

## Financial Services Business Continuity

At the start of the 2020 hurricane season, it is timely for entities carrying on financial services business to review and be aware of the provisions of the Financial Services (Exceptional Circumstances) Act, 2020 (the **FSECA**) which may apply to the financial services industry in the case of any disruption.

The FSECA came into force on 28 March 2020. It repeals the Financial Services (Continuity of Business) Act, 2017 which was put in place for a transient period to deal with the interruption in financial services business in the aftermath of Hurricanes Irma and Maria. The FSECA now provides a permanent framework for the adoption of special measures relating to the conduct of financial services business in the event of an exceptional circumstance arising within or outside the Virgin Islands including but not limited to pandemics, earthquakes and hurricanes.

### Who does the FSECA apply to?

The FSECA applies to:

- (a) all persons holding a financial services licence; and
- (b) any person otherwise subject to the Financial Services Commission Act, 2001 (the **FSCA**) or any other financial services legislation including approved, recognised and authorised persons,  
  
(together referred to as **Relevant Persons**).

### When does the FSECA apply?

The special measures provided for by the FSECA will apply when the Minister with responsibility for financial services issues an Order published in the Virgin Islands Official Gazette declaring that an exceptional circumstance has arisen or is likely to arise whether within or outside the Virgin Islands (the **Order**). An exceptional circumstance has arisen or is likely to arise when:

- (a) it has become difficult or impossible to carry out financial services business in and from within the Virgin Islands in accordance with the FSCA or any other financial services legislation; or
- (b) different or special measures are otherwise required to facilitate the conduct of financial services business in and from within the Virgin Islands.

The Order may indicate whether all or only specified provisions of the FSECA will apply or if it applies to all or only specified Relevant Persons. It must indicate the date from which the provisions of the FSECA will apply and, unless specified otherwise, the duration of application. The Order may also specify that the FSECA is to be applied retroactively if necessary.

## What are the main allowances under the FSECA?

In an exceptional circumstance, the Board of the Financial Services Commission (the **Board**), which has the responsibility for monitoring and overseeing the operation of the Financial Services Commission, will be afforded added flexibility to continue to discharge its functions. In particular:

- the Board may not be able to meet for the number of times stipulated in the FSCA. Under FSECA, it will have additional flexibility to meet at any other time or place, whether within or outside the Virgin Islands, or by any convenient medium, including via electronic means; and
- the Chairman and/or the Managing Director of the Board may make urgent decisions on their own which would have otherwise required a majority vote of the commissioners of the Board. Such decisions, however, will require subsequent ratification by the Board.

The Order may also specify that:

- a Relevant Person may temporarily relocate the whole or part of his or her business to another jurisdiction or to a new address within the Virgin Islands in order to continue the operation of his or her business;
- the provisions of the Insurance Act and the Regulatory Code relating to the licensing of loss adjusters are disapplied;
- directors or authorised agents normally required to be resident in the Virgin Islands may be resident outside the Virgin Islands for the period that the Order remains in force;
- the Commission may extend the time for Relevant Persons to perform outstanding obligations, including the payment of any administrative penalty;
- records that are normally required to be kept in the Virgin Islands may be temporarily kept in the jurisdiction of relocation; and
- certain specified fees that would have otherwise been payable are waived.

## What are the additional points to note under the FSECA?

Where a Relevant Person relocates temporarily outside the Virgin Islands due to an exceptional circumstance, he or she will be deemed to be operating in the Virgin Islands and must continue to comply with all applicable laws.

The FSECA also establishes a Financial Services Complaints Tribunal to receive and investigate complaints made by a client or customer of a licensee regarding the handling of claims made against the licensee.

The Minister has already issued an Order in light of the disruptions caused by the Covid-19 pandemic. Although hopefully further orders under the FSECA will not be required, the FSECA now provides a permanent legislative framework to help facilitate the ongoing operation of the financial services industry in or temporarily from outside the Virgin Islands in the event of any exceptional circumstance.

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For more information and to discuss how the FSECA could inform your business continuity plans and strategies, please feel free to [email us](#) or reach out to one of our lawyers using the contact details below.

## Contact Us

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