newspaper in general circulation in Saint Vincent and the Grenadines and on an Internet site maintained by or on behalf of the Authority.

Application for
freezing order

38. (1) The Authority may apply to the High Court for a freezing order under this section with respect to –

(a) a financial entity where –

(i) there are reasonable grounds to believe that there is failure to comply with this Act, the Regulations or guidelines, a specified enactment or any Act or regulations relating to money laundering or the financing of terrorism; or

(ii) the licence of the financial entity is about to be suspended or cancelled; or

(b) a person providing financial services without a licence.

(2) On application made under subsection (1), the High Court may grant a freezing order freezing the property of or in the possession or under the control of the person with respect to whom the application is made and may give directions with regard to –

(a) the duration of the order;

(b) the disposal of the property for the purpose of –

- (i) determining a dispute relating to the ownership of or other interest in the property or part of the property;
- (ii) the proper administration of the property during the period of freezing;
- (iii) the payment of debts incurred in good faith prior to the making of the freezing order;
- (iv) the payment of money to the person with respect to whom the application is made for the reasonable subsistence of that person and that person's family; or
- (v) the payment of reasonable legal costs incurred by the person with respect to whom the application is made in related civil or criminal proceedings against that person.

(3) The Authority or the State shall not be liable for damages or cost arising directly or indirectly from the making of a freezing order under this section unless it is proved on a balance of probability that the application for the freezing order was made in bad faith.

(4) Where under subsection (2) the High Court gives a direction for the administration of frozen property, the person upon whom the duty to administer the property is imposed is not liable –

- (a) for any loss or damage to the property;
- (b) for the costs of proceedings taken to establish a claim to the property; or
- (c) to a person having an interest in the property,

unless the High Court is of the opinion that the person has been negligent in respect of taking of custody or control of the property.

39. (1) The Authority may enter into a memorandum of understanding with the Financial Intelligence Unit for the purpose of the exchange of information necessary to enable the Financial Intelligence Unit to exercise its functions.

Exchange of
information with
F i n a n c i a l
Intelligence Unit

(2) A memorandum of understanding made pursuant to subsection (1) shall –

- (a) set out the scope, procedure and other details of exchange of information;
- (b) provide for reciprocal treatment;
- (c) not provide for disclosure beyond what is provided for under this Act; and
- (d) not relieve the Authority of any functions of the Authority under this Act.

Prohibition on advertising likely to mislead

40. (1) A financial entity shall not engage in advertising practices which are likely to mislead the public concerning –

- (a) the relation of the financial entity to the Authority or any department or official of the Authority;
- (b) the financial condition of the financial entity; or
- (c) any other matter relating to the financial entity.

(2) A financial entity that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of twenty five thousand dollars.

Establishment of Appeal Tribunal

41. (1) For the purpose of hearing appeals under this Act, there is established a Financial Services Authority Appeal Tribunal which shall consist of –

- (a) a Chairperson who shall be a person qualified in law of not less than seven years standing; and
- (b) four other members from amongst persons who appear to the Minister to be qualified as having had experience of and shown capacity in, matters relating to industry, finance, economics, accountancy, commerce or law.

(2) The members of the Tribunal shall be appointed by the Minister with the approval of the Cabinet and, subject to subsections

(3), (4) and (5), shall hold office for a period not exceeding three years as specified in the instrument of appointment but shall be eligible for reappointment.

(3) A member of the Tribunal other than the Chairperson may at any time resign his office by notice in writing addressed to the Chairperson who shall cause it to be transmitted to the Minister.

(4) The Chairperson of the Tribunal may at any time resign his office by notice in writing addressed to the Minister.

(5) The Minister may at any time revoke the appointment of the Chairperson or any other member of the Tribunal.

(6) The number of members of the Tribunal who may sit at the hearing of an appeal before the Tribunal shall be three members including—

- (a) the Chairperson; and
- (b) two other members assigned by the Minister to sit on the hearing by the Tribunal of such appeal.

(7) Notwithstanding subsection (6), at the hearing of an appeal before the Tribunal, the Chairperson and one other member assigned to sit on the hearing of such appeal shall constitute a quorum.

(8) The members of the Tribunal shall be paid such remuneration and allowances as may be determined by the Minister with the approval of the Cabinet.

(9) A Secretary shall be appointed to the Tribunal by the Minister and shall perform such duties to be determined by the Tribunal.

(10) If a member of the Tribunal is for any reason temporarily unable to perform his duties under this section, the Minister may appoint some other person to act as a temporary member of the Tribunal during the inability, save that if the member is the Chairperson, the person appointed to act in his stead shall be a person qualified in law of not less than seven years standing.

(10) The notice of the appointment and cessation of appointment of a member of the Tribunal shall be published in the *Gazette*.

Appeal to Tribunal

42. (1) Where under any of the specified enactments an appeal lies to a court, the Minister or a tribunal or any other authority or body from a decision made under any of the specified enactments, the appeal shall, after the commencement of this Act lie to the Tribunal.

(2) The Tribunal may make any order or take any action which would have been within the power of a court, the Minister, the tribunal or other authority or body to make under the specified enactments upon an appeal before the commencement of this Act.

(3) The commencement of an appeal before the Tribunal shall not operate as a stay or a suspension of the decision of the Authority being appealed.

(4) An appeal shall lie from a decision of the Tribunal to a Judge of the High Court.

Procedure of Tribunal

43. (1) In determining an appeal, the Tribunal may review the whole case in respect of law and fact, and the exercise of any discretion, and shall determine the case in accordance with its own judgment.

Cap. 220

(2) In the hearing and determination of any matter before it, the Tribunal may act without regard to technicalities and legal form and shall not be bound to follow the rules of evidence prescribed by the Evidence Act but the Tribunal may inform itself on any matter in such manner as it thinks just and may take into account opinion evidence and such facts as it considers relevant and material, but in any such case, the parties to the proceedings shall be given the opportunity, if they so desire of adducing evidence.

(3) The parties to the proceedings shall be entitled to appear in person or may be assisted in the preparation of their respective cases by an attorney-at-law or by a duly authorised representative, but the Tribunal shall not award costs to any party to a proceeding before the Tribunal other than sums in respect of the reasonable costs incurred in any one or more of the following –

- (a) the filing of documents;
- (b) the obtaining of any expert report; or
- (c) the enforcement of an award of the Tribunal,

and any such award of costs shall be in the discretion of the Tribunal.

(4) The Tribunal may, where it determines it to be necessary in any particular case, consult any person having experience in any relevant field to assist it in dealing with a matter.

(5) The Tribunal may issue subpoenas, make orders and give directions to such persons and in such manner as it thinks fit for the purpose of summoning witnesses, requiring the disclosure of documents or other evidence, requiring parties or witnesses to answer questions, and for the purpose of conducting its proceedings in a proper and orderly manner.

(6) For the purposes of reviewing a decision, the Tribunal may proceed in the absence of a party who has been given reasonable notice in writing to attend.

(7) The decision of the Tribunal shall be in writing and shall include reasons for the decision, a statement of its findings on material questions of fact and a reference to the evidence or other material on which the findings are based.

(8) The Tribunal shall ensure that a decision is served on each party to the proceedings.

(9) Save as otherwise provided by this Act, the Tribunal shall regulate its own procedure and may make rules for that purpose.

(10) The failure of a person to obey a subpoena, order or direction issued, made or given to such person by the Tribunal makes the person, on application to a magistrate's court by the Tribunal, liable to be committed for contempt as if in breach of an order or judgement of a magistrate's court.

PART IV**FINANCIAL PROVISIONS RELATING TO THE AUTHORITY**

Funds and resources of the Authority	<p>44. The funds and resources of the Authority shall consist of –</p> <ul style="list-style-type: none"> (a) such sums as may be voted by Parliament for the Authority; (b) money borrowed by the Authority under this Act; (c) revenues from charges imposed by the Authority for use of any facility or services provided by it; (d) amounts realised from investment proceeds; (e) money received by the Authority by way of grants or subsidies; and (f) all other sums that may in any manner become lawfully payable to or vested in the Authority in respect of any matters incidental to its functions.
Application of funds and resources	<p>45. The funds and resources of the Authority shall be applied by the Authority in the payment of expenses and in discharging its obligations or performing any of its functions.</p>
Investment of funds and resources	<p>46. The Authority may, with the approval in writing of the Minister, invest any sums not required for the purposes of section 45 in such low-risk securities as it considers appropriate.</p>
Borrowing power of Authority	<p>47. (1) The Authority may, with the approval in writing of the Minister, borrow money for the purpose of discharging its obligations or performing any of its functions.</p>
Cap. 255	<p>(2) The Minister may, subject to the provisions of the Government Guarantee of Loans Act, guarantee in the manner and on any condition the Minister considers appropriate the repayment of the principal, interest or other charges in respect of any authorised borrowing by the Authority.</p>
Financial year	<p>48. The financial year of the Authority is the twelve-month period beginning on the 1st day of January and ending on the 31st day of December in any year.</p>

49. (1) The Authority shall, not later than four months before the commencement of each financial year and in such form as the Minister requires, prepare in respect of the financial year, and submit to the Minister, a proposal for a business plan for the financial year that shall contain –

Annual business plan

- (a) a statement of the Authority's objectives and priorities in carrying out its responsibilities for the financial year and the following two financial years;
- (b) a comprehensive financial plan that –
 - (i) shows how resources, including but not limited to financial resources, will be allocated to meeting the objectives and priorities of the Authority for the financial year; and
 - (ii) includes *pro forma* financial statements as required by the Minister;
- (c) a comparison of the *pro forma* financial statements with the actual financial statements for the previous financial year;
- (d) a statement as to how the Authority proposes to measure its performance in carrying out its responsibilities in the financial year; and
- (e) any other information required by the Minister by written notice to the Authority.

(2) The Minister may, on the request of the Authority, extend the time for submitting a proposal for a business plan.

(3) The Minister shall, as soon as practicable, consider the proposal for a business plan and may –

- (a) approve the proposal as submitted;
- (b) after consultation with the Authority, amend the proposal and approve it as amended; or
- (c) refer the proposal back to the Authority with directions that the Authority take any further action

with respect to it that the Minister considers appropriate.

(4) Where the Minister refers the proposal for a business plan back to the Authority under subsection (3) (c), he shall provide the Authority with his reasons for not approving it.

(5) A proposal for a business plan that is referred back to the Authority under subsection (3) (c) must be resubmitted to the Minister as directed by the Minister and, when it is resubmitted, subsections (3) and (4) apply.

(6) When a proposal in relation to a financial year is approved by the Minister, it becomes the business plan for that financial year.

(7) The Authority –

- (a) may, of its own motion, submit to the Minister a proposal to amend an approved business plan; and
- (b) shall, on request of the Minister and within the time required by the Minister, submit to the Minister a proposal to amend an approved business plan.

(8) Subsections (3), (4), (5) and (6) apply to a proposal submitted to the Minister under subsection (7).

Authority obligated
to implement
business plan

50. The Authority shall –

- (a) in each financial year implement the business plan for that financial year; and
- (b) establish a mechanism for monitoring the implementation of the financial plan.

Accounts

51.(1) The Authority shall –

- (a) keep proper books of account of its income and other receipts and expenditures; and
- (b) ensure that –
 - (i) all money received is promptly and 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 Authority.
- (2) The books of account kept under subsection (1) shall –
- (a) be sufficient to record and explain the Authority's transactions;
 - (b) enable the Authority'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 Authority shall cause to be prepared –
- (a) the following financial statements together with proper and adequate explanatory notes –
 - (i) a statement of the assets and liabilities of the Authority at the end of the financial year;
 - (ii) a statement of the revenue and expenditure of the Authority during the financial year; and
 - (iii) such other financial statements for the financial year as may be specified in writing by the Minister; and
 - (b) an annual report of the Authority on the implementation of the business plan and such other matters as the Authority considers advisable or the Minister directs.
- (4) Without delay after the completion of the financial statements and the annual report, the Authority shall furnish a copy of each to the Director of Audit.

Audit by Director of
Audit and report to
House
Cap. 245

52. (1) Not later than three months after receipt of the financial statements and annual report from the Authority, the Director of Audit shall audit the financial statements in accordance with the Audit Act.

(2) Without delay after the completion of his audit of the Authority, the Director of Audit shall submit a copy of his report together with the financial statements and annual report to the Minister and the Authority.

(3) The Minister shall, not later than seven days after the House of Assembly first meets after he has received the report together with the financial statements and annual report of the Authority, lay it before the House.

(4) If the Minister fails to lay the report together with the financial statements and the annual report of the Authority before the House of Assembly in accordance with subsection (3), the Director of Audit shall transmit the report, the financial statements and the annual report to the Speaker who shall, as soon as practicable, present them to the House of Assembly.

(5) As soon as reasonably practicable after the report together with the financial statements and the annual report of the Authority have been laid before the House of Assembly, the Authority shall cause the report, the financial statements and the annual report of the Authority to be published in the *Gazette*.

Exemption from
taxation

53. The Authority shall be exempt from stamp duties, import duties and all other taxes or other charges, on its income or profit or on assets, which it acquires for its own use in carrying out any of its functions under this Act.

PART V

MISCELLANEOUS

Fees

54. (1) The Minister may by Order prescribe –

- (a) fees for services performed by the Authority under this Act or the Regulations, including fees for the filing of any document or application;

(b) late filing fees where a financial entity –

- (i) fails to file a return or any other information required to be filed under this Act, the Regulations or any specified enactment at the period set out in, or within the time required under this Act, the Regulations or the specified enactment;
- (ii) fails to provide complete and accurate information with respect to a return or any other information required to be filed under this Act, the Regulations or any specified enactment; and

(c) charges for the late payment of fees, including fees prescribed under any specified enactment or registry legislation, or any sum owing to the Authority.

(2) A failure to file a return, provide information or to pay any fee or sum shall be a contravention for each day during which the failure continues.

(3) The Authority, may on behalf of the Accountant General, charge and collect any fee that is prescribed under this Act, any subsidiary legislation made under this Act, any specified enactment or registry legislation.

(4) All fees and other sums due and payable under this Act, any subsidiary legislation made under this Act, any specified enactment or registry legislation are recoverable as a debt due to the Authority in any court of competent jurisdiction.

(5) The Authority shall remit to the Consolidated Fund all fees and other sums, including charges for the late payment of fees, collected under this Act, any subsidiary legislation made under this Act, any specified enactment or registry legislation.

(6) Where a court orders a person to pay a debt due to the Authority, the judgment together with any costs awarded shall be registered in the Registry of the High Court as a charge or lien in

such form as may be prescribed and such registration shall create a charge or lien in favour of the Authority on the personal or real property belonging to such person.

(7) Unless another date is specifically fixed by law, the charge or lien imposed by subsection (6) shall arise at the time the charge or lien is registered in the Registry of the High Court and shall continue until the judgment is satisfied.

(8) The Registrar of the High Court shall—

- (a) keep a register of charge and lien for the purposes of this Act which register may be maintained in or upon any medium or combination of media capable of having information recorded thereon; and
- (b) enter in the register, the name of the owner whose property, whether real or personal, is intended to be affected and such other information contained in the form prescribed pursuant to subsection (6).

(9) Where, with respect to a charge or lien registered under this Act—

- (a) the judgment for which the charge or lien was given has been paid or satisfied in whole or in part; or
- (b) the property, against which the charge or lien has been registered, or any part thereof has been released from such charge or lien,

the Authority shall lodge with the Registrar of the High Court in such form as may be determined by the Authority a memorandum of the payment or satisfaction or a memorandum of the fact that the property or any part thereof has been released from the charge or lien and the Registrar shall enter particulars of that memorandum in the register referred to in subsection (8).

Offences by officers
of bodies corporate

55. (1) Where an offence under this Act, committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any

director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in that capacity, that person as well as the body corporate commits that offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

56. (1) This section applies to an offence specified in Schedule 5 being a offence under this Act or an offence under any specified enactment or registry legislation.

Fixed penalty
offences
Schedule 5

(2) Subject to the powers of the Director of Public Prosecutions under the Constitution, the Authority may give to any person who it has reason to believe has committed an offence to which this section applies, a notice in writing in the prescribed form offering that person the opportunity to discharge liability to conviction of that offence by payment of a fixed penalty under this section.

(3) No person shall be liable to be convicted of the offence if the fixed penalty is paid in accordance with this section and the requirement in respect of which the offence was committed is complied with before the expiration of twenty-one days following the date of the notice referred to in subsection (2) or such longer period, if any, as may be specified in that notice or before the date on which proceedings are begun, whichever event last occurs.

(4) Where a person is given notice under this section in respect of an offence, proceedings shall not be taken against any person for that offence until the end of twenty-one days following the date of the notice or such longer period, if any, as may have been specified.

(5) Payment of a fixed penalty under this section shall be made to the Accountant General and in any proceedings a certificate that payment of a fixed penalty was or was not made to the Accountant General by a date specified in the certificate shall, if the certificate purports to be signed by the Accountant General, be admissible as evidence of the facts stated in the notice.

(6) A notice under subsection (2) shall –

- (a) specify the offence alleged;
- (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation;
- (c) state –
 - (i) the period whether twenty-one days or a longer period during which, by virtue of subsection (4), proceedings will not be taken for the offence; and
 - (ii) the amount of the fixed penalty.

(7) The fixed penalty for the offences specified in Schedule 5 shall be the penalty specified therein in relation to such offences.

(8) In any proceedings for an offence to which this section applies, no reference shall be made after the conviction of the accused to the giving of any notice under this section or to the payment or non-payment of a fixed penalty unless in the course of the proceedings or in some document which is before the court in connection with the proceedings, reference has been made by or on behalf of the accused to the giving of such a notice, or as the case may be, to such payment or non-payment.

(9) The Minister may, by regulations, make provision as to any matter incidental to the operation of this section, and in particular, any such regulations may prescribe–

- (a) the form of notice under subsection (2);
- (b) the nature of the information to be furnished to the Accountant General along with any payment; and
- (c) the arrangements for the Accountant General to furnish to the Authority, information with regard to any payment pursuant to a notice under this section.

(10) In this section, “proceedings” means any criminal proceedings in respect of the act or omission constituting the offence specified in the notice under subsection (2).

57. The Minister may make regulations – Regulations
- (a) to make provision for any exemptions granted under section 8 (1) (f);
 - (b) prescribing anything that is required or authorised by this Act to be prescribed; or
 - (c) generally for carrying out the purposes and giving effect to the provisions of this Act.
58. Subject to negative resolution of the House of Assembly, the Minister may by order published in the *Gazette* amend Schedule 2, 3 or 5. Amendment of
Schedule 2, 3 or 5
59. The enactments set out in Schedule 6 are amended to the extent set out in that Schedule. Consequential
amendment of
enactments
60. (1) Where at the commencement of this Act, a court, the Minister or a tribunal or other authority or body is in the process of hearing an appeal under any of the specified enactments, the court, the Minister or tribunal or other authority or body shall continue to hear and determine the appeal. Transitional
provisions relating to
appeals
- (2) Where at the commencement of this Act an appeal under any of the specified enactments is awaiting hearing by a court, the Minister or tribunal or other authority or body, the appeal shall be heard and determined by the Tribunal.
- (3) Subject to subsection (1), after the commencement of this Act, any tribunal or similar body which was established under any of the specified enactment to hear appeals shall cease to exist.
61. (1) The Saint Vincent and the Grenadines International Financial Services Authority established by the Saint Vincent and the Grenadines International Financial Services Authority Act is dissolved. Dissolution, savings
and transitional
Cap. 108
- (2) On the commencement of this Act –

- (a) all assets, rights, privileges, liabilities and obligations that the Saint Vincent and the Grenadines International Financial Services Authority was entitled or subject to immediately before such commencement shall be transferred to and conferred or imposed on the Authority;
- (b) a reference in any deed, contract, bond, security or other document to the Saint Vincent and the Grenadines International Financial Services Authority shall be construed as a reference to the Authority;
- (c) legal proceedings pending immediately before such commencement by or against the Saint Vincent and the Grenadines International Financial Services Authority may be continued by or against the Authority as a party to the proceedings;
- (d) legal proceedings pending before such commencement by or against the Government which concern the administration of any specified enactment or registry legislation may be continued by or against the Authority as a party to the proceedings.

Repeal
Cap. 108

62. The Saint Vincent and the Grenadines International Financial Services Authority Act is repealed.

SCHEDULE 1

(section 3)

CONSTITUTION OF AUTHORITY

Constitution of Authority

1. (1) The Authority shall consist of the following directors –
 - (a) the Executive Director;
 - (b) the Director General of Finance and Planning;
 - (c) one person nominated by the Governor of the Central Bank, to be appointed by the Minister; and
 - (d) subject to subclause (2), five other persons to be appointed by the Minister.
- (2) A person appointed a director under sub-clause (1) (c) or (d) must have a minimum of seven years experience in banking, insurance, law, economics, finance, financial management, accounting, anti-money laundering, anti-terrorism or other related fields.
- (3) The appointment of a director pursuant to sub-clause (1) (c) and (d) shall be by instrument in writing.

Disqualification from appointment to Authority

2. (1) A person is disqualified from being a director and is not eligible to be appointed as a director, or having been appointed, is not eligible to continue as a director if that person –
 - (a) or a family member of that person holds or is beneficially interested in more than five per cent of any stock, share, bond, debenture or other security of, or other interest in, a financial entity or registered entity except membership of shares in a credit union;
 - (b) or a family member of that person has a pecuniary or other material interest in a device, appliance, machine, article, patent or patented process which is required or used by a financial entity or registered entity;
 - (c) is a director, officer, employee, or agent of a financial entity or registered entity

- (d) is a person providing a service or supplying goods to a financial entity or registered entity under a contract;
- (e) has filed for bankruptcy in a court or is declared by a court to be bankrupt;
- (f) is declared by a court to be physically or mentally incapacitated by reason of unsoundness of mind;
- (g) has been convicted of a criminal offence except where the offence –
 - (i) is a minor traffic offence;
 - (ii) has been spent in accordance with any law in force in Saint Vincent and the Grenadines; or
 - (iii) is of a non-financial nature that occurred so long ago that it has no material effect on the character of the person; or
- (h) is a member of Parliament.

(2) Notwithstanding subclause (1) (b), a person shall not be held to have a pecuniary or other material interest in a financial entity in respect of which the Authority performs regulatory functions by reason only of the fact that he is a customer of a financial entity in respect of which the Authority performs regulatory functions.

(3) In determining whether a person is eligible for appointment as a director, the Minister shall have regard to all matters that the Minister considers relevant to the appointment including –

- (a) that person's probity, competence and soundness of judgment for fulfilling the responsibilities of director;
- (b) the diligence with which that person is likely to fulfil the responsibilities of director.

(4) Notwithstanding subclause (3), regard may be had to the previous conduct and activities in business or financial matters of the person and, in particular, to any evidence that the person has –

- (a) committed an offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under an enactment designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking,

insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of a discharged or undischarged bankrupt;

- (c) engaged in any business practices appearing to the Minister to be deceitful, oppressive or otherwise improper or which otherwise reflect discredit on that person's method of conducting business;
- (d) an employment record which leads the Minister to believe that the person carried out an act of impropriety in the handling of his employer's business; or
- (e) engaged in or been associated with any other business practice or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment.

(5) A director shall act in the public interest to carry out the purposes of this Act and not based on his personal or business interest.

Chairperson and Deputy Chairperson

3. (1) The Minister shall appoint from among the directors the Chairperson and Deputy Chairperson of the Authority.

(2) Where the Chairperson is absent, the Deputy Chairperson has all the powers of the Chairperson.

Publication of membership

4. The Minister shall by notice published in the *Gazette* give notice of the names of the directors as the Authority is first constituted and every change in constitution of the Authority.

Tenure of office

5. A director appointed pursuant to clause 1 (1) (c) and (d) shall hold office for a period not exceeding three years, as the Minister may specify in the instrument of appointment and is eligible for reappointment.

Resignation

6. A director appointed pursuant to clause 1 (1) (c) and (d) may resign at any time by giving notice in writing to the Minister.

Revocation

7. The Minister shall, at any time in writing, revoke the appointment of a director appointed pursuant to clause 1(1) (c) and (d), if upon evidence, the Minister is satisfied that the director –

- (a) is disqualified from being a director pursuant to clause 2;
- (b) is guilty of serious misconduct;
- (c) has been disqualified or suspended on grounds of personal misconduct, by a competent authority, from practising a profession;
- (d) has been prohibited from being a director or officer of another organisation;
or
- (e) is disqualified on grounds of national security.

Vacancy

8. The office of a director appointed pursuant to clause 1 (1) (c) and (d) is vacated –

- (a) upon the death of the director;
- (b) if the director becomes disqualified pursuant to clause 2;
- (c) if the director resigns pursuant to clause 6;
- (d) if the Minister revokes the appointment of the director pursuant to clause 7;
- (e) if the director's appointment is not renewed by the Minister as of the date of expiry of the director's term of appointment;
- (f) if the director fails to attend three consecutive meetings of the Authority without presenting a medical certificate or without being excused by the Minister in writing, in the case of the Chairperson or by the Chairperson in writing in the case of any other director; or
- (g) if the director fails, without reasonable excuse, to attend at least half of the meetings of the Authority held in the last year.

Filling of vacancy

9. (1) If a director appointed under clause 1 (1) (c) and (d) is absent on account of illness or for any temporary cause or is temporarily absent from Saint Vincent and the Grenadines,

the Minister shall appoint some other person to act as a temporary director during the time that the incapacity or absence continues, but not for a period exceeding ninety days.

(2) If a person ceases to be a director for any reason, the Minister may appoint any person to act in his place for the duration of the time that the director would have served.

Remuneration

10. A director shall be paid, out of the funds and resources of the Authority, such remuneration as may be determined by the Minister.

Procedure at meetings

11. (1) The Authority shall meet monthly as far as practicable and at such other times as may be necessary or expedient for the transaction of business and in any event not less than six times per year and at such places as the Chairperson shall determine.

(2) The Chairperson may, at any time call a special meeting of the Authority and shall call a special meeting to be held within seven days of a written request for that purpose addressed to the Chairperson by any three directors.

(3) The Chairperson and any other director are deemed to be present at a meeting of the Authority if the Chairperson or the director participates by telephone, video link or satellite, and all directors participating in the meeting are able to hear and to speak to each other.

(4) At a meeting of the Authority –

(a) the Chairperson shall preside; or

(b) if the Chairperson is not present, the Deputy Chairperson shall preside;

(c) if neither the Chairperson nor the Deputy Chairperson is present, the directors present shall elect a temporary Chairperson from among their number who shall preside at the meeting.

(5) A meeting of the Authority is duly constituted for all purposes if, at the meeting there is a quorum of not less than five directors participating in the meeting.

(6) A decision of the Authority at any meeting shall be by a majority of votes of the directors present and voting and in the event of an equality of votes the person presiding shall have a casting vote in addition to an original vote.

(7) The Authority may co-opt any person to attend any of its meetings but such person shall have no right to vote.

(8) Subject to the provisions of this Schedule, the Authority shall regulate its own procedure.

Declaration of interest and abstention from voting

12. (1) A director who is any way, whether directly or indirectly, interested in any matter before the Authority, shall declare the nature of his interest at the first meeting of the Authority at which it is practicable to do so.

(2) Where a director declares an interest under subclause (1), the Authority shall determine whether or not the director's interest in a matter is material and where the Authority determines that the director's interest is material, the director shall leave the meeting upon the matter coming up for discussion.

(3) A declaration and the departure of a director from the meeting in accordance with subclause (1) shall be noted in the minutes of the meeting.

(4) A director shall not –

- (a) fail to comply with subclause (1);
- (b) vote in respect of a matter before the Authority in which he is materially interested, whether directly or indirectly; or
- (c) seek to influence the vote of any other director in relation to a matter before the Authority in which he is materially interested, whether directly or indirectly.

(5) A director who fails to comply with subclause (4) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years or to both.

Resolution

13. (1) If a majority of the directors sign a document circulated by or on behalf of the Authority containing a statement that those directors are in favour of a resolution in terms specified in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the Authority held on the day on which the last member to sign so signs the document.

(2) If a resolution under subclause (1) is deemed to have been passed at a meeting of the Authority, notice of the resolution shall be given under the procedure established by the Authority.

SCHEDULE 2

(section 2)

SPECIFIED ENACTMENTS

1. Friendly Societies Act
2. Building Societies Act
3. Registered Agent and Trustee Licensing Act
4. Mutual Funds Act
5. International Insurance (Amendment and Consolidation) Act
6. Insurance Act
7. International Banks Act
8. Money Services Business Act

SCHEDULE 3

(section 2)

REGISTRY LEGISLATION

1. International Trusts Act
2. International Business Companies (Amendment and Consolidation) Act
3. Limited Liability Companies Act

SCHEDULE 4

(section 16)

OATH OF CONFIDENTIALITY

Form of oath to be taken by directors, officers and employees;

I(name) swear/affirm* that I will well and faithfully discharge the duties as a director/officer/employee of the Financial Services Authority under the Financial Services Authority Act 2011 and any regulations, rules and instructions thereunder and that I will not without due authority in that behalf disclose or make known any matter or thing that comes to my knowledge by reason of my office or employment. So help me God (*omit if affirming*)

Sworn/affirmed before me, a Magistrate/Justice of the Peace this [] day of [] [].

(Name of person swearing/affirming)

***Delete as appropriate**

SCHEDULE 5

(section 56)

**OFFENCES IN RESPECT OF WHICH LIABILITY TO CONVICTION MAY BE
DISCHARGED BY PAYMENT OF FIXED PENALTY**

Act	Penalty
THIS ACT	
Section 21 (3)	\$25,000
Section 22 (2)	\$25,000
Section 31	\$20,000
Section 40 (2)	\$7,500

SCHEDULE 6

(section 59)

ENACTMENTS AMENDED

1. Building Societies Act, Chapter 450

In section 2, delete the definition of “Authority” and insert the following definition –

“Authority” means the Financial Services Authority established by the Financial Services Authority Act 2011;.

2. Registered Agent and Trustee Licensing Act Chapter 105

In section 2 –

(a) delete the definition of “Authority” and insert the following definition –

“Authority” means the Financial Services Authority established by the Financial Services Authority Act 2011;.

(b) delete the definition of “Executive Director” and insert the following definition –

“Executive Director” means the Executive Director of the Authority;.

3. International Trusts Act Chapter 491

In section 2 –

(a) delete the definition of “Authority” and insert the following definition –

“Authority” means the Financial Services Authority established by the Financial Services Authority Act 2011; and

(b) delete the definition of “Executive Director” and insert the following definition –

“Executive Director” means the Executive Director of the Authority;.

4. Mutual Funds Act Chapter 154

In section 2, delete the definition of “Authority” and insert the following definition –

“Authority” means the Financial Services Authority established by the Financial Services Authority Act 2011;.

5. International Insurance (Amendment and Consolidation) Act Chapter 307

In section 4, delete the definition of “Authority” and insert the following definition–

“Authority” means the Financial Services Authority established by the Financial Services Authority Act 2011;.

6. Insurance Act Chapter 306

(a) In section 2 –

(i) insert the following definition before the definition of “carrying on insurance business” –

“Authority” means the Financial Services Authority established by the Financial Services Authority Act 2011; and

(ii) delete the definition of “Supervisor”.

(b) Delete section 4 and insert the following section –

“Authority to administer Act 4. The Authority shall be responsible for the general administration of this Act.”.

(c) Delete the word “Supervisor” in each place where it occurs in the Act and insert the word “Authority”.

7. International Banks Act Chapter 99

In section 2 –

(a) delete the definition of “Authority” and insert the following definition –

‘ “Authority” means the Financial Services Authority established by the Financial Services Authority Act 2011;’.

(b) delete the definition of “Executive Director” and insert the following definition –

‘ “Executive Director” means the Executive Director of the Authority;’.

8. Money Services Business Act Chapter 260

In section 2, delete the definition of “Authority” and insert the following definition –

‘ “Authority” means the Financial Services Authority established by the Financial Services Authority Act 2011;’.

9. International Business Companies (Amendment and Consolidation) Act Chapter 149

In section 2, delete the definition of “Authority” and insert the following definition –

“Authority” means the Financial Services Authority established by the Financial Services Authority Act 2011;
and

10. Exchange of Information Act Chapter 146

In the Schedule, delete item 4 and insert the following item –

“4. The Financial Services Authority”

11. Limited Liability Companies Act Chapter 151

In section 2 –

(a) delete the definition of “Authority” and insert the following definition –

‘ “Authority” means the Financial Services Authority established by the Financial Services Authority Act 2011;’; and

- (b) delete the definition of “Executive Director” and insert the following definition –

‘ “Executive Director” means the Executive Director of the Authority;’.

12. Co-operative Societies Act Chapter 451

- (a) In section 2 –

- (i) delete the definition of “Registrar”; and
(ii) insert the following as subsection (3) -

“(3) In this Act, a reference to “Registrar” shall –

- (a) in relation to a credit union, be construed as a reference to the Financial Services Authority established by the Financial Services Authority Act 2011;
- (b) in relation to a co-operative society other than a credit union, be construed as a reference to the Registrar of Co-operative Societies appointed under section 5 (1).”.

- (b) In section 5 –

- (i) in subsection (1), by inserting the words “Subject to subsection (1a),” before the word “There”; and

(ii) by inserting the following as subsection (1a) –

“(1a) For the purposes of regulating credit unions, the Registrar shall be the Financial Services Authority established by the Financial Services Authority Act 2011.”.

Passed in the House of Assembly this day of 2011.

Clerk of the House of Assembly.

OBJECTS AND REASONS

This Bill seeks to establish an authority to regulate providers of certain entities and businesses in the financial sector and to provide for related matters.

Dr. the Hon. Ralph Gonsalves
Prime Minister, Minister of Finance,
Economic Planning, National Security,
Public Service, Legal Affairs and
Grenadines Affairs