

## ST HELENA



## A BILL

## FOR

## AN ORDINANCE

to amend the Financial Services Ordinance 2008, to revise the duties and powers of the Regulatory Authority and the obligations of a person approved as fit and proper for appointment to perform a specified function within a relevant business; to introduce principles for businesses; and for connected and incidental purposes.

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Enacted by the Governor of St Helena with the advice and consent of the Legislative Council of St Helena.

### **Short title and commencement**

1. This Ordinance may be cited as the Financial Services (Amendment) Ordinance 2026.
2. This Ordinance comes into force on [DATE].

### **Amendment of section 2 (interpretation)**

3. In section 2, for the definition of “clients’ money” substitute—

““client money” means—

- (a) money a relevant business receives from or holds for or on behalf of a client or potential client in the course of or in connection with its regulated activities;
- (b) money an estate agent receives from or holds for or on behalf of a client or potential client in the course of or in connection with the purchase of land; or
- (c) money a legal practitioner or accountant receives from or holds for or on behalf of a client or potential client in the course of or in connection with the services provided to the client, or to be provided to the potential client, by the legal practitioner or accountant;”.

### **Amendment of section 4 (powers and duties of the Regulatory Authority)**

4. In section 4, after subsection (6) insert—

**“(6A)** A provision of a Directive that applies to a relevant business in respect of a specified regulated activity may, by direction, be modified or waived by the Regulatory Authority.

**(6B)** Further to subsection (6A), on the application or with the consent of a relevant business, the Regulatory Authority may direct that a provision of a Directive—

- (a) does not apply to the relevant business; or
- (b) applies to the relevant business with such modifications as may be specified in the direction.

**(6C)** The Regulatory Authority may not give a direction unless the Regulatory Authority is satisfied that—

- (a) compliance by the relevant business with the provision of the Directive, or with the provision as unmodified, would be unduly burdensome or would not achieve the purpose for which the provision was made; and
- (b) the direction would not adversely affect the advancement of any of the Regulatory Authority's regulatory objectives.

**(6D)** A direction may be subject to conditions.

**(6E)** The Regulatory Authority may—

- (a) revoke a direction; or
- (b) vary a direction on the application or with the consent of the relevant business to which the direction relates.”.

### **Insertion of section 5A (principles for businesses)**

5. After section 5 insert—

#### **“Principles for businesses**

**5A.** A relevant business must comply with the principles for businesses specified in Schedule 2.”.

### **Amendment of section 8 (application for a licence)**

6. (1) For section 8(1) substitute—

**“(1)** Any person desirous of commencing a relevant business in or from St Helena must, before commencing any such business, apply in writing to the Regulatory Authority for a licence under this Ordinance for each regulated activity which the business intends to carry out.”

**(2)** For section 8(4) substitute—

“(4) Every application for a licence must be accompanied by a business plan which specifies the regulated activity to be carried out by the relevant business and the range of services to be provided by that business. If a licence is granted, this range of services cannot be materially varied without the written consent of the Regulatory Authority.”.

(3) For section 8(6) substitute—

“(6) Each regulated activity requires a separate application for a licence and each application must be accompanied by any fee prescribed by the Regulatory Authority; different fees may be prescribed for different types of business.”.

(4) In section 8(8) after “annual report of” insert “all regulated”.

#### **Amendment of section 9 (issuing of a licence)**

7. (1) In section 9(1) after paragraph (d) insert—

“(da) all persons who are proposed to perform specified functions are fit and proper to carry out the specified function;”.

(2) For section 9(10) substitute—

“(10) The Regulatory Authority may, on application by a relevant business registered outside St Helena, grant that business a licence to carry on business in respect of one or more regulated activities in St Helena and may (by way of a Directive) dispose of any of the requirements under this Ordinance and the regulations in respect of that business if—

- (a) that business holds an appropriate licence to carry out the equivalent activity or activities in the territory where it is so registered, and
- (b) the Regulatory Authority is satisfied that the licensing requirements in that territory are sufficient to ensure stringent control and oversight of that business by the corresponding authority in that territory.”.

#### **Amendment of section 18 (liquidity)**

8. For section 18 substitute—

“18. (1) A bank must maintain adequate liquidity taking account of the nature and scale of the business, so that it is able to meet its obligations as they fall due.

(2) The Regulatory Authority must from time to time issue Directives—

- (a) specifying what constitutes liquid assets, and the minimum holding of such assets that must be held by banks;
- (b) establishing liquidity risk management standards for banks;
- (c) specifying the liquidity monitoring tools to be used by banks; and
- (d) establishing regulatory reporting requirements in relation to liquidity matters.”

#### **Substitution of section 19 (clients’ money)**

9. For section 19 substitute—

**“Client Money**

**19.** Client money placed in a designated account with a bank in accordance with the provisions of a Regulation or Directive or by an estate agent, legal practitioner or accountant must be regarded as held in trust for the client or potential client and not as forming part of the assets of the relevant business or estate agent, legal practitioner or accountant.”.

**Amendment of section 20 (information to be submitted to the Regulatory Authority)**

10. In section 20(1)—

- (a) in paragraph (a), after “notification” insert “in writing”;
- (b) for the full stop at the end of paragraph (c) substitute a semi-colon;
- (c) after paragraph (c) insert—
  - “(d) notification in writing immediately upon the relevant business becoming aware that the relevant business is in breach of this Ordinance, the Regulations made thereunder or a Directive; or
  - (e) notification in writing immediately upon the relevant business becoming aware that a material operational risk event has occurred.”.

**Substitution of section 21 - directors and managers**

11. For section 21 substitute—

**“Persons carrying out specified functions**

**21. (1)** The Regulatory Authority may, from time to time, publish a list of specified functions.

**(2)** A person carrying out a specified function means—

- (a) a person carrying out a function included in a list published under subsection (1); or
- (b) where no list has been published, a manager or a director.

**(3)** A relevant business must ensure that a person appointed to perform, or a person who is performing, a specified function for the relevant business is a fit and proper person.

**(4)** No change may be made to the person carrying out a specified function at a relevant business except with the prior written approval of the Regulatory Authority.

**(5)** A relevant business must provide the Regulatory Authority with all information about any person who is a prospective person carrying out a specified function necessary to allow the Regulatory Authority to determine whether the individual is a fit and proper person to perform the function.

(6) The Regulatory Authority, in making the determination regarding the approval of a person to be appointed to perform, or who is performing, a specified function, may have regard to, among other things, the skills, qualifications, experience and competency of the person being considered for appointment, in determining whether the person is a fit and proper person to perform the function.

(7) A relevant business, must immediately upon becoming aware of any matter affecting the basis upon which a person was approved to perform a specified function, inform the Regulatory Authority of such matter.

(8) Where the Regulatory Authority considers and can demonstrate that a person previously approved to perform a specified function is no longer fit and proper, the Regulatory Authority may withdraw such approval.

(9) For the purposes of section (8), a person is to be considered no longer fit and proper if they have—

- (a) participated in serious misconduct in relation to the business of a licensed firm (whether in St Helena or elsewhere);
- (b) intentionally misled the Regulatory Authority;
- (c) failed to comply with a Directive that applies to a fit and proper person;
- (d) directly or indirectly provided information to the Regulatory Authority that the individual knew or ought to have known was false or misleading;
- (e) been convicted of an offence, whether in St Helena or elsewhere, involving—
  - (i) money laundering,
  - (ii) terrorist financing, or
  - (iii) fraud, dishonesty or breach of trust; or
- (f) participated in any other behaviour that the Regulatory Authority considers inimical to being a fit and proper person.

(10) If a person ceases to perform the function for which the person was approved, the relevant business must immediately—

- (a) inform the Regulatory Authority that the person has ceased to perform the functions for which the person was approved;
- (b) inform the Regulatory Authority of the reason the person has ceased to perform the functions for which the person was approved; and
- (c) inform the Regulatory Authority if disciplinary action was taken and what such action was taken against the person.

(11) The Regulatory Authority may prescribe a fee to be charged in respect of the consideration and processing of an application for the approval of a person as fit and proper.

(12) The Regulatory Authority must establish and, by Directive, publish a code of conduct for a person approved as being fit and proper to carry out a specified function.”.

#### **Amendment of section 22 - supervision of relevant businesses**

**12. For section 22(7) substitute—**

“(7) The Regulatory Authority may exercise the powers conferred by subsections (1) and (3) in relation to—

- (a) any business activity conducted by a relevant business, whether or not that business activity is a regulated activity;
- (b) any member or former member of any group of which the relevant business is a member wheresoever such member is located and whether or not such member is licensed by the Regulatory Authority;
- (c) pension schemes or other financial products that are, or previously were, approved by the Regulatory Authority wheresoever the schemes or products are established;
- (d) current and former statutory auditors of a relevant business;
- (e) a liquidator of a relevant business;
- (f) any current or former director, manager or employee of a relevant business.

**(7A) For the purposes of subsection (7) “group”, in relation to a person (“A”) means A and any person who is—**

- (a) a parent undertaking of A;
- (b) a subsidiary undertaking of A;
- (c) a subsidiary undertaking of a parent undertaking of A;
- (d) a parent undertaking of a subsidiary undertaking of A; or
- (e) an undertaking in whose shares A or an undertaking listed in paragraphs (a) to (d) holds an interest for the purpose of securing a contribution to its activities by the exercise of control or influence arising from or related to that interest.”.

**Amendment of section 24 - investigations**

**13. (1) For section 24(1) substitute—**

“(1) If it appears to the Regulatory Authority desirable to do so in the interests of depositors, investors or creditors or potential depositors, investors or creditors of a relevant business, it may appoint one or more competent persons to investigate and report on—

- (a) the nature, conduct or state of the business’s business or any particular aspect of it;
- (b) the ownership or control of the business;
- (c) the offering by or through a relevant business of any pension scheme or investment product that has been approved by the Regulatory Authority wheresoever the scheme or product is established;

and the Regulatory Authority must give written notice of any such appointment to the business concerned.”.

**(2) For section 24(2) substitute—**

“(2) If a person appointed under subsection (1) considers it necessary for the purposes of the investigation, the person may investigate—

- (a) any business activity conducted by a relevant business, whether or not that business activity is a regulated activity;
- (b) any member of any group of which the relevant business is a member, wheresoever such member is located and whether or not such member is licensed by the Regulatory Authority.”.

(3) In section 24(5), after “banker” insert “,director, liquidator”.

(4) After section 24(10) insert—

“(11) For the purposes of this section, “group” has the same meaning as in section 22.”.

## **Substitution of section 27 - co-operation and sharing of information**

**14.** For section 27 substitute—

**“27. (1)** The Regulatory Authority may—

- (a) conclude cooperation agreements with domestic authorities, foreign regulators and foreign authorities, establishing procedures for the exchange of information;
- (b) assist, exchange information or cooperate with domestic authorities, foreign regulators and foreign authorities for the purpose of facilitating or carrying out any of the Regulatory Authority’s functions, or similar activity being undertaken by the domestic authority, foreign regulator or foreign authority;
- (c) cooperate with a domestic authority, foreign regulator or foreign authority under this section even in cases where the conduct under investigation would not constitute a contravention of the laws of St Helena;
- (d) share information with the Governor for the purpose of meeting any of the regulatory objectives set out in this Ordinance;
- (e) share information with the Governor or with any law enforcement authority in St Helena or elsewhere for the purpose of assisting in the prevention or detection of suspected criminal activity and of prosecution of offenders;
- (f) may meet with and share information with—
  - (i) any persons responsible for the financial audit of a relevant business; or
  - (ii) any persons conducting insolvency or similar procedures in relation to a relevant business.

**(2)** Where a foreign regulator informs the Regulatory Authority of a suspected contravention of the Financial Services Ordinance 2008 or any subsidiary legislation made under it, the Regulatory Authority must take appropriate action and inform the foreign regulator of the outcome of the action.

**(3)** Where a person is appointed under section 22 or 24, the Regulatory Authority, the Registrar of Companies and any other public or statutory officer in St Helena must provide that person with access to any accounts, returns or other relevant information relating to the relevant business which are in the possession of the Regulatory

Authority, the Registrar of Companies or any other public or statutory officer in St Helena.

(4) In this section—

“**domestic authority**” means—

- (a) the Governor,
- (b) the Attorney General of St Helena,
- (c) the Crown Prosecutor of St Helena,
- (d) the Registrar of Companies of St Helena,
- (e) the Commissioner for Income Tax,
- (f) the Royal St Helena Police,
- (g) St Helena Customs and Immigration,
- (h) the St Helena Money Laundering Regulatory Authority,
- (i) the minister with responsibility for finance, and
- (j) the minister with responsibility for financial services;

“**foreign authority**” means a person performing functions similar to those of a domestic authority, under the law of a country or territory outside St Helena;

“**foreign regulator**” means a person performing functions similar to those of the Regulatory Authority, under the law of a country or territory outside St Helena.”.

## **Insertion of Schedule 2 - principles for businesses**

15. After Schedule 1 insert—

### “**SCHEDULE 2** (Section 5A)

#### **PRINCIPLES FOR BUSINESSES**

The principles for businesses are—

**1. Integrity**

A relevant business must conduct its business with integrity.

**2. Skill, care and diligence**

A relevant business must conduct its business with due skill, care and diligence.

**3. Management and control**

A relevant business must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

**4. Financial prudence**

A relevant business must maintain adequate financial resources.

**5. Market conduct**

A relevant business must observe proper standards of market conduct.

**6. Customers' interests**

A relevant business must pay due regard to the interests of its customers and treat them fairly.

**7. Communication with clients**

A relevant business must pay due regard to the information needs of its customers and communicate information to them in a way which is clear, fair and not misleading.

**8. Conflicts of interest**

A relevant business must manage conflicts of interest fairly, both between itself and its customers, and between customers.

**9. Customers: relationships of trust**

A relevant business must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

**10. Clients' assets**

A relevant business must arrange adequate protection for clients' assets when it is responsible for them.

**11. Relations with regulators**

A relevant business must deal with its regulators in an open and cooperative way, and it must disclose to the Regulatory Authority appropriately anything relating to the relevant business of which the Regulatory Authority would reasonably expect notice.

**12. Fair value for customers**

A relevant business must ensure that its products and services for customers provide fair value.

For the purpose of these principles—

- (a) value is the relationship between the amount paid by a customer for a product or service and the benefits they can reasonably expect to get from the product or service, and
- (b) a product or service provides fair value where the amount paid for the product or service is reasonable relative to the costs of providing it and the benefits of the product or service.”.

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**EXPLANATORY NOTE**

(This note is not part of the Ordinance)

This Ordinance revises the duties and powers of the Regulatory Authority and the obligations of a person approved as fit and proper for appointment to perform specified functions within

a relevant business. It also introduces principles for businesses with which a relevant business is required to comply.