

S.P. 55/16



ST. HELENA

GOVERNMENT OF SAINT HELENA

A BILL FOR AN ORDINANCE

THE FINANCIAL SERVICES (AMENDMENT) ORDINANCE, 2016

*Laid upon the Table, 9<sup>th</sup> December 2016*





## ST HELENA

### A BILL

### FOR

### AN ORDINANCE

**to amend the Financial Services Ordinance, 2008, to further regulate the provisions of financial services in St Helena; and for purposes connected therewith or incidental thereto.**

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

#### **Citation, commencement and interpretation**

1. (1) This Ordinance may be cited as the Financial Services (Amendment) Ordinance, 2016, and shall come into force on publication.

(2) In this Ordinance, “the principal Ordinance” means the Financial Services Ordinance, 2008.

#### **Interpretation**

2. Section 2(1) of the principal Ordinance is amended—

(a) by repealing the definition of “**control**” and substituting the following therefor:

“**control**” is the power to govern the financial and operating policies of an entity so as to affect the entity’s returns, granting exposure, or rights to variable returns from the entity;”.

#### **Appointment of the Financial Services Supervisor and Regulatory Authority**

3. Section 3(4) of the principal Ordinance is amended by deleting the expression “subsection (2)(b)” and substituting “subsection (3)(b)” therefor.

#### **Licences for Regulated Activities**

4. Section 6 of the principal Ordinance is amended by deleting the expression “£5,000” in subsection (2) and substituting “£100,000” therefor.

#### **Application for licence**

5. Section 8 of the principal Ordinance is amended by adding the following subsection:

“(7) A person may, at least nine months before expiry of a licence issued under section 9, apply to the Regulatory Authority for renewal of the licence and the provisions of this section shall apply with necessary modifications in respect of any such application:

Provided that the annual report of activities for the last financial year shall be submitted in addition to any other information or documents required by the Regulatory Authority under this section.”.

### **Issuing and renewal of licence**

6. Section 9 of the principal Ordinance is amended by adding the following subsections:

“(7) The Regulatory Authority may issue a licence under this section for a period not exceeding five years.

(8) A licence under this section may be renewed and the provisions of this section apply with necessary modifications in respect of any such renewal.

(9) Any licence granted before 1 December 2016 will expire and require renewal by 1 December 2020.”.

### **Large exposures**

8. Section 16 of the principal Ordinance, other than the heading, is repealed and the following is substituted therefor:

“16. The Regulatory Authority shall from time to time issue Directives covering large exposures”.

### **Liquidity**

9. Section 18 of the principal Ordinance is amended by deleting the words “issue a Directive” and substituting “from time to time issue Directives” therefor.

### **Clients’ money**

10. Section 19 of the principal Ordinance is amended by deleting the words “clients money” where it occurs in the heading and in the section and substituting “clients’ money” therefor.

### **Investigations**

11. Section 24 of the principal Ordinance is amended by repealing subsection (9) and substituting the following therefor:

“(9) The Regulatory Authority shall have the power to direct a relevant business reported on under subsection (1) to pay for the costs and expenses incurred in relation to such report.”.

### **Obstruction**

12. Section 26 of the principal Ordinance is amended by repealing subsection (2) and substituting the following therefor:

“(2) Every person who does an act which is forbidden under subsection (1) is guilty of an offence and is liable on conviction on indictment to imprisonment for five years, or to a fine of £500,000, or both”.

## **Auditors**

13. Section 32 of the principal Ordinance is amended—
- (a) by adding the words “(who is a member in good standing of an internationally recognised body responsible for regulating the activities of the accounting profession)” in subsection (1)(c) after the words “qualified person”;
  - (b) by repealing subsection (3) and substituting the following therefor:
    - “(3) The auditor's report shall contain statements as to the following matters:
      - (a) whether, in their opinion, the financial statements present fairly, in all material respects, the financial position of the relevant business as at the end of the financial year, and the financial performance and cash flows for the year then ended, in accordance with the applicable international financial reporting framework;
      - (b) whether, in their opinion, and to the best of their knowledge and according to the explanations given to them, the financial statements give the information required by any law which may from time to time be in force in the manner;
      - (c) whether they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purpose of the audit.”.

## **Regulations**

14. Section 39 of the principal Ordinance is amended—
- (a) by renumbering the existing text as subsection (1); and
  - (b) by adding the following subsection:
    - “(2) The Governor in Council may, after consultation with the Regulatory Authority, provide by order that sections 21 and 24 shall apply to representative offices in St Helena as they apply to a relevant business.”.

### **EXPLANATORY NOTE**

*(This note is not part of the Ordinance)*

This Ordinance amends the Financial Services Ordinance, 2008, to further regulate banking and other financial services in St Helena. The penalties under the Ordinance are being increased and new provision is made for a five year limit on licences with the possibility of renewal. The Ordinance also makes further provision for Directives and further regulates the appointment of auditors by a business for purposes of financial reporting.

