

VIRGIN ISLANDS

VIRGIN ISLANDS GAMING AND BETTING CONTROL ACT, 2020

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I Assent
(Sgd.) Augustus J. U. Jaspert,
Governor.
18th August, 2020

VIRGIN ISLANDS

No. 14 of 2020

AN ACT to provide for the regulation and control of gaming and betting and matters related thereto.

[Gazetted 20th August, 2020]

ENACTED by the Legislature of the Virgin Islands as follows:

PART I

PRELIMINARY

1. (1) This Act may be cited as the Virgin Islands Gaming and Betting Control Act, 2020. Short title and commencement.

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

2. In this Act Interpretation.

“associate”, in relation to a licensed business, means any person who holds any financial interest in, or can exercise any power, control or influence over, the licensed business;

“authorised officer” means

- (a) a person appointed by the Commission to carry out the functions of an inspector pursuant to section 64;
- (b) a member of the Police Force; or
- (c) any other person duly authorised by the Commission;

“betting” means making or accepting, on a fixed odds or pool betting basis, a bet on the outcome of a horse race or a sporting event or lottery draw;

“betting shop” means premises in respect of which a General Betting Operator’s Licence and a Premises Licence is in force and in particular, refers to

- (a) an off-track betting shop; or
- (b) a private betting shop;

“betting transaction” means the making and accepting on a fixed odds or pool betting basis between a bookmaker or a promoter and a punter or bettor on the outcome of an event, horse race or lottery draw;

“Board” means the Board of the Commission referred to in section 4(3);

“bookmaker” means a person licensed by the Commission, who

- (a) accepts bets on a fixed odds basis and to whom the person making the bet looks to for payment of his or her winnings; and
- (b) by way of business in any manner holds himself or herself out or permits himself or herself to be held out as a person who receives or negotiates bets on a fixed odds basis;

“Commission” means the Gaming and Betting Control Commission established under section 4(1);

No. 16 of 2004

“company” means a body incorporated or continued under the BVI Business Companies Act, 2004;

“director” has the meaning assigned to it in section 2 of the BVI Business Companies Act, 2004;

“enforcement officer” means

- (a) a member of the Police Force; or
- (b) a person authorised by the Commission;

“equipment” means

- (a) a gaming machine;
- (b) a device used in any type of gaming or betting activity; or
- (c) a machine, computer or device used for the purposes of gaming or betting or the regulation thereof;

“FIA” means the Financial Investigation Agency of the Virgin Islands established under the Financial Investigation Agency Act, 2003;

No. 19 of 2003

“fixed odds betting” means betting on the basis of odds that are fixed by a licensed promoter or bookmaker, whether locally or abroad, even though the odds may be changed from time to time prior to the start of the race or event;

“gaming” means to play a game for a prize or winnings in money or money’s worth including but not limited to lottery, raffles and scratch cards;

“gaming machine” means an electronic machine of any type designed or adapted and used by individuals to game or bet and engage in sports betting which is authorised and or licenced by the Commission;

“gaming machine location” means a business location approved by the gaming machine contractor and the Commission to operate gaming machines on the premises;

“gaming machine contractor” means the company contracted with the government of the Virgin Islands to provide gaming machines and gaming machine services in the Virgin Islands regulated by the Commission;

“horse racing or racing” means competition between two or more horses for prize money which is authorised by the Horse Racing Unit;

“horse racing activities” means all matters involving horse racing and or ancillary matters;

“Horse Racing Unit” means the Horse racing Unit established under section 10(8), created under this Act with responsibility for the supervision and regulation of horse racing and horse racing activities in the Virgin Islands subject to the general direction and control of the Commission;

“licence” means a category of licence issued by the Commission pursuant to the provisions of this Act;

“member” means a member of the Board of the Commission;

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

“off-track betting shop” means premises in respect of which a license has been issued by the Commission for use by a licensed promoter for the purpose of accepting bets in pool betting;

“pool betting” means betting into a pool from which the licensed operator takes a percentage, leaving a balance to be distributed amongst winners;

“premises” means any house, office, room or building and any racetrack, place or spot, whether open or enclosed, and includes an aircraft, ship, or other vessel whether afloat or not, and any other premises or vehicle as the Commission may prescribe;

“private betting shop” means premises in respect of which a license is issued by the Commission for the purpose of conducting fixed odds betting;

“prize”, in relation to gaming, means a reward given for winning in the form of money or money’s worth;

“promoter” means a person licensed by the Commission to stage live racing and accept bets on a pool betting basis;

“racing” means horse racing;

“relative”, in relation to a person, means the spouse, father, mother, brother, sister, son or daughter of the person;

“Secretary” means the Corporate Secretary appointed under section 6(1);

“simulcast racing” means live racing conducted in a jurisdiction outside of the Virgin Islands which is transmitted live on television monitors by modes of transmission approved by the Commission and on which bets are accepted by licensees;

“sport” means an athletic activity requiring skill or physical prowess and often of a competitive nature;

“sports betting” means all betting on sports events wherever held;

“vulnerable person” means a person who exhibits an addiction to gaming and betting as evidenced by

- (a) his or her indebtedness to an extent that he or she cannot pay gaming and betting related debts; and
- (b) his or her inability to
 - (i) meet his or her basic needs or family obligations because of gaming and betting related debts; or
 - (ii) meet the obligations of his or her job because of his or her addiction to gaming and betting.

Objects of the Act.

3. The objects of this Act are to

- (a) create an entity (the Commission) which will oversee, regulate and control gaming and betting in the Virgin Islands;
- (b) protect minors and other vulnerable persons from being harmed or exploited by gaming and betting;
- (c) ensure that gaming and betting is conducted in a fair, open and responsible manner;
- (d) prevent gaming and betting from being a source of crime, being associated with crime or being used to support crime;
- (e) ensure compliance with international anti-money laundering and counterterrorism financing regulations in line with the Financial Action Task Force Recommendations;
- (f) control the growth of and facilitate responsible gaming and betting;
- (g) provide employment opportunities;
- (h) enhance the Virgin Island's tourism product;
- (i) improve horse racing by establishing a Unit under the Commission to regulate and supervise horse racing and horse racing activities in the Virgin Islands; and
- (j) for the collection of taxes and for the redirection of monies to the Government of the Virgin Islands that are now spent in unauthorised gaming and betting activities.

PART II

GAMING AND BETTING CONTROL COMMISSION

4. (1) There is hereby established a body corporate to be known as “the Gaming and Betting Control Commission” and section 21 of the Interpretation Act shall apply accordingly.

Establishment
and constitution.
Cap. 136

(2) The Commission shall be managed by a Board appointed by the Cabinet, for the purpose of exercising such powers and duties as are conferred upon it by this Act, regulations made hereunder and any other written law.

(3) The Board shall consist of a Chairman and eight other members, one of whom shall be appointed on the recommendation of the Chambers of

Commerce and Hotel Association and Board of Tourism respectively in accordance with subsection (6).

(4) The Minister shall by instrument in writing appoint one of the Members of the Board to be the Chairman of the Board.

(5) The members of the Board shall be appointed on such terms and conditions as Cabinet shall determine.

(6) A person shall be qualified to be a member of the Board by reason of his or her qualifications, work and experience in the gaming and betting industry or fields relating to law, finance, information technology, economics, management, social work or law enforcement.

(7) A person who holds a licence issued under this Act or intend to apply for a licence pursuant to the provisions of this Act shall not be eligible for appointment to the Board and, in the case of persons who hold positions on the Board, an application for a licence under this Act, shall be grounds for an automatic termination of the members' appointment on the Board.

Tenure.

5. (1) The Board shall consist of

- (a) the Chairman, a Deputy Chairman and two other members, each appointed for a term of four years;
- (b) three members, each appointed for a term of three years; and
- (c) two members, each appointed for a term of two years,

and their appointments shall not expire on the same date.

(2) A member shall hold and vacate office in accordance with the terms of his or her appointment.

(3) A member may resign by notice in writing to the Minister.

(4) The appointment of any person to membership of the Board and the termination thereof, whether by death, resignation, revocation, effluxion of time, if he or she becomes an employee or holds any financial interest in a company licenced under this Act or otherwise, shall be published in the *Gazette*.

(5) A member may be removed from office by Cabinet, where he

- (a) becomes a person of unsound mind;
- (b) is unable, unfit or unwilling to perform his or her functions;

- (c) is absent from three consecutive meetings of the Commission without leave of the Commission or without reasonable cause;
- (d) is guilty of misconduct in relation to his or her duties as a member of the Board; or
- (e) is sentenced to imprisonment or is convicted of an offence involving fraud or dishonesty, whether in the Virgin Islands or elsewhere.

(6) Where a member is unable to participate in the business of the Board, by reason of illness or other cause, Cabinet may subject to section 4(6) appoint a person to act as a member in his or her stead for that occasion or until termination of the disability.

(7) A person appointed temporarily pursuant to subsection (6) may complete any unfinished business of the Commission in which he or she has taken part, notwithstanding the resumption of duty of the member in whose place he or she was appointed under this section.

6. (1) The Board shall appoint a Corporate Secretary for a period of not less than three years on such terms and conditions as shall be agreed. Corporate Secretary.

(2) The Secretary shall be responsible for such matters as the Board may determine.

7. (1) The Seal of the Commission shall be kept in the custody of the Secretary. The Seal.

(2) The Seal shall be used with the permission of the Board in the presence of the Chairman and one other member and the Secretary and every instrument to which it is affixed shall be signed by the Secretary and Chairman or the Secretary and the Deputy Chairman.

(3) All documents other than those required by law to be under Seal shall be signed by the Chairman or the Deputy Chairman or a member authorised by the Board.

8. (1) Service upon the Board of any notice, order or other document, shall be executed by delivering the same or by sending it by registered post addressed to the Secretary at the office of the Board. Service of documents.

(2) Service upon the Commission of any document, by electronic means, shall be supported by hard copy as soon as possible thereafter.

9. (1) The Board shall meet at such times as may be necessary or expedient for the transaction of business, and where necessary may meet at least Proceedings.

once in every calendar month, and the meetings shall be held at such place and time and on such days as the Board determines.

(2) The Chairman may, at any time, call a special meeting of the Board and shall also call such meeting within seven days of the receipt of a request for that purpose addressed to him by any five members.

(3) The Chairman shall preside at meetings of the Board and in the absence of the Chairman from any meeting, the Deputy Chairman shall preside at that meeting.

(4) The Chairman, or in his or her absence the Deputy Chairman, and four other members shall form a quorum.

(5) The Board may co-opt any one or more persons to attend any particular meeting of the Board for the purpose of assisting or advising the Board, but no such co-opted person shall have any right to vote.

(6) Subject to this section, the Board may, by Standing Orders, regulate its own proceedings.

Appointment of
Committees and
Unit.

10. (1) The Board may appoint committees to examine and report to it on any matter whatsoever arising out of, or connected with, any of its powers and duties under this Act.

(2) The Board shall establish a standing committee to be known as “the Audit and Regulatory Committee” which shall have a compliance oversight role in the specific areas of financial reporting and internal controls implemented within the operations of the licensees.

(3) Based upon their specific expertise, three members of the Board shall be appointed to the Audit and Regulatory Committee and may be required to attend industry training seminars to gain specific knowledge of their governance roles.

(4) Other committees appointed by the Board shall consist of at least one member of the Board together with such other persons, whether members of the Board or not, whose assistance or advice the Board may require.

(5) Where a person, who is not a member of the Board, is appointed as a member of the committee, the Board may determine, with the approval of Cabinet, by resolution determine the remuneration and allowances of such person and such sums shall properly be so payable out of the funds and resources of the Commission.

(6) The Board may, by resolution reject the report of any such committee or adopt it either wholly or with such modification, addition or adaptation as the Board considers appropriate.

(7) Subject to this Act, and to the prior approval of the Minister, the Board may delegate to a member or a committee, power and authority to carry out on its behalf such functions and to exercise such powers as the Board may determine, but any such delegation shall be revocable at will and shall not preclude the Board from acting from time to time as occasion requires.

(8) For the purpose of this Act, there is hereby established a Horse Racing Unit.

(9) The provisions of Schedule 2 shall have effect as to the constitution and operation of the Horse racing Unit and otherwise in relation thereto. Schedule 2

11. (1) A member of the Board shall, on appointment, submit to the Minister on an annual basis a declaration stating whether or not he has an actual or contingent pecuniary interest in a Declaration of members' interests.

(a) licensee or proposed licensee regulated or to be regulated by the Commission; or

(b) business or body corporate carrying on business with the Commission in the exercise of its functions.

(2) Any member whose actual or contingent pecuniary interest is likely to be affected in any way by a decision of the Board on any matter specified in subsection (1) shall, as soon as possible after the relevant facts come to his or her knowledge, disclose to the Board and to the Minister the nature of that interest.

(3) A disclosure under subsection (2) shall be recorded in the Minutes of a meeting of the Board and the member shall

(a) not take part after disclosure in any deliberation or decision of the Board with respect to that matter; and

(b) be disregarded for the purpose of constituting a quorum of the Board.

(4) For the purposes of this section, a person who, or a nominee or relative of whom, is a shareholder who owns in excess of five per cent of the shareholding, or is a partner in a company or other body of persons or who is an employee thereof, shall be treated as having an actual or contingent pecuniary interest.

(5) Any person to whom this section applies who fails to comply with the provisions of this section commits an offence unless he or she can prove to the satisfaction of the Court that he or she did not know

Powers and duties of the Commission.

- (a) the matter in which he or she had an interest was the subject of consideration at the meeting; or
- (b) he or she had an interest in the matter under consideration at the meeting.

12. (1) The Commission shall

- (a) regulate and control the operation of gaming and betting in the Virgin Islands, including but not limited to contracting with a company to provide gaming machine and gaming machine services pursuant to this Act;
- (b) provide such information to other regulatory and government agencies, including the Inland Revenue Department, the Financial Investigation Agency, the Commissioner of Customs, and the Commissioner of Police, as may be agreed between the Commission and those agencies;
- (c) seek to address, through the Rehabilitation and Development Funds, the harmful and negative effects of gaming and betting; and
- (d) carry out such other actions in pursuance of the provisions of this Act or any regulations made hereunder including, but not limited to entering into a gaming machine contract with a gaming machine contractor that will provide a comprehensive gaming machine program, including machines and related services to the Virgin Islands;
- (e) regulate the establishment of a Lottery with lottery games; and
- (f) establish a Horse Racing Unit.

(2) Without prejudice to the generality of the foregoing, the Commission shall

- (a) grant licences pursuant to the provisions of this Act;
- (b) impose conditions in the granting of licences subject to the provisions of this Act;
- (c) engage in consultations in accordance with prescribed regulations;

- (d) conduct studies, prepare reports, and generally make recommendations relating to the gaming and betting industry in the Virgin Islands;
- (e) verify or cause to be verified the background, character and reputation of an applicant and any associate, employee, relative or other person as the Commission deems necessary;
- (f) regularly review the operations of the licensed gaming and betting activity;
- (g) inspect or cause to be inspected any equipment or device associated with gaming or betting and which is being used or is proposed to be used in a licensed gaming machine location;
- (h) ensure that licensed activities are conducted in a fair and honest manner;
- (i) collect fees and levies;
- (j) advise the Minister on all matters relating to the operation of this Act;
- (k) require the production of any documents, records and information in the custody or control of a licensee or an associate;
- (l) request the appearance of a licensee, associate or any employee or officer of a licensee or any other person for the purpose of attaining compliance with this Act;
- (m) formulate and implement policies, codes of practice and other documents for the administration and control of the conduct of gaming and betting;
- (n) require verification of all income and other matters relevant to the business for which a license was granted under this Act;
- (o) inspect premises and all equipment where licensed activities are conducted;
- (p) seize or impound any betting machine, gaming machine or gaming device or associated equipment, document or records for the purpose of examination or inspection;

- (q) designate any machine or device to be a gaming or betting machine or device;
- (r) direct the implementation of a computerised internal enterprise network system approved by the Commission to facilitate interrogation, validation and auditing of gaming and betting operations;
- (s) resolve disputes between licensees and consumers; and
- (t) do all such other things as are in its opinion necessary for, or conducive to, the proper discharge of its powers and duties.

Appointment of Chief Executive Officer.

13. (1) The Board shall appoint a Chief Executive Officer for a term not exceeding five years on such terms and conditions as are agreed upon between the Board and the Chief Executive Officer.

(2) The Chief Executive Officer shall manage the affairs of the Commission subject to the directions of the Board.

(3) The Chief Executive Officer shall attend all meetings of the Board and participate in its deliberations but shall not vote on such deliberations.

(4) The appointment of the Chief Executive Officer and the termination of that appointment, whether by death, resignation or otherwise, shall be published in the *Gazette*.

Personal liability.

14. (1) No personal liability shall be attached to any member of the Board for

- (a) any act or omission of the Board; or
- (b) anything done or permitted in good faith, in the course of the operations of the Commission, under this Act.

(2) Any sums of money, damages or costs recovered against the Commission for anything done, omitted or permitted in good faith in the course of the operations of the Commission shall be paid out from the funds of the Commission.

(3) No personal liability shall be attached to any member of staff of the Commission for

- (a) any act or omission of the Board; or
- (b) anything done or permitted in good faith, in the course of the operations of the Commission, under this Act.

- 15.** The Commission shall give effect to such general policy directions of the Minister, in relation to any matter relating to the regulation of gaming and betting as appears to him or her to be of public interest. Execution of policy.
- 16.** The provisions of the Criminal Code apply where any person demands or accepts any fee, perquisite, bribe, gratuity, recompense or reward, whether pecuniary or otherwise, from any other person on account of anything done or to be done, omitted or to be omitted by such person, in any way relating to his or her office or employment or, if such a person attempts to make any collusive agreement to neglect his or her duty or to conceal or connive at any act whereby any provision of this Act or any other law may be evaded or violated, such person commits an offence and is liable, on summary conviction to imprisonment and a penalty as stipulated in that Act. Inducement, concealment or connivance.
- 17. (1)** The Commission may employ such persons as it considers necessary for the due and efficient performance of its functions and powers and on such terms and conditions as are agreed upon between the Commission and those persons, subject to such remuneration as the Board may determine. Staff of the Commission.
- (2)** Pursuant to the provisions of Schedule 1, officers in the Public Service or a Statutory Authority may be seconded or transferred to the Commission. Schedule 1
- (3)** The Commission may employ persons to perform specific tasks that the Commission considers necessary for the due performance of its functions and exercise of its powers under this Act, on such terms and conditions as are agreed between the Commission and the person and subject to such maximum limit of remuneration as the Board determines.
- 18.** The funds of the Commission will comprise of Funds of the Commission.
- (a) such amounts as may be appropriated by the House of Assembly for the purposes specified in section 19;
 - (b) special grants of funds as may from time to time be provided for the financing of any special project;
 - (c) monies collected in respect of licences, levies, fees and other monies lawfully due to the Commission under this Act;
 - (d) sums from time to time received by, or falling due to the Commission as fees or payments for services rendered;
 - (e) all other sums that may in any manner become lawfully payable to the Commission in respect of any matters incidental to its functions; and

- (f) such amounts borrowed by the Commission consistent with section 26.

Allowable
expenditure.

19. The funds of the Commission, in any financial year shall be applied in defraying the following expenditure:

- (a) the operating expenses of the Commission and Horse Racing Unit and to support horse racing and other cultural events;
- (b) such capital expenditure as may be necessary;
- (c) the fees and allowances of the Chairman and other members of the Board and members of the Horse Racing Unit;
- (d) the salaries, fees, allowances, advances, loans, gratuities, pensions and other payments to the Chief Executive Officer, Secretary and other members of staff of the Commission;
- (e) research and development projects, training and certification and other related matters; and
- (f) any other expenditure authorised by this Act in relation to the Commission's discharge of its duties, functions and contractual obligations.

Accounts of the
Commission.

20. (1) The Commission shall keep and maintain a bank account into which monies, collected by way of licence fees and levies and any other monies collected pursuant to the provision of this Act, shall be deposited and disbursed therefrom for the purposes set out in section 19.

(2) The Commission shall establish a secondary bank account to be known as "the Contingency Fund Account", in which it shall deposit sums collected by way of fee or levy pursuant to section 60 and approved by the Minister, for the purposes of meeting obligations that come due in the short-term of no more than twelve months.

(3) The Commission shall establish and maintain such other bank accounts opened with the approval of the Minister as deemed necessary in furtherance of the provisions of this Act.

(4) At the end of each financial year, any surplus of funds remaining in the account opened in accordance with subsection (1), shall be paid into the Consolidated Fund.

Budget of the
Commission.

21. (1) For the purposes of this Part

“IFRS” means International Financial Reporting Standards which includes the International Accounting Standards adopted by Accountants in the Virgin Islands;

“surplus” means the balance of revenue after payment of all allowable expenditure of the Commission and approved allocations to the Contingency Fund, the Rehabilitation Fund and the Development Fund.

(2) The Commission shall prepare a budget in accordance with such form as the Minister may direct and submit those estimates to the Ministry not later than the stipulated deadline date.

(3) The Commission shall furnish the Minister with any additional information in relation to the estimates as he or she may require.

(4) The estimates of expenditure as approved by the Minister shall be the expenditure budget of the Commission for the financial year to which it relates.

22. (1) The Commission shall keep proper accounts and other records in relation to the business of the Commission and shall prepare annually a statement of accounts in accordance with IFRS or other best practice commercial standards.

Accounts and audit.

(2) The accounts of the Commission are public accounts of the Virgin Islands for the purpose of the Laws of the Virgin Islands and the Audit Act applies as if an audit referred to in this Part is one to which that Act applies.

(3) The Auditor General or any auditor authorised by him, or her to undertake an audit shall undertake an audit of the annual accounts and other records in relation to the business of the Commission.

(4) Three months after the end of the Commission’s fiscal year, the Commission shall submit a copy of the audited accounts to the Minister.

23. (1) The Commission shall, within four months after the end of each financial year or such longer period as the Minister may in special circumstances approve, cause to be made and transmit to the Minister a report dealing generally with the activities of the Commission during the preceding financial year.

Annual report.

(2) The Minister shall as soon as practicable cause a copy of the report together with the annual statement of accounts and Auditor’s Report to be laid before the House of Assembly.

(3) The Commission shall publish copies of the documents referred to in subsection (2) in such manner as it deems appropriate.

24. The financial year of the Commission shall be the twelve-month period ending 31st December in every year or such other period that the

Financial year.

Commission may prescribe, and the period from the date of commencement of this Act, to the 31st of December next following year, shall be deemed to be the first financial year.

Exemption from tax.

25. (1) The Commission is exempt from stamp duty, corporation tax, customs duty and all other taxes, fees, charges, provisions of assessments, levies and imposts on its income or on assets which it acquires for its own use.

Borrowing powers.

26. (1) Subject to the provisions of subsection (2), the Commission may borrow sums required by it for capital expenditure in discharging any of its functions under this Act.

(2) The power of the Commission to borrow shall be exercisable only with the approval of the Minister as to the source of borrowing and as to the terms on which the borrowing may be effected, and an approval given in any respect for the purpose of this subsection may be either general or limited to a particular borrowing or otherwise and may be either unconditional or subject to conditions.

(3) The Minister may guarantee the repayment of the principal and the payment of interest on any authorised borrowings of the Commission.

Financial rules.

27. For the purpose of regulating and controlling the financial operations of the Commission, the Board may develop Accounting Procedures and Policies in accordance with IFRS or other best practice commercial standards.

Procurement procedures.
No. 2 of 2004
S.I. No. 87 of 2005

28. The Commission shall, in the performance of its functions, be subject to the provisions of the Public Finance Management Act, 2004 and the Public Finance Management Regulations, 2005 until such time as the Commission develops its own procurement policies and procedures.

PART III

LICENSING REGIME

Requirement for a licence.

29. A person shall not participate in any aspect of the gaming and betting sectors, that is to say

- (a) own or operate a gaming machine location for the purpose of conducting gaming;
- (b) perform a specific function in connection with a licensed betting or gaming activity or in relation to a licensed premises;
- (c) manufacture, fabricate, assemble, programme, modify or repair equipment;

- (d) sell, import, supply or distribute a gaming machine or associated equipment;
- (e) lease gaming machines to an owner or operator of a gaming machine location in exchange for remuneration based on earnings in profit from a gaming operation;
- (f) manufacture, sell, supply, install and adapt gaming software;
- (g) provide facilities for betting of any kind; and
- (h) provide or utilise premises for the purpose of gaming or betting,

without first acquiring the necessary licence from the Commission pursuant to section 30.

30. (1) The Commission shall issue licenses in accordance with the provisions of this Act. Categories of licences.

- (2) There shall be several categories of licence, as follows:
 - (a) a Gaming Operators Licence, which shall permit the licensee to operate a gaming machine location for the purpose of conducting gaming;
 - (b) a Gaming Owners Licence, which shall permit the licensee to own a gaming machine location though such licensee shall not operate such establishment without first having obtained a Gaming Operators Licence;
 - (c) a Bookmakers Licence, which shall permit the licensee to conduct betting activities other than pool betting;
 - (d) a Promoters Licence which shall permit a licensee to stage live racing and conduct pool betting (*pari-mutuel*) activities;
 - (e) a Gaming Machine Operating Licence, which shall permit the licensee to sell or lease gaming machines for use in premises approved by the Commission for the purpose;
 - (f) a Gaming Machine Distributor Licence which shall permit a licensee to import, supply licensed gaming machines, prescribed gaming components and related equipment;

- (g) a Technical Operators Licence which shall permit the licensee to install, maintain or repair licensed gaming machines;
- (h) a Premises Licence, which shall permit activities approved by the Commission under an operating licence to be conducted at premises stipulated in the licence;
- (i) a Personal Licence, in respect of key employees within a licensed betting or gaming machine location;
- (j) a Betting Operators licence which shall permit the licensee to operate a betting business; or
- (k) any other licence as the Commission may from time to time stipulate, as it deems necessary.

(3) A person who is a key stakeholder in the racing sector shall not be permitted to hold a Bookmakers Licence or a Promoters Licence.

(4) For the purposes of subsection (3), a “*key stakeholder*” includes racehorse owners, trainers, jockeys and members of organisations affiliated with, or regulating the betting industry.

(5) The Minister may by Order, subject to negative resolution of House of Assembly, amend the categories of licences.

Application for a licence.

31. (1) Subject to subsection (2), the following persons may apply for a licence under this Act:

- (a) an individual who is twenty five years old and older; or
- (b) a company incorporated under the laws of the Virgin Islands, which shall partner with a believer as defined under section 2 of the Virgin Islands Constitution Order, 2007.

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(2) A company incorporated under the Laws of the British Virgin Islands is eligible to apply for a Gaming Owners Licence, Bookmakers Licence or a Promoters Licence.

(3) An application for a category of Operating License shall be made to the Commission in writing in such form as may be prescribed by the Commission and on payment of the prescribed fee.

(4) Notice of such application shall be published by the Commission in at least two local newspapers for such period as the Commission shall determine, inviting the general public to comment thereon within one month from the time the notice first appears in the newspapers.

(5) An application for a licence shall be accompanied by such documents as the Commission prescribes.

(6) Objections to the grant of a licence may be made by the following persons, in writing, to the Commission

- (a) any resident of, or business owner in the area in which the proposed licensed premises are located;
- (b) any school principal, teacher or parent of a student of a school within the area of the proposed licensed premises;
- (c) representative of any religious group that is located in the area of the proposed licensed premises;
- (d) the Commissioner of Police of the Royal Virgin Islands Police Force; or
- (e) any other interested party.

32. (1) Upon receipt of an application, the Commission shall carry out an investigation of the applicant and any proposed or existing associate or employee. Investigations.

(2) The applicant and persons referred to in subsection (1) may, if requested by the Commission

- (a) submit to, or assist in the investigation;
- (b) submit to an interview;
- (c) provide information or documents requested by the Commission that are pertinent to the application; and
- (d) be required to have his or her photograph and his or her finger and palm prints taken.

(3) If any person referred to in subsection (1) fails to comply with a request under subsection (2), the Commission may reject the application.

(4) The Commission shall consider all objections made pursuant to section 31(6).

(5) The Commission shall, within fourteen days of the completion of its investigation, publish in at least two local newspapers notice of the date, time and place of hearing of the application which hearing shall be open to the public.

(6) The Commission shall also cause notice of the date, time and place of consideration of the application to be sent to

- (a) the applicant; and
- (b) any person who has submitted an objection.

(7) The Commission shall send to the Commissioner of Police a copy of the photograph, finger and palm prints, of the applicant or other person referred to in subsection (1) and a copy of the objection.

(8) The Commissioner of Police shall cause such enquiries to be made as he or she deems necessary and shall provide a copy of the report on his or her enquiries to the Commission.

(9) The Commission shall make Rules for the conduct the hearing of any application.

(10) Rules made pursuant to subsection (9) shall be published in the *Gazette* and shall be available at the offices of the Commission.

Decision of the Commission.

33. The Commission shall, upon the conclusion of any hearing forward a copy of its decision to the applicant and publish its decision in at least two local newspapers.

Power to approve or refuse.

- 34. (1)** The Commission may
- (a) approve or refuse an application; or
 - (b) approve an application in respect of specified activities only and reject in respect of others.

(2) Upon approval of the application pursuant to subsection (1), and upon payment of the prescribed fee, the Board shall issue a license to the applicant duly signed by the Secretary or Chairman.

(3) A licence shall be valid for the period of time specified in the licence or unless revoked prior to the end of the period, in accordance with this Act.

Form of licence.

- 35.** A licence may specify one or more of the following:
- (a) the name of the licensee;
 - (b) the period of the licence;
 - (c) the activity to be undertaken;
 - (d) the premises to which the licence applies;
 - (e) the conditions upon which the licence is granted;

- (f) the facilities to be provided;
- (g) the equipment permitted to be used; and
- (h) any other matter that the Board considers pertinent.

36. (1) It shall be a condition of every licence that the licensee shall

Conditions of
licence.

- (a) comply with such terms, conditions and restrictions as may be specified in the licence;
- (b) give seven days prior notice of a change in the directors, management, control or circumstances of the licensee or licensed premises and notify the Commission in writing of such change;
- (c) comply with such directions, restrictions, conditions or requirements as the Commission may impose during the currency of the licence;
- (d) notify the Commission of the conviction of the licensee, an associate or any employee for any offence under the law as may be specified by the Commission from time to time; and
- (e) comply with any other written law relating to the prevention of money laundering and combatting the financing of terrorism.

(2) A licence may likewise contain the following conditions:

- (a) the nature, circumstances and extent of the licensed activities;
- (b) the facilities and the manner in which facilities may be provided;
- (c) how licensed activities are to be advertised;
- (d) the recording of users of facilities;
- (e) the installation of identification discs and online monitoring software as approved by the Commission, on gaming machines, gaming devices, betting machines and betting devices;
- (f) the quantum of financial resources to be made available or maintained for licensed activities;

- (g) the provision of annual financial statements and audited accounts of the licensed operations;
- (h) the requirement to pay fees and levies to the Commission, as prescribed; and
- (i) any other matter as the Commission determines.

Publication of licence.

37. The grant of any licence, amendment, renewal, expiry or revocation shall be published in the *Gazette* and in at least two local newspapers or any other means including electronic publication on the Commission’s website, as may be approved by the Commission for publishing and, notwithstanding the date of publication, the licence shall take effect on the date specified on the licence.

Premises Licence.

38. In addition to the general conditions applicable to licences, a Premises Licence shall contain further conditions that require the licensee to

- (a) place in a prominent place on the premises rules by which the licensed activities will be conducted, including rules prohibiting gaming and betting by minors;
- (b) provide duly licensed and properly trained security staff at all entry and exit points on the premises; and
- (c) provide appropriately authorised and appropriately prepared safety crew at all section and leave focuses on the premises.

Personal Licence.

39. (1) For the purposes of this Act, a “Personal Licence” is a licence which authorises an individual to perform a specified function in connection with a licensed gaming activity, a licensed betting activity or licensed premises.

(2) The following persons shall not be involved with any activities for which a Premises Licence or any other licence granted pursuant to this Act is required, unless having first obtained a Personal Licence:

- (a) a director;
- (b) an associate;
- (c) key employees and officers;
- (d) security staff at all levels;
- (e) internal compliance personnel including game supervisors and inspectors;

- (f) accounting staff including cashiers, clerks, assistants and any person dealing with, or recording credit, cash chips, tokens and coins;
- (g) any person involved in managing, monitoring, supervising or directing any activities;
- (h) any person administering a game on behalf of the licensee including a croupier;
- (i) any person operating any gaming equipment directly or indirectly connected to the licensed activities; and
- (j) such other persons as may be prescribed.

(3) The Board may vary the list of persons listed in subsection (2) either generally or in a particular case or for a particular purpose.

(4) An applicant under this section shall submit to having his or her photograph, fingerprints and palm prints taken.

40. (1) The Commission shall assess the applicant as fit and proper, pursuant to the criteria set out in Schedule 3, as a condition to the granting of a licence. Fit and proper criteria.
Schedule 3

(2) The Commission may, if it deems such action to be necessary, demand from the licensee a list of all persons who are employed in the gaming machine location but not required to be licensed under this section, and the licensee shall comply.

41. A licence shall automatically expire Expiration.

- (a) upon the date specified in the licence;
- (b) on surrender of the licence by the licensee;
- (c) if the licensee becomes incapable by reason of mental or physical incapacity of carrying on the licensed activities;
- (d) the licensee becomes bankrupt or goes into liquidation; or
- (e) the licensee, being a corporation, becomes insolvent or ceases to exist.

42. (1) A licensee shall notify the Board of his or her intention to renew the licence at least three months before expiration. Renewal.

(2) The application for renewal shall be accompanied by

- (a) a copy of the licence to be renewed;
- (b) the renewal fee as prescribed by Regulations;
- (c) evidence that all taxes, fees, levies, and other charges have been paid to the Inland Revenue Department, the Commission and other relevant authorities; and
- (d) any other information or document as may be required by the Board.

(3) The renewal procedures of the Commission shall replicate the application procedures for the original licence.

(4) In addition to the procedures required pursuant to subsection (3), the applicant shall provide such consent and authorisation as may be required by the Commission, including the granting to the authorised officer of the Commission the right to enter the premises at any time over any twenty-four hour period, without notice, for the purpose of assessing the suitability of the applicant to the grant of a renewal of the licence.

Review of
licence.

43. (1) The Commission may, in relation to licences, review

- (a) the manner in which licensees carry on the licensed activities; and
- (b) in particular, arrangements made by licensees to ensure compliance with the conditions attached to the granting of the licenses.

(2) The Commission may review any matter connected with the provision of gaming and betting as authorised by a licence, where the Commission:

- (a) has reason to suspect that activities may have been carried on in purported reliance on the licence but not in accordance with a condition of the licence;
- (b) believes that the licensee or a person who exercises a function in connection with the licensed activities has been convicted of a criminal offence; or
- (c) for any reason:
 - (i) suspects that the licensee may be unsuitable to carry on the licensed activities; or
 - (ii) thinks that a review would be appropriate.

- (3) For the purpose of subsection (2)(c), a reason
- (a) may, in particular, relate to the receipt of a complaint about the licensee's activities; or
 - (b) need not relate to any suspicion or belief about the licensee's activities.
- (4) Before commencing a review of a licence under subsection (2), the Commission shall
- (a) notify the licensee; and
 - (b) inform him of the procedure to be followed in the conduct of the review.
- (5) In conducting a review of a licence under subsection (2), the Commission
- (a) shall give the licensee an opportunity to make representations; and
 - (b) may give other persons as referred to in section 31(6) an opportunity to make representations.
- (6) Following a review under subsection (1) or (2), the Commission may
- (a) give the licensee a written warning;
 - (b) attach an additional condition to a licence;
 - (c) remove or amend a condition attached to a licence;
 - (d) make, amend or remove an exclusion to a licence;
 - (e) exercise its power to suspend a licence;
 - (f) exercise its power to revoke a licence; or
 - (g) exercise its power to impose a penalty.
- (7) Where the Commission determines to take action under subsection (6) in respect of a licence, it shall as soon as is reasonably practicable, notify the licensee of:
- (a) the action to be taken; and
 - (b) the Commission's reasons.

(8) In determining what action to take under subsection (6), the Commission may have regard to a warning given to the licensee under that subsection following an earlier review (whether or not of that licence).

Suspension.

44. (1) The Commission may suspend a licence if, following a review under section 43, the Commission has reason to believe that any of the conditions specified in subsection (7) applies.

(2) The Commission may suspend a licence if at the time of deciding to conduct a review under section 43 or at any time during the course of a review the Commission suspects that any of the conditions specified in subsection (7) may apply.

(3) Before suspending a licence, the Board shall give the licensee notice in writing of its intention so to do, specifying the grounds upon which it proposes to suspend the licence and where the licensee proposes to challenge that decision, the licensee shall submit a written statement to the Board within seven days of such notice showing cause why the licence should not be revoked.

(4) Where a decision is taken to revoke the licence, notice of revocation shall be sent to the address of the licensee and published in the *Gazette*.

(5) Where the Commission decides to suspend a licence it

(a) shall specify the date from which the suspension takes effect;

(b) shall specify either

(i) a period for which the suspension shall last, which shall be without prejudice to the re-exercise of the power under subsection (1) on or after the expiry of that period; or

(ii) that the suspension shall last until some specified event occurs; and

(c) may make a saving or transitional provision which may, in particular, provide for a licence to continue to have effect in relation to a gaming machine supplied or another thing done, before the time when the suspension takes effect for other purposes.

(6) A licence shall have no effect while it is suspended under this section.

(7) The conditions referred to in subsections (1) and (2) of this section, leading to a suspension of the licensee, are

- (a) that a licensed activity is being or has been carried on in a manner which is inconsistent with the licensing objectives;
- (b) that a condition of the licence has been breached;
- (c) that the licensee has failed to cooperate with a review under section 43; or
- (d) that the licensee is unsuitable to carry on the licensed activity.

(8) In considering a licensee's suitability for the purpose of subsection (7)(d), the Commission may, in particular, have regard to

- (a) the integrity of the licensee or of any person who exercises a function in connection with, or is interested in the licensed activities;
- (b) the competence of the licensee, or of any person who exercises a function in connection with the licensed activities, to carry on the licensed activities in a manner consistent with pursuit of the licensing objectives; and
- (c) the financial and other circumstances of the licensee or of any person who exercises a function in connection with, or is interested in the licensed activities and, in particular, the resources available for the purpose of carrying on the licensed activities.

(9) A licensee aggrieved by the decision of the Board to suspend its licence may within thirty days from the date of the notice of suspension appeal to the Appeals Tribunal setting out the grounds of appeal.

45. (1) The Commission may revoke a licence where

Revocation.

- (a) the licensee, associate or other person to whom the licence applies, fails to meet any of the criteria stipulated therein;
- (b) the licensee fails to pay fees or levies falling due to the Commission;
- (c) the licensee has provided the Commission with false, misleading or inaccurate information;

- (d) the interests of customers are in any way threatened, whether by the manner in which the licensee is conducting or proposes to conduct its business or for any other reason;
- (e) a Receiver appointed in accordance with the provisions of the Insolvency Act;
- (f) possession has been taken by, or on behalf of the holder of a debenture secured by any charge on any property of the licensee comprised in, or subject to the charge;
- (g) the licensee has merged or been amalgamated with another company or institution and the licence is no longer required;
- (h) the business of the licensee is no longer the business for which it was licensed;
- (i) the owner or operator of the business for which a licence has been granted or any member of the key management or any associate has been convicted of a criminal offence whether in relation to said business or not;
- (j) the licensee has been struck off the Register of Companies;
- (k) the licensee has been convicted of an offence under this Act or any offence involving fraud or dishonesty;
- (l) the Board considers suspension an insufficient response to the finding of the review conducted under section 43;
- (m) the licensee has failed to comply with any obligations imposed on it by this Act or Regulations made hereunder or with the terms upon which the license has been granted; or
- (n) the licensee has failed to comply with any other written law relating to the prevention of money laundering and combatting the financing of terrorism.

(2) Before revoking a licence, the Board shall give the licensee notice in writing of its intention so to do, specifying the grounds upon which it proposes to revoke the licence and where the licensee proposes to challenge that decision, the licensee shall submit a written statement to the Board within twenty-eight days of such notice showing cause why the licence should not be revoked.

(3) Where a decision is taken to revoke the licence, notice of revocation shall be sent to the address of the licensee and published in the *Gazette*.

(4) Upon revocation, the Board shall direct an authorised officer to take charge of all books, records, assets of the licensee or any portion thereof for the purpose of safeguarding the interests of creditors, shareholders and customers.

(5) A licensee aggrieved by the decision of the Commission to revoke its licence may, within thirty days from the date of the notice of revocation appeal to the Appeals Tribunal setting out the grounds of appeal and the decision of the Commission shall be stayed pending the outcome of the appeal process.

46. (1) A licensee shall notify the Commission of any change in its circumstances and provide details of the change. Notice of change.

(2) Without prejudice to the generality of subsection (1), a licensee shall notify the Commission of any of the following changes of circumstances:

- (a) commencement of bankruptcy or insolvency proceedings or any change in corporate status or control;
- (b) removal or resignation of any key (licensed) employees or officers;
- (c) change of auditors;
- (d) change of shareholdings of five per cent or more of the shares of the licensee;
- (e) change of business address of licensee; or
- (f) change of business address relative to the licensed activities.

(3) Upon the receipt of any notice under this section the Commission may vary, suspend or revoke the licence or give such other directions as it deems necessary.

47. (1) A licensee may apply to the Commission to vary or amend the licence or insert or remove a condition. Application to vary licence.

(2) An application under subsection (1) shall be accompanied by

- (a) a statement of the variation sought;
- (b) the licence sought to be varied; and
- (c) the fee prescribed by the Commission.

(3) The Board may grant the application for a variation subject to such terms and conditions as it determines.

(4) Notice of variation of a licence shall be published in the *Gazette* and at least two local newspapers.

Application for multiple licences.

48. Subject to the provisions of this Part, a person may apply for more than one type of licence and the Commission shall take into consideration such matters as it considers relevant to the making of its determination.

Appeals.

49. Any person aggrieved by a decision of the Commission under this Part may, within thirty days of receipt of the Commission's decision in respect thereof, appeal to the Appeals Tribunal.

Register.

50. (1) The Commission will keep a register containing

- (a) the name of every person to whom a licence is granted;
- (b) a list of every gaming machine for which a license is granted;
- (c) the address of every premises in respect of which a licence is granted; and
- (d) all matters pertaining to the Licence and Licensee to which this Part refers.

(2) The Register shall be kept at such place as the Board may from time to time determine which

- (a) shall be open to inspection and search by the public during regular office hours; and
- (b) upon payment of the prescribed fee by a person, copies of pages of the Register may be made.

PART IV

GAMING

Prize competitions.

51. Participation in a competition or other arrangement under which a person wins a prize is not gaming and betting for the purpose of this Act unless it is gaming within the meaning of this Act.

Designation of machines.

52. The Commission shall have the power to designate any machine to be a gaming machine.

Approval of games.

53. (1) The Commission shall approve all games to be played at a licensed gaming machine location.

(2) The Commission may amend the lists of approved or disallowed games as it deems necessary in its sole discretion.

54. (1) Copies of Rules of all games played in a gaming machine location shall be available to patrons at an easily and prominently accessible location on the premises. Display of gaming rules.

(2) The licensee or his or her representatives shall provide such guidance and assistance to patrons as to enable them to decide on the merits of playing a game.

55. (1) Gaming shall be exempt from the provisions of this Act if it is private gaming. Private gaming.

(2) For the purposes of this Act, gaming is private gaming if

- (a) it takes place in a private dwelling;
- (b) members of the public have no access, whether on payment or not, to the place where the gaming occurs;
- (c) no charge, however described and whether in money or money's worth, is made for participation in the gaming; and
- (d) it is equal chance gaming.

56. (1) Without prejudice to the generality of section 55(2)(c)

Charge for participation in gaming.

- (a) an amount deducted or levied by a person providing facilities for gaming from sums staked or won in the course of gaming is a charge for participation in the gaming; and
- (b) a charge for admission to premises where gaming takes place is a charge for participation in the gaming.

(2) For the avoidance of doubt, a stake is not a charge for participation in gaming for the purposes of section 55(2)(c).

57. (1) Where gaming is carried on as an entertainment, the requirements of section 29 shall not apply, however the conditions set out in subsection (2) shall be observed in connection with the promotion and conduct of that entertainment. Entertainment not held for private gain.

(2) The conditions referred to in subsection (1) shall be that

- (a) the whole proceeds of the entertainment after deducting sums lawfully appropriated on account of expenses or for

the provision of prizes or awards in respect of the games are applied to purposes other than private gain; and

(b) the amount of the said proceeds appropriated in respect of expenses does not exceed the reasonable cost of the facilities provided for the purpose of the games.

(3) The entertainments to which this section applies are

(a) bazaars, fetes, dinners, dances, fairs and other entertainments of similar character whether limited to one day or extended over a maximum of seven days; and

(b) entertainment or social functions approved in writing by the Commissioner of Police.

PART V

BETTING

Number of licences per applicant.

58. Nothing in this Act shall be construed so as to prohibit the Commission from granting an applicant more than one Betting Operator's Licence.

Conduct of betting.

59. The conduct of betting business shall be stipulated in the licence as a condition thereof or as may be prescribed by Regulations made under this Act.

PART VI

TAXES AND FUNDS

Payment of fees.

60. (1) A Gaming Machine contractor shall pay to the Commission such fees as set forth in the Gaming Machine Contract or as may be prescribed by Regulations made under this Act.

(2) The Commission shall collect such levy on bets made on live and simulcast horse racing, as may be prescribed by regulations made by the Commission with the approval of Cabinet.

(3) The Commission shall deposit into the Contingency Fund an annual amount agreed to by the Board for the purposes of meeting contingencies of the Commission.

61. (1) There are hereby established two funds to be known as “the Rehabilitation Fund” and “the Development Fund” for the purposes hereinafter set forth.

Rehabilitation
and
Development
Funds.

(2) The Rehabilitation Fund is established to assist non-governmental organisations and other groups working with vulnerable persons and their families suffering the effects of gaming and betting addiction and other forms of harm or exploitation associated with gaming and betting.

(3) The Development Fund is established to assist persons in areas of sport, social and community work, arts and culture.

(4) The Commission shall on an annual basis, deposit into the Rehabilitation Fund and the Development Fund amounts equivalent to two and one half per cent and five per cent of the monies collected from gaming and betting, respectively.

62. (1) The Minister shall appoint a committee to be known as “the Rehabilitation and Development Funds Committee”, for the purpose of considering applications for funding and disbursing of funds to organisations and groups engaged in activities related to the purposes set out in section 63.

Rehabilitation
and
Development
Funds
Committee.

(2) The Committee shall comprise a minimum of five but no more than nine members, one of whom shall be a senior officer in the Ministry of Finance.

(3) The members of the Committee shall be selected from among persons with experience and relevant qualifications in the areas of addiction, particularly gaming and betting addiction, sports development, social and community work, arts and culture, finance and accounting.

(4) Members of the Committee may hold office for a term of two years and may be reappointed for no more than two consecutive terms.

(5) Members of the Committee shall be paid such remuneration and allowances as the Minister may determine.

(6) The Committee shall regulate its own procedures but shall meet at least once per month and at such other times as may be necessary or expedient at such time and place as the Committee may determine.

(7) The Committee shall establish guidelines to facilitate applicants seeking financial assistance from the funds.

(8) Any member of the Committee, including its Chairman, whose interest is likely to be directly affected by a decision or determination of the Committee shall declare his or her interest in the matter under consideration and shall recuse himself or herself from all deliberations with respect to that particular subject matter.

(9) The Committee shall, within three months of the end of each financial year, submit a report to the Minister on the activities and management of the Funds and the Minister shall as soon as practicable cause a copy of the report to be laid in the House of Assembly.

Accounts and
audit.

63. (1) All accounts relating to the Rehabilitation and Development Funds shall be managed by the Committee which shall disburse monies from those accounts in accordance with its procedures.

(2) The Committee shall keep proper accounts and other records in relation to its mandate and shall prepare annually a statement of accounts in accordance with General Acceptable Accounting Principles or other best practice commercial standards.

(3) The accounts of the Committee are public accounts of the Virgin Islands for the purpose of Audit Act and Finance Act applies as if an audit referred to in this Part is one to which that Act applies.

(4) The Auditor General or an auditor authorised by him or her to undertake an audit shall be entitled, at his or her own volition and at all reasonable times, to conduct an audit of the accounts and other records in relation to the business of the Committee.

(5) Three months after the end of the Committee's fiscal year, a copy of the audited accounts and report shall be submitted to the Minister, and the Minister shall as soon as practicable cause a copy to be laid in the House of Assembly.

PART VII

ENFORCEMENT

Authorised
officers.

64. (1) An authorised officer may undertake activities for the purpose of assessing

- (a) compliance with the provisions of this Act;
- (b) compliance with any other written law relating to the prevention of money laundering and combatting the financing of terrorism;
- (c) whether an offence under this Act is being or has been committed;
- (d) whether facilities for gaming and betting, or any other activity required to be licensed under this Act are being provided in any place;

- (e) whether a licence is held in respect of any activity required to be licensed; or
- (f) whether activities are being carried on in accordance with the terms and conditions of the licence issued.

(2) In pursuance of the activities under subsection (1) the authorised officer may, in respect of licensed premises

- (a) inspect any premises;
- (b) monitor the activities of a gaming machine location to ensure compliance with the terms and conditions of the relevant licence and the Act generally;
- (c) examine all machines and equipment;
- (d) take copies of any document, record or information, however stored, in such form as he or she requires;
- (e) monitor and record the collection of funds;
- (f) investigate complaints from customers and clients of licensees;
- (g) remove and retain anything he or she reasonably believes is being used or has been used to commit an offence under this Act;
- (h) question any person on the premises, whether at the premises or at the offices of the Commission;
- (i) conduct detailed and complex criminal, regulatory, administrative and background investigations;
- (j) collect intelligence information regarding individuals engaged in organised crime and other activities relating to gaming and betting; or
- (k) require assistance from other regulatory bodies, including the Financial Investigation Agency, the Commissioner of Police, the Inland Revenue Department and the Commissioner of Customs, with respect to gaming and betting and other related matters.

(3) The authorised officer seeking to exercise a power under this Act shall produce evidence of his or her identity and authority to the person who appears to the authorised person to have management, responsibility or control of the relevant premises.

(4) An authorised officer shall provide a written report to the Commission on all matters for which he or she has responsibility or on any matters coming to his or her attention in relation to any class of licence.

(5) An authorised officer shall perform such other duties and have such other functions as are specified under this Act or as may be authorised by the Commission so long as such functions are in accordance with the provisions of this Act.

(6) An authorised officer may enter any licensed premises in order to carry out any activity under subsection (2).

(7) An authorised officer may also enter a licensed premises in respect of which an application for a licence has been made, to assess, having regard to the licensing objectives, the likely effects of the activity to be carried on in reliance of the licence.

Issue of warrant.

65. (1) A Magistrate may, on application of an authorised officer, issue a warrant authorising such officer to enter upon a licensed premises if the Magistrate is satisfied that

- (a) there are reasonable grounds for suspecting that an offence has been or is being committed;
- (b) there are reasonable grounds for suspecting that evidence of the commission of an offence may be found on the premises;
- (c) the authorised officer has requested and been refused entry;
- (d) the admission to the premises is likely to be refused unless a warrant is produced;
- (e) that the purpose of entry may be frustrated or seriously prejudiced unless the authorised officer can secure immediate entry; or
- (f) there is no person on the premises capable of granting admission.

Submission of report.

66. Within forty-eight hours of entry onto a licensed premises, the authorised officer shall produce a written report for the information of the

Commission, which report shall provide details of the inspection that was undertaken, including

- (a) a list of the names of all persons present at the time of the inspection;
- (b) details of the time and location of the inspection;
- (c) a list of documents and other records examined or removed;
- (d) details of any incidents occurring during the inspection;
- (e) details of all conversations between the authorised officer and anyone present at the inspection; and
- (f) any other information that the authorised officer considers pertinent to the investigation.

PART VIII

OFFENCES AND PENALTIES

Division 1 - Gaming and Betting Offences

67. (1) A person commits an offence if, without a licence issued under this Act, he or she uses or causes or permits premises to be used to

Use of premises.
Issue of warrant.

- (a) operate a wagering shop, club, a gaming machine location or any betting foundation;
- (b) make a gaming machine available for use;
- (c) provide facilities of any kind for betting or gaming;
- (d) manufacture, fabricate, assemble, programme, modify or repair any betting or gaming machine, or any equipment or device associated with gaming and betting; and
- (e) store, sell, supply or distribute a gaming machine or any equipment or device associated with gaming and betting generally.

(2) A person who commits an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding fifty thousand dollars, or to a term of imprisonment not exceeding two years.

Restrictions on gaming and betting.

- 68. (1)** A person who
- (a) conducts gaming and betting;
 - (b) operates as a bookmaker or promoter;
 - (c) manufactures, fabricates, assembles, programmes, modifies, tests or repairs a gaming machine, or an instrument or device associated generally with gaming and betting;
 - (d) imports, sells, supplies or operates a gaming machine or associated equipment;
 - (e) manufactures, supplies, installs and adapts gaming and betting or gaming software; or
 - (f) provides facilities for gaming and betting of any kind,

commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars, or to a term of imprisonment not exceeding five years, unless such person has been granted the appropriate licence under the terms of this Act.

- (2) A licensee who
- (a) conducts gaming and betting contrary to the terms and conditions of the licence issued for the purpose;
 - (b) fails to place all licences issued to him pertaining to all gaming and betting activities for which licences are issued under this Act in a conspicuous place on the licensed premises;
 - (c) allows his or her licensed premises to be used for unlawful gaming and betting or makes such premises available to a person who has committed an offence under this Act or any other written law pertaining to gaming and betting;
 - (d) operates unlicensed gaming machines; or
 - (e) operates licensed gaming machines contrary to the terms and conditions of his or her licence,

commits an offence and is liable on summary conviction to a fine not exceeding thirty thousand dollars, or to a term of imprisonment not exceeding six months.

69. (1) A person commits an offence if in the course of a business, he or she manufactures, supplies, installs or adapts gaming and betting software without a licence issued under this Act. Gaming software.

(2) For the purposes of this section, “gaming software” means computer software for use in connection with gaming but does not include anything for use solely in connection with a gaming machine.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars, or to a term of imprisonment not exceeding six months.

70. (1) A person, whether a licensee or associate of an employee or patron in a gaming machine location, shall not cheat at any gaming and betting activity. Cheating.

(2) For the purposes of this Act, “cheating” means to alter the selection criteria which determine

- (a) the result of a game or race; or
- (b) the amount or frequency of payment in a game or race.

(3) A person shall not

- (a) alter or misrepresent the outcome of a game or other event on which wagers have been made after the outcome is made sure, but before it is revealed to the players;
- (b) place, increase, or decrease a bet or determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or any event that affects the outcome of the game or which is subject of the bet or to aid anyone in acquiring such knowledge for the purpose of placing, increasing, or decreasing a bet or determining the course of play contingent upon that event or outcome;
- (c) claim, collect, or take, or attempt to claim, collect, or take, money or anything of value in, or from any gaming and betting activity with the intent to defraud and without having made a wager contingent thereon, or to claim, collect or take, an amount greater than the amount that was won;
- (d) knowingly entice or induce another person to go to any place where gaming is being conducted or operated

contrary to the provisions of this Act, with the intent that the other person plays or participate in that gaming activity;

- (e) place or increase a bet after acquiring knowledge of the outcome of the game or other event, which is subject of the bet, including past-posting and pressing bets;
 - (f) reduce the amount wagered or cancel a bet after acquiring knowledge of the outcome of the game or other event, which is the subject of the bet, including pinching bets;
 - (g) manipulate, with the intent to cheat, any component of a gaming machine with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game;
 - (h) by any trick or sleight of hand performance, or by fraud or fraudulent scheme, cards, equipment or device, for himself or herself or another, win or attempt to win money or property or a representative of either, or reduce a losing wager or attempt to reduce a losing wager in conjunction with gaming;
 - (i) conduct any gaming and betting operation without a valid licence;
 - (j) conduct any gaming and betting on an unlicensed premises;
 - (k) permit any gaming and betting game or equipment to be conducted, operated, dealt, or carried on in any gaming and betting premises by a person other than a person licensed for such premises pursuant to this Act;
 - (l) place any gaming machine into play or display without the approval of the Commission;
 - (m) employ or continue to employ any person in a gaming and betting operation who is not duly licensed or registered in a position whose duties would require a license, registration or other approval by the Commission pursuant to this Act;
- or

(n) without first obtaining the requisite licence, registration or approval pursuant to the provisions of this Act, employ, work, or otherwise act in a position whose duties would require licensing, registration, or other approval pursuant to the provisions of this Act.

(4) A person, at a licensed gaming machine location, shall not use, or possess with the intent to use, any equipment or device to assist in

(a) projecting the outcome of the game; or

(b) analysing the strategy to be used in a game,

except as permitted by the Commission.

(5) A person shall not possess any equipment or material which he or she knows has been manufactured, distributed, sold, tampered with, or serviced contrary to the provisions of this Act.

(6) A person, not being a duly authorised employee of a licensee acting in furtherance of his or her employment within a gaming machine location shall not have on his or her person or in his or her possession any equipment intended to be used contrary to the provisions of this Act.

(7) A person, not being a duly authorised employee of a licensee acting in furtherance of his or her employment within the establishment, shall not have on his or her person or in his or her possession while on the premises of any licensed gaming machine location any key or device known to have been designed for the purpose of, and suitable for, opening, entering, or affecting the operation of any gaming and betting activity, drop box, or electronic or mechanical device connected thereto, or for removing money or other contents therefrom.

(8) Possession of more than one of the devices, equipment, products, or materials described in subsections (6) and (7) may give rise to a rebuttable presumption that the possessor intended to use them for cheating so long as other circumstances exist in support of that presumption.

(9) A person shall not use or possess while in a gaming and betting premises, any equipment for the purposes of cheating, including but not limited to, tools, drills, wires, coins or tokens attached to strings or wires, or electronic or magnetic devices, to facilitate the alignment of any winning combination or to facilitate removing from any gaming machine any money or contents thereof, unless the person is a duly authorised gaming employee, acting in furtherance of his or her employment.

(10) A person, playing any licensed gaming and betting game in a licensed gaming machine location shall not

- (a) knowingly conduct, carry on, operate, or deal or allow to be conducted, carried on, operated, or dealt any cheating or thieving game or equipment; or
- (b) knowingly deal, conduct, carry on, operate, or expose for play any game or games, or any mechanical device, or any combination of games or devices, which have in any manner been marked or tampered with or placed in a condition or operated in a manner the result of which tends to deceive the public or tends to alter the normal random selection of characteristics or the normal chance of the game which could determine or alter the result of the game.

(11) A person shall not manufacture, sell, or distribute any cards, chips, dice, game, or other device which is intended to violate any provision of this Act.

(12) A person shall not mark, alter, or otherwise modify any associated equipment in a manner that

- (a) affects the result of a wager by determining win or loss; or
- (b) alters the normal criteria of random selection, which affects the operation of a game or which determines the outcome of a game.

(13) A person shall not instruct another person in cheating or in the use of any equipment for that purpose, with the knowledge or intent that the information or use so conveyed may be employed contrary to the provisions of this Act.

(14) A person who contravenes any provision of this section commits an offence and shall be liable on summary conviction to a fine not exceeding ten thousand dollars, or a term of imprisonment not exceeding two years.

Facilities for gaming and betting.

71. (1) A person commits an offence if he or she provides facilities for gaming and betting unless

- (a) he or she holds an operating license authorising the activity and the activity is carried on in accordance with the terms and conditions of the licence; and
- (b) in relation to the use of premises by a person, the use is authorised by a premises licence held by him.

(2) A person provides facilities for gaming and betting if he

- (a) invites others to conduct gaming and betting in accordance with arrangements made by him;
 - (b) provides, operates or administers arrangements for gaming and betting by others; or
 - (c) participates or assists in the operation or administration of gaming and betting by others.
- (3) A person does not provide facilities for gaming and betting by virtue of
- (a) providing an article, other than a gaming machine, to someone who intends to, or uses or may use it, for gaming and betting; or
 - (b) unless he or she knows or ought to have known that the articles or facilities may have been used for gaming and betting.
- (4) The Commission may add criteria for determining what constitutes or does not constitute the provision of facilities for gaming and betting and shall publish such additional criteria and make it available to all licensees and applicants.
- (5) A person who contravenes any provision of this section commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars, or to a term of imprisonment not exceeding two years.

72. (1) Subject to subsection (2), a person who

- (a) uses any premises or causes or knowingly permits any premises to be used as a place where persons may conduct betting transactions;
- (b) provides facilities at any premises for persons resorting thereto to effect betting transactions;
- (c) controls, occupies or uses or causes or knowingly permits another person to control, occupy or use, any premises for the purpose of
 - (i) effecting betting transactions of any kind with persons resorting to those premises; or
 - (ii) facilitating the making of betting transactions between persons resorting to those premises,

Restrictions on use of premises for betting transactions.

without first obtaining the appropriate licence from the Commission, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars, or a term of imprisonment not exceeding two years.

(2) Any person who, for any purpose connected with the effecting of a betting transaction, resorts to any premises which are being used in contravention of subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars, or a term of imprisonment not exceeding two years.

(3) For the purposes of subsection (2), proof that any person was on any premises while they were being used as mentioned in that subsection shall be evidence that he or she resorted to the premises for such a purpose as is so mentioned unless he or she proves that he or she was on the premises for bona fide purposes which were not connected with the effecting of a betting transaction.

Prohibition of betting in streets and public places.

73. (1) Any person frequenting or loitering in a street or public place, on behalf either of himself or herself or of any other person, for the purposes of bookmaking, betting, agreeing to bet or paying, receiving or settling bets commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars, or to a term of imprisonment not exceeding six months, or to both such fine and term of imprisonment.

(2) An authorised officer may take into custody without warrant, a person found committing an offence under this section, and may seize and detain any article found in his or her possession which the authorised officer has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of such offence.

(3) In this section, the doorways and entrances of premises abutting upon, and any ground adjoining and open to a street, shall be treated as forming part of the street.

Division 2 - Minors

Invitation to gaming or betting.

74. (1) For the purposes of this Act, a minor is a person who is under twenty one years of age.

(2) A person commits an offence if he or she knowingly invites, causes or permits, whether directly or indirectly, a minor to game or bet.

(3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars, or to a term of imprisonment not exceeding two years, or to both such fine and term of imprisonment.

75. A person who knowingly invites, permits or causes a minor to enter licensed premises, other than a racetrack, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars, or to a term of imprisonment of two years, or to both such fine and term of imprisonment.

Invitation to gaming and betting premises.

76. (1) A person commits an offence if he or she knowingly employs a minor to perform any function relating to gaming and betting.

(2) A person commits an offence if he or she knowingly employs a minor to perform any function on premises in respect of which any of the following have effect:

- (a) a betting shop licence;
- (b) a bookmaker's licence; or
- (c) an off-track betting shop,

but no offence is committed if employment of the minor takes place at a time when no activity is being carried on in reliance of the premises licence.

(3) Where a person is charged for an offence under this Part, it shall be a defence for the person to prove that he

- (a) took all reasonable steps to determine the individual's age; and
- (b) reasonably believed that the individual was not a minor.

(4) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars, or to a term of imprisonment not exceeding two years, or to both such fine and term of imprisonment.

Division 3 - General Offences

77. (1) A person commits an offence if he or she obstructs or fails to cooperate with an authorised person in the exercise of his or her power under this Act, and is liable on summary conviction to a fine not exceeding five thousand dollars, or to a term of imprisonment of six months.

Obstruction.

(2) A person who, not being the holder of an owner's or operator's licence or an authorised officer under this Act, brings a firearm onto licensed premises, whether or not that firearm is licensed under the Firearms Act, commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars and to a term of imprisonment of two years.

78. A person who contravenes or fails to comply with any provision of this Act or Regulations made pursuant thereto, for which no other penalty is

Penalties.

expressly provided, commits an offence and is liable on summary conviction to a fine of five thousand dollars and to a term of imprisonment of one year and in the case of a continuing offence, to a fine of five hundred dollars for each day that the offence continues.

PART IX

NOTIFICATIONS AND ADMINISTRATIVE PENALTIES

Notification of
contravention of
the Act.

79. (1) Where the Commission determines that there are reasonable grounds for believing that a person has contravened or is contravening any provision of this Act, or any conditions of any licence or any other authorisation granted pursuant to this Act, or fails to comply with any direction or decision given by the Commission, whether under this Act or any other law which the Commission is entitled to enforce, the Commission may issue a notification to that person under this section.

(2) A notification under this section is one which

- (a) sets out the determination made by the Commission;
- (b) specifies the provision of condition and contravention in respect of which that determination has been made; and
- (c) specifies the period during which the person notified has the opportunity to respond to the notification in the manner specified in subsection (3).

(3) The Commission may require the person to whom it has sent a notification to respond in one or more of the following ways

- (a) making representations about the matter notified;
- (b) complying with the notified provisions or conditions of licence in respect of which he or she is in contravention; or
- (c) remedying the consequences of the notified contravention.

(4) Subject to subsections (5), (6) and (7), the period to respond as specified in subsection (2) shall be twenty working days beginning with the day after the date on which the notification was received by the person to whom the notification was sent.

(5) The Commission may, if it considers it necessary, allow a longer period to respond either

- (a) by specifying a longer period in the notification; or

(b) by subsequently, on one or more occasion, extending the specified period.

(6) The person notified shall have a shorter period in which to respond if a shorter period is agreed between the Commission and the person.

(7) The person shall also have a shorter period to respond if the Commission has reasonable grounds to believe that the contravention is a repeated contravention and in the circumstances therefore, a short period is appropriate, provided however that the Commission notifies the person of the shorter period to be applied.

(8) A notification under this section may be given in respect of more than one contravention or in respect of a continuing contravention.

(9) For the purposes of this section, a contravention is a repeated contravention, if

(a) a previous notification under this section has been given in respect of the same contravention or in respect of another contravention of the same provision or condition; or

(b) the subsequent notification is given no more than twelve months after the day of the making by the Commission of a determination, for the purposes of this section, that the contravention to which the previous notification related, did occur.

80. (1) This section applies where

Enforcement
against person
duly notified.

(a) a person (in this Part, “the notified person”) has been given a notification under section 79;

(b) the Commission has allowed the notified person an opportunity of making representations about the matters notified; or

(c) the period allowed for the making of the representations has expired.

(2) The Commission may give the notified person an enforcement notification if it is satisfied that

(a) the notified person has, in one or more respects, been in contravention of a provision or condition or failed to comply with any direction or decision given by the Commission as specified in the notification under section 81; or

- (b) the notified person has not, during the period allowed under that section, taken all such steps as the Commission considers appropriate to
 - (i) comply with the provision or condition;
 - (ii) comply with the direction or decision; or
 - (iii) remedy the consequences of the notified contravention of that provision or condition.

(3) An enforcement notification is a notification which imposes one or both of the following requirements on the notified person, a requirement to take such steps for:

- (a) complying with the notified condition or direction as may be specified in the notification; or
- (b) remedying the consequences of the notified contravention as may be so specified.

(4) A decision of the Commission to give an enforcement notification to a person shall

- (a) be conveyed to that person, together with the reasons for the decision, no later than one week after the day on which the decision was taken; and
- (b) fix a reasonable period for the taking of the steps required by the notification.

(5) It shall be the duty of a person to whom an enforcement notification has been given to comply with it and that duty shall be enforceable in civil proceedings by the Commission for

- (a) an injunction;
- (b) specific performance; or
- (c) any other appropriate remedy or relief.

Imposition of penalties on person duly notified.

- 81. (1)** This section applies in addition to the provisions of section 79 where
- (a) a person (“the notified person”) has been given a notification under section 79;

- (b) the Commission has allowed the notified person an opportunity of making representations about the matters notified; and
- (c) the period allowed for the making of the representations has expired.

(2) The Commission may impose an administrative penalty on the notified person if it is satisfied that

- (a) the notified person has, in one or more of the respects notified, been in contravention of a provision or condition or failed to comply with any direction or decision given by the Commission as specified in the notification under section 79;
- (b) that the notified person has been given a notification under section 79; or
- (c) the notified person has not, during the period allowed under section 79, taken the steps the Commission considers appropriate for
 - (i) complying with the provision or condition which is the subject of the notification; or
 - (ii) remedying the consequences of the contravention of that provision or condition which is the subject of the notification.

(3) Where a notification under section 82 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention.

(4) Where such a notification relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.

(5) The Commission may also impose an administrative penalty on the notified person if he or she has contravened or is contravening a requirement of an enforcement notification given under section 79 in respect of the notified contravention.

(6) Where the Commission imposes a penalty on a person under this section, it shall

- (a) within one week of making its decision to impose the penalty, notify the person of that decision, the penalty in respect thereto, and of its reasons therefore; and

(b) in that notification, fix a reasonable period after the giving of the notification as the period within which the penalty is to be paid.

(7) A penalty imposed under this section

(a) shall be paid to the Accountant General; and

(b) if not paid within the period fixed by the Commission, shall be recoverable as a civil debt.

(8) Notwithstanding anything to the contrary, in all cases where the Commission imposes an administrative penalty in respect of anything done or omitted to be done by any person and such act or omission also constitutes a criminal offence, no proceedings may be taken or continued against that person in respect of such criminal offence.

Level of penalty.

82. (1) The amount of a penalty imposed under section 81 shall not exceed the maximum penalty that may be imposed by the High Court for the same or similar offence as the Commission determines to be

(a) appropriate; and

(b) proportionate to the contravention in respect of which it is imposed.

(2) In making that determination, the Commission shall have regard to

(a) any representations made to it by the notified person;

(b) any steps taken by the notified person towards complying with the provision and conditions, the contravention of which was notified under section 79;

(c) its estimate of the cost of the contravention;

(d) its estimate of the economic benefit of the contravention to the notified person;

(e) the period during which the contravention was in effect, if continuing; and

(f) the number and seriousness of other contraventions if any, committed by the notified person.

83. Where a contravention of any provision of this Act or a condition of a licence or any other law which the Commission is entitled to enforce is committed by a corporate body and is proved to have been committed with the consent or involvement of, or to be attributable to any gross negligence on the part of a person being a director, manager, secretary or other officer however so described, of the body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be liable to be proceeded against and punished as if he or she were responsible for the said infringement.

Administrative infringements by corporate body.

PART X

APPEALS TRIBUNAL

84. (1) For the purposes of this Act there is hereby established an Appeals Tribunal.

Establishment of Appeals Tribunal.

(2) The provisions of Schedule 4 shall have effect as to the constitution and operation of the Appeals Tribunal and otherwise in relation thereto.

(3) Nothing in this section shall prevent a person from seeking an appeal before the High Court.

PART XI

MISCELLANEOUS PROVISIONS

85. (1) The Commission may make Regulations prescribing anything necessary or convenient for carrying out or giving effect to this Act.

Regulations.

(2) Without limiting the generality of subsection (1) regulations made under subsection (1) may make provisions for or with respect to

- (a) prescribing fees;
- (b) prescribing forms;
- (c) the specific conditions and requirements of licences under section 30;
- (d) gaming machines;
- (e) betting;
- (f) lotteries;

- (g) horse racing matters; and
- (h) generally, any other matter or thing that is authorised or required to be prescribed or necessary to be prescribed to carry out this Act.

Confidentiality.

86. (1) No Board member, officer or employee of the Commission, or person acting under the direction of the Commission, shall disclose any information regarding the business or affairs of a licensee or any of its affiliates, obtained in the course of carrying out the official duties and functions of the Commission.

(2) Disclosures made by the Commission, its officers, employees or any other person under the direction of the Commission, pursuant to the provisions of this Act or any Regulations made hereunder or which the Commission considers necessary in the discharge of its functions, shall not be deemed inconsistent with any duty imposed under this section.

(3) Nothing in this section authorises the Commission or any person acting under the direction of the Commission to disclose information about a particular licensee, except where such disclosure is required by any written law or ordered by the Court.

Amendment of Schedules.

87. The Minister may by order amend the Schedules to this Act, subject to affirmation resolution and the House of Assembly.

PART XII

CONSEQUENTIAL AMENDMENT

Consequential amendment.
Schedule 6

88. The written law specified in Schedule 6 is amended to the extent specified in that Schedule.

SCHEDULE 1

[Section 17(2)]

STAFF OF THE COMMISSION

1. (1) Subject to subparagraph (2) and to the approval of the Commission, the appropriate Service Commission and the consent of the officer, any officer in the Public Service or a Statutory Body may be seconded to the service of the Commission, on terms and conditions agreed between the officer and the Commission. Secondment to Commission.

(2) Where a secondment referred to in subparagraph (1) is effected, arrangements shall be made to preserve the rights of the officer so transferred to any pension, gratuity or other allowance for which he or she would have been eligible had he or she not been seconded to the service of the Commission.

(3) A period of secondment shall be in the first instance not to exceed three years, in case, of further extension, to a period to be agreed between the officer and the Commission.

2. Subject to the approval of the Commission, the appropriate Service Commission and with the consent of the officer, an officer in the Public Service or a Statutory Body may be transferred to the service of the Commission on terms and conditions no less favourable than those enjoyed by the officer in the Public Service or Statutory Body, as the case may be. Transfer to the Commission.

3. (1) The Commission shall establish a pension fund plan or where the establishment of a plan is not feasible, join an existing plan. Pension fund.

(2) All employees of the Commission shall be eligible to become members of the pension fund plan.

(3) Superannuation benefits which had accrued to a person who transferred in accordance with paragraph 2 shall be preserved as at the date of his or her employment by the Commission and such benefits shall continue to accrue under the relevant pension law up to the date of establishing or joining a pension fund plan on the basis of pay, pensionable emoluments or salary, as the case may be, applicable at the time of his or her transfer, to the office held by him immediately prior to his or her employment at the Commission.

(4) Where a person who is transferred in accordance with paragraph 2

(a) dies;

(b) retires; or

(c) his or her post in the Commission is abolished; or

(d) he or she or she is retrenched by the Commission,

prior to establishing or joining the pension fund plan and, if at the date that his or her service is terminated by any of the above-mentioned methods he or she was in receipt of a salary higher than the pay, pensionable emoluments or salary referred to in subparagraph (3), the superannuation benefits payable to his or her estate or to him, as the case may be, shall be based on the higher salary.

(5) The difference between the superannuation benefits payable on the basis of the higher salary referred to in subparagraph (4) and the superannuation benefits payable under the relevant pension law, on the basis of the pay, pensionable emoluments or salary referred to in subparagraph (3), shall be paid by the Commission.

(6) Where a person, who is transferred in accordance with paragraph 2

(a) dies;

(b) retires;

(c) his or her post in the Commission is abolished; or

(d) he or she or she is retrenched from the Commission,

while being a member of the pension fund established by the Commission, he or she shall be paid superannuation benefits by the pension fund at the amount which, when combined with the superannuation benefits payable under the relevant pension law, is equivalent to the benefits based on his or her pensionable service in the Public Service or a Statutory Authority combined with his or her service in the Commission and calculated at the final salary applicable to him on the date that his or her service was terminated by any of the methods identified herein.

(7) For the purposes of subparagraph (6) “final salary” shall have the meaning assigned to it in the pension fund plan.

(8) Where a person who is transferred in accordance with paragraph 2 dies, retires, his or her post in the Commission is abolished or he or she is retrenched from the Commission while being a member of a pension fund plan that the Commission joined, superannuation benefits payable under that plan shall be no less favourable than those payable in accordance with subparagraph (6).

Declaration of
interest.

4. Section 11 of this Act applies mutatis mutandis to the staff of the Commission.

SCHEDULE 2

[Section 10(9)]

HORSE RACING UNIT

1. The Commission may employ such persons as it considers necessary for the due and efficient performance of the Horse Racing Unit and on such terms and conditions as are agreed upon between the Commission and those persons, subject to such remuneration as the Board may determine, provided that one of the members has the requisite knowledge in horse racing or horse racing activities.

2. The purpose of the Unit is to regulate and supervise all aspects of horse racing and horse racing activities in the Virgin Islands.

3. The Unit through the Commission shall have the power, authority and responsibility to promulgate and publish rules and regulations to carry out its duties as prescribed in this Act.

4. Any action or decision made or taken by the Unit shall be reviewable by the Commission and may be amended and reversed by the Commission, if any person or entity aggrieved or affected by such action or decision appeals or requests such review within thirty days of any action or decision made by the Unit.

5. A member of the Unit who has a pecuniary interest direct or indirect in any specific horse or horse racing activity shall not participate in any decision or determination relative to any matter in which that member has an interest and if any member so does such may be removed forthwith from the Unit by the Commission.

SCHEDULE 3

[Section 40(1)]

FIT AND PROPER CRITERIA

1. A person shall be considered fit and proper if that person is of good character, competent, honest, financially sound, reputable, reliable and discharges and is likely to discharge his or her responsibilities fairly.

2. A person who is, or is to be, an owner, director, shareholder, associate, trustee, committee member, manager or key employee of the licensee must be adjudged to be a fit and proper person to hold the particular position which he or she holds or is to hold.

3. (1) In determining whether a person is fit and proper the Board shall have regard to any matter that it considers relevant, including that person's

- (a) integrity, fairness, honesty and reputation;
- (b) competence, diligence and capability, and soundness of judgment; and
- (c) financial soundness.

(2) Where the person, being assessed as to fitness and propriety, is a corporate entity, holds a minimum per cent share stake holding in the licensed operation, regard shall be had to credit

- (a) its financial soundness and strength;
- (b) the nature and scope of its business;
- (c) the fitness and propriety of key personnel such as owners, directors, managers, controlling shareholders;
- (d) the group structure (if applicable) and organisational chart; and
- (e) any other matter that the Board considers appropriate.

(3) For the purpose of this section, "*controlling shareholder*" means any person, whether an individual or corporate entity that

- (a) is entitled to control at least one-third of the voting power at any general meeting of the company; and

- (b) controls twenty-five per cent or more of the voting power at any general meeting.

4. The owner or Board of Directors of every licensed gaming machine location shall establish a fit and proper person policy, taking into account the fit and proper criteria set out in this Schedule and such policy shall be made available to the Commission as and when required. In addition, such owner or Board of Directors shall document the process used to assess a person's fitness and propriety.

5. (1) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and in particular, to any evidence that the person has

- (a) committed an offence involving fraud or financial crime or other dishonesty or violence;
- (b) contravened any provision made by, or under any law designed for protecting members of the public against financial loss due to dishonesty, incompetence, malpractice or the management of companies or businesses or against financial loss due to the conduct of discharged or undercharged bankrupts;
- (c) been the subject of any adverse findings or any settlement in civil proceedings, particularly in connection with banking or other financial business, misconduct or fraud;
- (d) engaged in any business practices appearing to the Board to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflects discredit on his or her method of conducting business;
- (e) been the owner, beneficiary of, manager or director of a company, partnership or other organisation that has previously been refused a licence under this Act or has had a licence revoked or suspended;
- (f) an employment record which leads the Board to believe that the person carried out an act of impropriety in the handling of his or her employer's business;
- (g) been dismissed, asked to resign or resigned from employment or from a position of trust, fiduciary appointment or similar position because of questions about honesty and integrity;

- (h) whether the person has ever been disqualified from acting as a director or serving in a managerial capacity because of wrongdoing; and
- (i) engaged in, or has been associated with any other business practices or otherwise conducted himself or herself in such a way as to cast doubt on his or her competence and soundness of judgment and honesty.

(2) In assessing competence in furtherance of subparagraph (1)(i), all relevant factors shall be considered, including but not limited to

- (a) qualifications and experience, the capacity to successfully undertake the responsibilities of the position;
- (b) whether the person has ever been disciplined by a professional, trade or regulatory body, dismissed or requested to resign from any position or office for negligence, incompetence, fraud or mismanagement; and
- (c) whether the person has a sound knowledge of the business and the responsibilities of the position.

6. An applicant shall not be considered to be conducting business in a financially sound manner unless the applicant can demonstrate that he or she will be able to

- (a) maintain such net assets together with other financial resources which the Board considers
 - (i) commensurate with the type, nature and class of business operated under the licence; and
 - (ii) sufficient to cover the risks inherent in the operations of the gaming machine location;
- (b) maintain adequate liquidity having regard to the relationship between the applicant's liquid assets and its actual and contingent liabilities and to the times at which those liabilities will fall due and when the assets will mature;
- (c) make adequate provision for depreciation or diminution of its assets and makes provision for bad or doubtful debts; and
- (d) maintain adequate and proper accounting systems and other systems of control.

7. (1) Fit and proper tests will be applied by the Commission when a person applies for a licence or on the occurrence of specified events, including but not limited to new appointment.

(2) The application of fitness, propriety or other qualification tests to managers, directors, trustees and controlling shareholders may vary depending on the degree of their influence and on their responsibilities in the affairs of the gaming machine location or betting office.

(3) The Commission may have regard to current, past and prospective matters when conducting fit and proper assessments of persons or entities. Each case will be considered on its own merit, taking into account all relevant factors including, but not limited to, the fit and proper criteria set out in this Guideline. Accordingly, certain matters which do not fall precisely within these specified factors may also be taken into account, for example, abuse of alcohol, drugs or other narcotic substances. In these circumstances, the Commission will consider whether such conduct is relevant to an assessment as to fitness and propriety.

(4) An assessment fitness and propriety test shall be done in a holistic manner after due consideration of all relevant issues. For instance, the Commission may determine whether a person who fails to qualify on the basis of several instances of misconduct which, if taken individually, may lead to a different conclusion. However, certain offences (e.g., if a person is convicted of a crime under banking or insurance legislation or other financial impropriety) may lead to automatic disqualification.

(5) In cases where those being assessed are known to have connections in other jurisdictions, the Commission shall communicate with the regulatory bodies in those jurisdictions as part of the assessment procedure to the extent permitted by those jurisdictions.

SCHEDULE 4

[Section 84]

APPEALS TRIBUNAL

Appeals
Tribunal.

1. (1) A person who is aggrieved by any decision of the Commission including decisions under sections 44(9), 45(5) and 49, may appeal to the Tribunal by way of a notice of appeal made within thirty days of the date of the decision or within such longer period as the Tribunal may, in any special circumstance, allow.

(2) The notice of appeal shall set out clearly the grounds of the appeal and shall be accompanied by copies of any correspondence, documents or statements relevant to the appeal, a copy of which shall be served on the Commission.

(3) The Tribunal shall, within seven (7) days of the receipt of a notice of appeal under subsection (1), request the Commission to furnish it with a statement in writing setting out the reasons for its decision.

(4) The Tribunal may order that any book, paper, document or statement, relating to the appeal, which is in the possession of the Commission, or the person aggrieved, be produced at the hearing of the appeal.

(5) The Tribunal shall cause all parties to the appeal to be informed

- (a) of the date of the hearing of the appeal;
- (b) that they may appear themselves or be represented by their legal practitioner; and
- (c) that they may summon witnesses in their case.

(6) On hearing an appeal under this section, the Tribunal may

- (a) dismiss the appeal and confirm the decision(s) of the Commission;
- (b) allow the appeal and set aside the decision(s) of the Commission;
- (c) vary the decision(s) of the Commission; or
- (d) direct that the matter be referred to the High Court.

<p>2. (1) The Appeals Tribunal shall consist of not less than three nor more than five members appointed by the Cabinet, being persons appearing to the Minister to be knowledgeable and experienced in matters relating to gaming and betting, horse racing and lottery.</p>	<p>Constitution and procedure of appeals tribunal appointment of members.</p>
<p>(2) For the hearing of an appeal under this Act, the Appeals Tribunal may consist of one member sitting alone if the parties to the appeal agree.</p>	
<p>3. If the chairman or other member of the Appeals Tribunal is absent temporarily or unable to act, the Cabinet may appoint another person to act temporarily as chairman or such other member.</p>	<p>Temporary Appointment.</p>
<p>4. (1) Subject to the provisions of this Schedule, a member of the Appeals Tribunal shall hold office for such period, not exceeding three years, as may be specified in the instrument of appointment.</p>	<p>Appointment period.</p>
<p>(2) Every member of the Appeals Tribunal shall be eligible for reappointment, but no such member shall be appointed for more than six consecutive years.</p>	
<p>(3) If any vacancy occurs in the membership of the Appeals Tribunal, the vacancy shall be filled by the making of another such appointment; however, the member so appointed shall, subject to the provisions of this Schedule, hold office for the remainder of the period for which the previous member was appointed.</p>	
<p>(4) Cabinet may, at any time, revoke the appointment of the chairman or any other member if that member is unable to discharge the functions of the office or for misbehavior.</p>	
<p>5. (1) Any member of the Appeals Tribunal other than the chairman may, at any time, resign his office by instrument in writing addressed to the Minister and from the date of the receipt by the Minister of such instrument such member shall cease to be a member of the Appeals Tribunal.</p>	<p>Resignation.</p>
<p>(2) The chairman may, at any time, resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt of such instrument by the Minister.</p>	
<p>6. The names of the members of the Appeals Tribunal as first constituted and every change in membership thereof shall be published in the <i>Gazette</i>.</p>	<p>Publication of membership.</p>
<p>7. All documents made by, and all decisions of the Appeals Tribunal may be signified under the hand of the chairman or any member of the Appeals Tribunal authorised to act in that behalf.</p>	<p>Authentication of documents.</p>
<p>8. (1) The Appeals Tribunal shall meet at such times as may be necessary or expedient for the transaction of business and such meetings shall be held at</p>	<p>Procedure.</p>

such places and times and on such days as the Appeals Tribunal may determine.

(2) The chairman or any other person appointed to act temporarily as chairman shall preside at meetings of the Appeals Tribunal.

(3) Subject to sub-paragraph 1, the decisions of the Appeals Tribunal shall be by a majority of votes of the members and, in addition to an original vote, the chairman shall, having a casting vote in any case in which the voting is equal.

(4) The Appeals Tribunal, with the approval of the Cabinet, may make rules to regulate its own proceedings.

(5) Proper records of all proceedings of the Appeals Tribunal shall be kept.

Remuneration of members.

9. There shall be paid to the chairman and other members of the Appeals Tribunal such remuneration (whether by way of honorarium, salary or fees) and such allowances as the Minister may determine.

Protection of members.

10. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Appeals Tribunal in respect of an act done bonafide in pursuance or execution or intended execution of the provisions of this Act.

Disclosure of interest.

11. Any member of the Appeals Tribunal who has any interest, directly or indirectly, in any matter brought before the Appeals Tribunal shall

- (a) as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Appeals Tribunal; and
- (b) not be present during the deliberations of the Appeals Tribunal on the matter or take part in the decision of the Appeals Tribunal with respect thereto.

SCHEDULE 5

[Section 88]

CONSEQUENTIAL AMENDMENT

1. The Criminal Code of the Virgin Islands is amended by repealing section 335. 2013 Revised Edition

Passed by the House of Assembly this 18th day of June, 2020.

(Sgd.) Julian Willock,
Speaker.

(Sgd.) Phyllis Evans,
Clerk of the House of Assembly.