

VIRGIN ISLANDS
ANTI-MONEY LAUNDERING AND TERRORIST FINANCING
(AMENDMENT) CODE OF PRACTICE, 2009

ARRANGEMENT OF SECTIONS

Section

1. Citation.
2. Section 2 amended.
3. Section 4 revoked and replaced.
4. Section 4A inserted.
5. Section 11 amended.
6. Section 11A inserted.
7. Section 13 amended.
8. Section 16 amended.
9. Section 18 amended.
10. Section 19 amended.
11. Section 20 amended.
12. Section 21 amended.
13. Section 23 amended.
14. Section 25 amended.
15. Section 26 amended.
16. Section 29 amended.
17. Section 31 amended.
18. Section 44 amended.
19. Section 45 amended.
20. Section 46 revoked and replaced.
21. Section 47 amended.
22. Section 51 amended.
23. Section 52 revoked and replaced.
24. Section 53 amended.
25. Section 56 amended.
26. Section 57 amended.
27. Schedules renumbered and new Schedules inserted.
28. Schedule 4 amended.

VIRGIN ISLANDS

STATUTORY INSTRUMENT 2009 NO. 4

**Proceeds of Criminal Conduct Act, 1997
(No. 5 of 1997)**

**Anti-money Laundering and Terrorist Financing (Amendment)
Code of Practice, 2009**

[Gazetted 5th February, 2009]

The Financial Services Commission, in exercise of the powers conferred by section 27 (1) of the Proceeds of Criminal Conduct Act, 1997 (No. 5 of 1997) and after consultation with the Anti-money Laundering and Terrorist Financing Advisory Committee, issues this Code.

Citation.

1. This Code of Practice may be cited as the Anti-money Laundering and Terrorist Financing (Amendment) Code of Practice, 2009.

Section 2
amended.
S.I. No. 13
of 2008

2. Section 2 of the Anti-money Laundering and Terrorist Financing Code of Practice, 2008 (hereinafter referred to as “the principal Code of Practice”) is amended

(a) in subsection (1),

(i) by inserting after the definition of “applicant for business”, the following new definition:

““beneficial owner” means the natural person who ultimately owns or controls an applicant for business or a customer or on whose behalf a transaction or activity is being conducted and includes, though not restricted to,

(a) in the case of a legal person other than a company whose securities are listed on a recognized stock exchange, a natural person who ultimately owns or controls, whether directly or indirectly, ten or more per cent of the shares or voting rights in the legal person;

- (b) in the case of a legal person, a natural person who otherwise exercises control over the management of the legal person; or
 - (c) in the case of a legal arrangement,
 - (i) the partner or partners who control the partnership;
 - (ii) the trustee or other person who controls the applicant; and
 - (iii) the settlor or other person by whom the legal arrangement is made;”
- (ii) by inserting after the definition of “entity”, the following new definition:

“FATF” means the Financial Action Task Force;”; and
- (iii) by deleting the word “or” at the end of paragraph (b) in the definition of “high risk countries” and adding the word “or” at the end of paragraph (c) and adding thereafter the following new paragraph:

“(d) the Commission identifies in an advisory or a warning issued pursuant to the Financial Services Commission Act, 2001 or section 52 (5) as not meeting or fully meeting or of weaknesses in the FATF anti-money laundering or anti-terrorist financing obligations or as engaging in or promoting activities that are considered detrimental to the interests of the public in the Virgin Islands;”; and
- (b) by adding after subsection (3), the following new subsections:

“(4) Any reference in this Code to a conduct or an activity includes, unless the context otherwise requires, an attempt in relation to the conduct or activity.

(5) Notwithstanding anything contained in this Code, the ultimate responsibility for complying with the requirements or prohibitions of this Code rests with the entity to which the Code applies.””.

Section 4
revoked and
replaced.

3. Section 4 of the principal Code of Practice is revoked and replaced by the following:

“General
application and
exception.

4. (1) Subject to subsection (2), this Code applies to

(a) every entity and professional; and

(b) a charity or other non-profit making institution, association or organization to the extent specified in section 4A.

(2) The identification and verification requirements set out in Part III of this Code do not apply in circumstances where regulation 6 (1) or (3) of the Anti-money Laundering Regulations, 2008 applies to an entity.

(3) Notwithstanding subsection (2), no exception provided in the Anti-money Laundering Regulations, 2008 and this Code shall apply where an entity or a professional knows or suspects that an applicant for business or a customer is engaged in money laundering or terrorist financing.”

The Explanation provided in section 4 of the Code of Practice is deleted and replaced by the following Explanation:

“(i) Section 27 (2) of the PCCA outlines the scope of the Commission’s exercise of its powers to issue a Code of Practice. The definition of “entity” in section 2 essentially covers the scope permitted by section 27 (2) of the PCCA as fully outlined in the AMLR. The application section seeks to implement FATF Recommendation 12. The regulated entities and non-regulated entities within the defined parameters of FATF Recommendation 12 are viewed as forming vital links in the anti-money laundering and countering the financing of terrorism (AML/CFT) efforts. The PCCA empowers the Commission to designate other businesses which are considered vulnerable to activities of money laundering and terrorist financing and thus fall within the definition of “entity”. These have been designated in the Non-financial Business (Designation) Notice, 2008 which lists additional businesses that fall within the regime of the Code. The Notice may be amended from time to time to ensure a well-insulated business sector against the activities of money laundering and terrorist financing, having regard, in particular, to the risks posed.

(ii) Any entity and professional that is caught under this section of the Code must ensure full compliance with the due diligence, record keeping measures and other requirements outlined in this Code.

(iii) Section 4 (2) takes into account the exceptions to identification procedures outlined in regulation 6 (1) and (3) of the Anti-money Money Laundering Regulations, 2008 with respect to the conduct of relevant business (as defined in regulation 2 (1) of the Regulations). It should be understood that the rationale for the exceptions is that identification and verification information relative to a regulated person and foreign regulated person that is an applicant for business is normally kept and maintained and such information is available to be accessed should the Agency or the Commission request it, whether through the exercise of its statutory powers or through the mutual legal assistance request regime. The same principle applies in relation to legal practitioners and accountants who are members of professional bodies whose rules of conduct or practice embody requirements for AML/CFT compliance to the standards of the FATF Recommendations and who are supervised for compliance with those requirements. It would be expected that such professional bodies would maintain as a matter of routine relevant identification and verification information relating to their members.

(iv) However, it must be borne in mind at all times that the burden of ensuring compliance with the obligations set out in this Code rests with the relevant entity or professional as outlined in section 2 (5). Accordingly, where an entity or a professional knows or suspects that an applicant for business or a customer who wishes to form a business relationship is engaged in money laundering or terrorist financing, it or he must not establish the business relationship. Regulation 6 (2) and (3) (b) of the AMLR already provides for such a prohibition in relation to money laundering. It would be incumbent under such circumstances for the entity or professional to submit a report to the Agency outlining its suspicion.”

Section 4A
inserted.

4. The principal Code of Practice is amended by inserting after section 4, the following new section:

“Application to charities, etc. 4A. (1) The provisions of this Code relating to the establishment of internal control systems, effecting customer due diligence measures, maintaining record keeping requirements and providing employee training shall apply to every charity or other association not for profit which

(a) is established and carries on its business in or from within the Virgin Islands;

(b) is established outside the Virgin Islands and registered to carry on its business wholly or

partly in or from within the Virgin Islands;
or

- (c) is established as provided in paragraph (a) and receives or makes payments, other than salaries, wages, pensions and gratuities, in excess of ten thousand dollars in a year.

(2) A charity or other association not for profit shall

- (a) comply with the provisions outlined in subsection (1) in relation to every donor to the charity or other association not for profit of monies or equivalent assets in excess of ten thousand dollars;
- (b) maintain relevant documentation with respect to its administrative, managerial and policy control measures in relation to its operations;
- (c) ensure that any funds that are planned and advertised by or on behalf of the charity or other association not for profit are verified as having been planned and spent in the manner indicated; and
- (d) adopt such measure as are considered appropriate to ensure that any funds or other assets that are received, maintained or transferred by or through the charity or other association not for profit are not for, or diverted to support,
 - (i) the activities of any terrorist, terrorist organization or other organized criminal group; or
 - (ii) any money laundering activity.

(3) For the purposes of subsection (2), where a series of donations from a single donor appear to be linked and cumulatively the donations are in excess of ten thousand dollars in any particular year, the requirements outlined in subsection (1) shall apply.

(4) Subsection (1) (c) does not apply where payment is made for goods or services the total of which do not in any particular year exceed twenty-five thousand dollars or its equivalent in any currency.

(5) Where a person who makes a donation (whether in cash or otherwise in excess of the amount or its equivalent stipulated in this section) does not wish to have his name publicly revealed, the charity or other association not for profit that receives the donation shall nevertheless carry out the requisite customer due diligence and record keeping measures under this Code, including

- (a) establishing the nature and purpose of the donation;
- (b) identifying whether or not there are any conditions attached to the donation and, if so, what those conditions are;
- (c) identifying the true source of the donation and whether or not the donation is commensurate with the donor's known sources of funds or wealth;
- (d) establishing whether or not the funds or other properties that are the subject of the donation are located in a high risk country; and
- (e) establishing that the donor is not placed on any United Nations, European Union or other similar institution's list of persons who are linked to terrorist financing or against whom a ban, sanction or embargo subsists.

(6) Where a charity or other association not for profit suspects that a donation may be linked to money laundering or terrorist financing, it shall

- (a) not accept the donation; and
- (b) report its suspicion to the Agency.

(7) For the purposes of the application of the Parts of this Code outlined in subsection (1) to a charity or other association not for profit, the relevant provisions shall be applied

with such modifications as are necessary to ensure compliance with the requirements of the provisions.

(8) Schedule 1 provides best practices for charities and other associations not for profit and every charity and other association not for profit shall govern its activities utilizing those best practices, in addition to complying with the other requirements of this Code. ”

[Explanation:

(i) *As noted in section 4, this Code equally applies to charities and other non-profit making institutions, associations and organizations as if they were entities. Charities and other similar institutions are not immune to abuse for money laundering and terrorist financing activities and must accordingly adopt all necessary due diligence measures outlined in this Code to ensure compliance therewith. It is expected that in applying the provisions of this Code to a charity or other similar institution, those provisions of the Code will be applied with such necessary modification as would enable proper compliance with the provisions. Where there is uncertainty, advice must be sought from the Agency and such advice complied with accordingly. Ultimately, the responsibility for full compliance with the requirements of this Code rest with the charity or other similar institution (as already noted in section 2 (5)).*

(ii) *Every charity or other association not for profit should expect that the laws, policies and guidelines relating to their activities and operations would be reviewed from time to time to verify compliance with the obligations outlined in this Code and ensure that they are not being used for money laundering and terrorist financing purposes. It is therefore important that every charity or other association not for profit brings to the attention of the Agency any activity with respect to which it has a suspicion of money laundering or terrorist financing. This would enable the Agency to guide and assist the charity or other association not for profit from being used for money laundering and/or terrorist financing purposes.*

Section 11
amended.

5. Section 11 of the principal Code of Practice is amended

(a) in subsection (3)

(i) by deleting the word “and” at the end of paragraph (r) and adding immediately after the paragraph, the following new paragraphs:

- “(s) providing appropriate measures for the identification of complex or unusual large or unusual large patterns of transactions which do not demonstrate any apparent or visible economic or lawful purpose or which are unusual having regard to the patterns of business or known resources of applicants for business or customers;
- (t) establishing policies, processes and procedures for communicating to employees an entity’s or a professional’s written system of internal controls;
- (u) establishing policies, processes, procedures and conditions governing the entering into business relationships prior to effecting any required verifications; and”;
- (ii) by renumbering the current paragraph (s) as paragraph (v); and
- (b) by inserting after subsection (3), the following new subsection:

“(3A) Every entity and professional shall establish and maintain an independent audit function that is adequately resourced to test compliance, including sample testing, with its or his written system of internal controls and the other provisions of the Anti-money Laundering Regulations, 2008 and this Code.”

The Explanation to section 11 of the principal Code of Practice is amended by adding after paragraph (iv), the following new paragraph:

“(v) The requirement to establish and maintain an independent audit function creates an obligation on an entity and a professional to essentially ensure the establishment of appropriate and effective mechanisms which allow for a periodic evaluation of the implementation by the entity or professional of the provisions of the AMLR and this Code as well as the internal control systems developed by the entity or professional. This obligation must be implemented by a person or persons that function independently and who have the ability to make objective assessments in a transparent and fair manner. The audit function may form a separate and independent unit of the entity (such as its compliance portfolio) or the professional’s undertaking, or the function may be outsourced. Whatever arrangement the entity chooses, it or he or she must provide adequate financial and human resources as would be commensurate with the size and volume of business of the entity or professional and adopt measures that guarantee the independent

functioning of the arrangement. It should be noted that ultimately the objective is to ensure a proper and adequate testing of the entity's level of compliance with its AML/CFT obligations under the AMLR, this Code and other applicable laws and policies. It is imperative that the results of any testing of compliance obligations under this section are embodied in a compliance audit report to be maintained by the entity or professional and made available to the Agency or Commission in an inspection or whenever requested. In addition, the entity or professional must provide an indication in writing as regards the steps taken, where applicable, to comply with any shortcomings identified in a compliance audit."

Section 11A
inserted.

6. The principal Code of Practice is amended by inserting after section 11, the following new section:

“Prohibition of misuse of technological developments. 11A. An entity or a professional shall adopt and maintain such policies, procedures and other measures considered appropriate to prevent the misuse of technological developments for purposes of money laundering or terrorist financing.”.

Explanation:

(i) *A lot of transactions are carried out these days utilizing the facilities afforded by the internet. While there are those that utilize these facilities for legitimate business reasons, there are also those that abuse and misuse the facilities for nefarious activities. Financial institutions such as banks, insurance companies, mutual funds and financing and money services entities that are engaged in the business of receiving and making payment of monies generally utilize technological facilities (such as telephone banking, transmission of instructions through the means of facsimile, investing via the internet, wire transfers, etc.) to establish business relationships and engage in various transactions and are therefore particularly vulnerable to the abuse of technologies to facilitate money laundering, terrorist financing and other financial crime activities.*

(ii) *Section 11A therefore obligates an entity or a professional that utilizes technological facilities to adopt appropriate policies, procedures and other relevant measures to guard against abuses and misuse that may be connected to the use of those facilities. These matters are left entirely to the judgment of the entity or professional concerned, having regard to the scope and extent of its reliance on technological facilities. Accordingly, the entity or professional is required to develop and maintain appropriate policies, procedures and other relevant measures for use by its or his or her staff to prevent the entity or professional from being used to carry out*

money laundering, terrorist financing or other financial crime activities. Both the Agency and the Commission may request to see such measures, procedures and other relevant measures in relation to any inspection conducted by them or for any other purpose.

*(iii) With respect to the risks that may be associated with electronic services engaged in by banks, entities that provide banking services are particularly encouraged to make reference to the “**Risk Management Principles for Electronic Banking**” issued by the Basel Committee in July, 2003.”*

Section 13
amended.

7. Section 13 of the principal Code of Practice is amended
 - (a) in subsection (1) by inserting after the words “dealings with”, the words “an applicant for business or”;
 - (b) in subsection (2) by deleting the word “and” at the end of paragraph (f), deleting the full-stop at the end of paragraph (g) and replacing it with a semi-colon, adding the word “and” at the end of paragraph (g) and adding immediately thereafter the following new paragraphs:
 - “(h) identify and pay special attention to, and examine, as far as possible, the background and purpose of, any complex or unusual large or unusual pattern of transaction or transaction that does not demonstrate any apparent or visible economic or lawful purpose or which is unusual having regard to the pattern of business or known sources of an applicant for business or a customer;
 - (i) record its or his findings in relation to any examination carried out pursuant to paragraph (h) and make such findings available to the Agency, Commission or other lawful authority, including the auditors of the entity or professional, for a period of at least five years; and
 - (j) adopt and maintain policies and procedures to deal with any specific risks that may be associated with non-face to face business relationships or transactions, including when establishing or conducting ongoing due diligence with respect to such relationships or transactions.”

The Explanation to section 13 of the principal Code of Practice is amended by inserting the following paragraphs at the end of paragraph (iii) and renumbering paragraph (iv) as paragraph (vi):

“(iv) It should be noted that complex and unusual large transactions or unusual patterns of transactions may take different forms and will vary from transaction to transaction. Entities and professionals should exercise the utmost vigilance and, in particular, in carrying out their examination of the background and purpose of a transaction, pay attention to significant transactions pertaining to a business relationship, transactions that exceed certain limits that are unusual with a customer or that should raise a red flag, very high account turnovers that are inconsistent with the size of the balance, and transactions which fall outside the scope of the regular pattern of the account’s activity.

(v) The formation of non-face to face business relationships or transactions may vary. It is for the entity or professional to identify and properly scrutinize the form and nature of a non-face to face business relationship or transaction. Such a relationship or transaction may be concluded electronically over the internet or by post or may relate to services and transactions over the internet, including trading in securities by retail investors over the internet or other interactive computer services; the use of ATM machines, telephone banking, transmission of instructions or applications by facsimile or similar means; and effecting payments and receiving cash withdrawals as part of electronic point of sale transaction utilizing prepaid or reloadable or account-linked value cards.”

Section 16
amended.

8. Section 16 of the principal Code of Practice is amended in subsection (1) by deleting the words “within the entity”.

The Explanation to section 16 of the principal Code of Practice is amended

(a) in paragraph (ii) by deleting the words “occupies a very senior position in the employment hierarchy of the entity” and replacing them with the words “is of sufficient seniority”; and

(b) adding immediately after paragraph (v), the following new paragraphs:

“(vi) The AMLR recognizes that there are circumstances where an entity may not have employees in the Virgin Islands and any guidelines provided in this Code in relation to such an entity or in relation to other circumstances shall have effect with respect thereto. An entity’s appointed person to perform the functions of Reporting Officer may be an employee of the entity, an external individual resident in the Virgin Islands or an external individual resident outside the Virgin Islands in a jurisdiction that is recognized by virtue of section 52 of this Code(see Schedule 2). In each case, the qualifications set out in regulation 13 of the AMLR

must be met. Generally, in any of these cases, the AML/CFT reporting requirements of the AMLR and this Code will apply.

(vii) The AMLR and this Code set out the internal reporting obligations of entities with respect to suspicious transactions. It is recognized that mutual funds and mutual fund administrators bear the same obligations in relation to their relevant financial business. While ultimate responsibility resides in the entity to ensure appropriate reporting mechanisms, such an obligation may be satisfied in ways other than through the direct appointment of a Reporting Officer for the Fund. In circumstances where the Fund does not have any staff employed in the Virgin Islands and the issuance and administration of subscriptions and redemptions is performed by a person who is regulated in the Virgin Islands or a recognized jurisdiction (Schedule 2) pursuant to section 52 of this Code, compliance by such person with the AML/CFT requirements of the Territory or the recognized jurisdiction will be construed and accepted as compliance with the obligations set out in the AMLR and this Code. It would be construed and considered as acceptable also where a Fund appoints a qualified third party pursuant to the provisions of the AMLR to act as its Reporting Officer; such third party may be an individual resident within or outside the Virgin Islands who is qualified and competent to perform such a role. It is essential (and should be considered good practice), however, that the directors of the Fund document through appropriate mechanisms (whether through board resolutions or otherwise) the form and manner in which the Fund has satisfied its obligations to ensure compliance with internal reporting procedures with respect to the identification and reporting of suspicious transactions.”

Section 18
amended.

9. Section 18 of the principal Code of Practice is amended by deleting subsection (5) and replacing it with the following new subsection:

“(5) If the Reporting Officer decides that the information does not substantiate a suspicion of money laundering or terrorist financing, the Reporting Officer shall

- (a) record that decision, outlining the nature of the information to which the suspicious activity relates, the date he received the information, the full name of the person who provided him with the information and the date he took the decision that the information did not substantiate a suspicion of money laundering or terrorist financing;

- (b) state the reason or reasons for his decision; and
- (c) make the record for his decision available to the Agency or Commission in an inspection or whenever requested.”

The Explanation to section 18 of the principal Code of Practice is amended in paragraph (iii) by adding at the end of the fourth sentence before the full-stop, the following words:

“if in his or her assessment the information substantiates a suspicion of money laundering or terrorist financing”.

Section 19
amended.

- 10. Section 19 of the principal Code of Practice is amended
 - (a) in subsection (3) by deleting the word “and” at the end of paragraph (d), deleting the full-stop at the end of paragraph (e) and replacing it with “; and”, and adding immediately after paragraph (e) the following new paragraph:
 - “(f) to inquire into and identify a person who purports to act on behalf of an applicant for business or a customer, which is a legal person or a partnership, trust or other legal arrangement, is so authorized and to verify the person’s identity.”;
 - (b) in subsection (4)
 - (i) by inserting after the words “in this Code” in paragraph (c), the words “, including where an applicant for business or a customer is considered by an entity or a professional as posing a low risk,”, and deleting the word “and” at the end of that paragraph; and
 - (ii) by inserting after paragraph (c), the following new paragraph:
 - “(d) where a business relationship or transaction presents any specific higher risk scenario; and”;
 - (iii) by renumbering paragraph (d) to paragraph (e); and
 - (c) in subsection (6)
 - (i) by deleting the word “and” at the end of paragraph (g) and inserting the following new paragraphs:

“(h) the applicants for business or customers are resident in foreign jurisdictions which the Commission is satisfied are in compliance with and effectively implement the FATF Recommendations pursuant to the provisions of section 52;

(i) in the case of a body corporate that is part of a group, the body corporate is subject to and properly and adequately supervised for compliance with anti-money laundering and terrorist financing requirements that are consistent with the FATF Recommendations; and”;

(ii) by renumbering the current paragraph (h) as paragraph (j); and

(d) by adding after subsection (6), the following new subsection:

“(6A) For the purposes of subsection (6) (i), the term “group”, in relation to a body corporate, means that body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company, and “subsidiary” and “holding company” shall be construed in accordance with section 2 (2) to (6) of the Banks and Trust Companies Act, 1990.”.

Section 20
amended.

11. Section 20 (4) of the principal Code of Practice is amended by deleting paragraph (b) and replacing it with the following new paragraph:

“(b) a business activity, ownership structure, anticipated, or volume or type of transaction that is complex or unusual, having regard to the risk profile of the applicant for business or customer, or where the business activity involves an unusual pattern of transaction or does not demonstrate any apparent or visible economic or lawful purpose; or”.

Section 21
amended.

12. Section 21 of the principal Code of Practice is amended

(a) in subsection (3) by inserting after the word “shall”, the words “to the extent possible”; and

(b) by adding after subsection (3), the following new subsections:

“(4) Notwithstanding anything contained in this section, where an entity or a professional forms the opinion upon careful assessment that an existing customer presents a high risk or engages in transactions that are of such a material nature as to pose

a high risk, it or he shall apply customer due diligence or, where necessary, enhanced customer due diligence, measures and review and keep up-to-date the existing customer's due diligence information.

(5) The requirements of subsection (4) apply irrespective of the periods stated in subsections (1) and (2).

(6) For the purposes of subsection (4), "existing customer" refers to a customer that had a business relationship with an entity or a professional prior to the enactment of this Code and which continued after the date of the coming into force of this Code."

The Explanation to section 21 of the principal Code of Practice is amended

(a) by deleting paragraph (ii) and replacing it with the following new paragraph:

“(ii) It may well be that a business relationship established with a customer terminates before an entity or a professional is able to comply with the review and updating of the requisite customer due diligence information in the terms provided in section 21 (1) or (2). Termination of a business relationship may arise for varying reasons some of which may not make it possible for an entity or a professional to review and update relevant information relating to the customer. Yet in some instances the entity or professional may already be in possession or be aware of or be able to access relevant information relating to the customer. In the case of the former, the entity or professional need only record its satisfaction on the customer's file that it has done what was reasonable in the circumstances and had been unable to obtain any information to update the customer's due diligence information. In the latter case, the entity or professional must record on the customer's file the information that it is in possession or is aware of or has been able to access. It is for the entity or professional to satisfy itself or himself, in either case, that it or he or she has taken reasonable measures to comply with the requirements of section 21 (3). The relevant record of the customer must be kept and maintained in accordance with the record keeping requirements of the AMLR and this Code.”; and

(b) by adding after paragraph (ii), the following new paragraphs:

“(iii) While it is required that an entity or a professional must effect the necessary review and updating of customer due diligence information for the periods stated in section 21 (1) and (2), depending on whether a customer is assessed as low or high risk, subsection (4) provides the additional requirement to perform a similar review and update in respect

of customers with whom an entity or a professional had had a business relationship prior to the effective date of this Code (20th February, 2008) which continued beyond the effective date. However, this requirement applies only in the circumstances where the entity or professional forms the view that any of those customers presents some risk or engages in transactions that are of a material nature as to present some risk. It is a question of judgment on the part of the entity or professional concerned to make that assessment and come to a conclusion. In such cases, the entity must not wait for the period specified in section 21 (1) or (2) to mature before effecting the required review and updating of the customer's due diligence information. Where an existing customer is not assessed as presenting a high risk or to be engaged in any material transaction that has the potential to present a high risk, the entity or professional need only comply with the requirements of section 21 (2).

(iv) The customer, it should be noted, is in effect the applicant for business and it is in relation to that applicant that the review and updating of customer due diligence information is required. Thus where, for instance, a mutual fund is a customer of a registered agent, the registered agent (as the relevant entity) is obligated to effect the necessary review and updating of customer due diligence information on the fund as the applicant for business. It is therefore essential for every entity or professional to determine from the outset of establishing a business relationship as to who actually is the applicant for business in the relationship and proceed accordingly in ensuring compliance with the requirements of section 21.”

Section 23
amended.

13. Section 23 of the Code of Practice is amended

- (a) by renumbering the second subsection (2) and subsections (3), (4), (5) and (6) as subsections (3), (4), (5), (6) and (7) respectively;
- (b) in subsection (2)
 - (i) by deleting the words “twenty-one days” in paragraph (a) and replacing them with the words “thirty days”, and deleting the word “and” at the end of the paragraph; and
 - (ii) by deleting paragraph (b) and replacing it with the following new paragraphs:
 - “(b) prior to the establishment of the business relationship, the entity or professional adopts appropriate risk management processes and procedures, having regard to the context and

circumstances in which the business relationship is being developed; and

- (c) following the establishment of the business relationship, the money laundering or terrorist financing risks that may be associated with the business relationship are properly and effectively monitored and managed.”

- (c) by inserting after subsection (2), the following subsections:

“(2A) Where an entity or a professional forms the opinion that it would be unable to complete a verification within the time prescribed in subsection (2) (a), it shall, at least seven days before the end of the prescribed period, notify the Agency in writing of that fact outlining the reasons for its opinion, and the Agency may grant the entity or professional an extension in writing for an additional period not exceeding thirty days.

(2B) For the purposes of subsection (2) (b), appropriate risk management processes and procedures that an entity or a professional may adopt may include, but not limited to, the following:

- (a) measures which place a limitation on the number, types and amount of transactions that the entity or professional may permit with respect to the business relationship;
- (b) requiring management approval before the business relationship is established; and
- (c) measures which require the monitoring of a large, complex or unusual transaction which the entity or professional considers not to be normal for that type of transaction.

(2C) Where an entity or a professional establishes a business relationship pursuant to subsection (2) and it or he

- (a) discovers or suspects, upon subsequent verification, that the applicant for business or customer is or may be involved in money laundering or terrorist financing,
- (b) fails to secure the full cooperation of the applicant for business or customer in carrying out or

completing its or his verification of the applicant for business or customer, or

- (c) is unable to carry out the required customer due diligence or, as the case may be, enhanced customer due diligence, requirements in respect of the applicant for business,

the entity or professional shall

- (i) terminate the business relationship;
 - (ii) submit, in relation to paragraph (a), a report to the Agency outlining its or his discovery or suspicion; and
 - (iii) submit, in relation to paragraph (b) or (c), a report to the Agency if it or he forms the opinion that the conduct of the applicant for business or customer raises concerns regarding money laundering or terrorist financing.”; and
- (d) in subsection (4) (as renumbered) by deleting the word “subsection (3)” and replacing it with the word “subsection (4)”.

The Explanation to section 23 of the principal Code of Practice is amended by inserting after paragraph (ii), the following new paragraph:

“(iiA) It should be noted that the effect of a termination of a business relationship as provided in subsection (2C) in circumstances where there is a suspicion of money laundering on the part of an applicant for business or a customer must be carried out in a manner so as not to tip off the applicant or customer. If an entity or a professional forms the opinion that an immediate termination of relationship might tip off the applicant or customer, it or he or she must liaise with and seek the advice of the Agency and act according to the Agency’s advice. The entity or professional must, however, freeze the relationship prior to any formal termination and no further business must be transacted in relation to the applicant or customer in violation of the requirements of section 23 (2C) of the Code.”

Section 25
amended.

14. Section 25 of the principal Code of Practice is amended by deleting subsection (7) and replacing it with the following new subsection:

“(7) Notwithstanding anything contained in this section, where an entity or a professional

- (a) forms the opinion that, having regard to the nature of its or his business, any of the requirements for verification of identity is inapplicable or, subject to subsection (7A), may be achieved by some other means, or
- (b) is unable to effect a verification of any matter in relation to a legal person,

and is satisfied on the basis of the information acquired and verified, including taking account of its or his risk assessment and ensuring the absence of any activity that might relate to money laundering, terrorist financing or other criminal financial activity, it

- (i) may establish a business relationship with the legal person concerned (applicant for business or customer) after recording its or his satisfaction and the reasons therefor; and
- (ii) shall make available the information recorded under subparagraph (i) in an inspection or whenever requested by the Agency or Commission.

(7A) Where an entity or a professional forms the opinion pursuant to subsection (7) (a) that it or he may be able to achieve any of the requirements for verification of identity by some other means, it or he shall, prior to establishing a business relationship with the legal person, carry out the verification by that other means.”

The Explanation to section 25 of the principal Code of Practice is amended

- (a) ***in paragraph (ii) by inserting after the third sentence, the following new sentences:***

“These minimum requirements may be abridged only in the circumstances outlined in section 25 (7) and upon being satisfied that it could properly do so and providing written reasons for the abridgement (which may be required by the Agency or the Commission in an inspection or whenever requested pursuant to the discharge of any of its functions), or pursuant to the simplified formula provided in section 26 (where applicable). Thus where an entity or a professional considers that some or all of the identification and verification requirements are not applicable, it or he or she is permitted to establish a business relationship.

Where such identification and verification can be achieved by some other means, that must be carried out first before any business relationship is established and the means applied for effecting the identification and verification be recorded for inspection purposes or whenever requested by the Agency or Commission. It is important to note the conditions outlined, which are that the entity or professional concerned has to be satisfied with the information it or he or she has in relation to the applicant for business or customer and has carefully weighed the risks associated therewith to exclude any links to money laundering, terrorist financing or other financial crime. The entity must record its reason or reasons for departing from the obligations outlined in section 25, unless it assesses a legal person who is an applicant for business as low risk, in which case the simplified verification method outlined in section 26 may apply.”;

- (b) by converting the fourth sentence of paragraph (ii) and the remainder of that paragraph into a new paragraph (iii);*
- (c) by deleting paragraph (v); and*
- (d) by renumbering paragraphs (iii) and (iv) as paragraphs (iv) and (v) respectively.*

Section 26
amended.

15. Section 26 of the principal Code of Practice is amended in subsection (1) by deleting the full-stop at the end of paragraph (d) and replacing it with a semi-colon and adding immediately thereafter the following new paragraph:

- “(e) wire transfer information, where a subscription or redemption payment is effected through a wire transfer from a specific account in a financial institution that is regulated in a jurisdiction which is recognized pursuant to section 52 and the account is operated in the name of the applicant.” .*

The Explanation to section 26 of the principal Code of Practice is amended

- (a) in paragraph (iii) by deleting the last sentence and adding the following:*

“The essence of section 26 (2) is to require the updating of any information on beneficial ownership or control where changes occur. This will ensure that at any point in time the record of such information is accurate and available whenever required.”; and

- (b) by adding after paragraph (iii), the following new paragraph:*

“(iv) Where an entity or a professional utilizes a wire transfer test to verify identification, it or he or she must take necessary steps to ascertain that the account through which a subscription or redemption payment is effected actually exists and it is in the name of the applicant for business.”

Section 29
amended.

16. Section 29 of the principal Code of Practice is amended
- (a) by deleting subsection (3) and replacing it with the following new subsection:
- “(3) Without prejudice to section 19 (7), the provisions of this Code relating to identification and verification shall apply with respect to non-face to face business relationships.”; and
- (b) in subsection (4) by inserting after the word “shall”, the words “, in the absence of the application of section 19 (7),”.
-

The Explanation to section 29 of the principal Code of Practice is amended

- (a) ***by adding immediately after the last sentence in paragraph (iii), the following:***
- “However, in circumstances where in a non-face to face business relationship an entity or a professional assesses an applicant for business or a customer as presenting a low risk pursuant to section 19 (7) of this Code, the entity or professional is not required to apply ECDD measures, unless in its or his or her assessment the entity or professional forms the view that some or all elements of ECDD measures is necessary. The risk factors that may be associated with a non-face to face business relationship must always be properly and adequately weighed to make an assessment as to whether or not the application of simplified CDD measures would be appropriate.”; and*
- (b) ***by adding immediately after the last bullet point of paragraph (v), the following sentence:***
- “Accordingly, where a verification of identity is to be effected electronically or through reliance on copies of documents with respect to the establishment of a business relationship, it is imperative that additional verification checks are employed, unless the applicant for business or customer is assessed by the entity or professional as presenting a low risk pursuant to section 19 (7) of this Code. This would normally be the case, for instance, in*

relation to applicants for business or customers that are known to the entity or professional or that emanate from jurisdictions that implement AML/CFT measures that are considered equivalent to those of the AMLR and this Code (the recognized jurisdictions in Schedule 2 of this Code). It should be noted, however, that dispensing with the requirement for additional verification does not mean dispensing with the basic CDD requirements with respect to identification and verification which apply in circumstances where an applicant for business or a customer (or a business relationship) is assessed as low risk.”

Section 31
amended.

17. Section 31 of the principal Code of Practice is amended in subsection (5) by deleting paragraph (a) and replacing it with the following new paragraph:

- “(a) in place a system of reviewing and keeping up-to-date at least once
 - (i) every three years the relevant customer due diligence information on the applicant or customer where such applicant or customer is assessed to present normal or low risk; and
 - (ii) every year the relevant customer due diligence information on the applicant or customer where such applicant or customer is assessed to present a higher risk; and”;

The Explanation to section 31 of the principal Code of Practice is amended in paragraph (iv) by deleting the words “at least once every year” and replacing them with the words “for the applicable period stated”; and

Section 44
amended.

18. Section 44 of the principal Code of Practice is amended

- (a) by deleting the word “and” at the end of paragraph (g);
- (b) by adding after paragraph (g), the following new paragraph:
 - “(h) account files and business correspondence with respect to a transaction; and”;
- (c) by renumbering the current paragraph (h) as paragraph (i).

Section 45
amended.

19. Section 45 of the principal Code of Practice is amended

- (a) in subsection (1)
 - (i) by deleting the word “and” at the end of paragraph (f);
 - (ii) by deleting the full-stop at the end of paragraph (g) and replacing it with a semi-colon and adding immediately thereafter the word “and”; and
 - (iii) by adding after paragraph (g), the following new paragraph:
 - “(h) the account files and business correspondence with respect to transactions.”; and
- (b) in paragraph (b) of subsection (2) by deleting the words “subsection (1) (e), (f) and (g)” and replacing them with the words “subsection (1) (e), (f), (g) and (h)”.

The Explanation to section 45 of the principal Code of Practice is amended by adding after paragraph (iii), the following new paragraph:

“(iv) Where an entity that is a financial institution maintains a business relationship relative to an account that is dormant, it is required to continue to maintain records with respect to that account until the business relationship is terminated. This would be compliant with FATF Recommendation 10 and regulation 10 (1) of the AMLR. The termination may occur by the application of an entity’s internal procedures and controls in relation to dormant accounts, or it may occur by virtue of a statutory prescription which formally provides for mechanisms (including time frames) for ending a business relationship (and the transfer and ownership of funds in the dormant account).”

Section 46
revoked and
replaced.

20. Section 46 of the principal Code of Practice is revoked and replaced by the following new section:

- “Outsourcing. 46. (1) Subject to subsections (2) and (3), an entity or a professional may outsource a function reposed in it or him under this Code on the conditions that
- (a) the outsourcing is made pursuant to a written agreement between the entity or professional and the person to whom the outsourcing is made;

- (b) the outsourcing is not inconsistent with any provision of the Anti-money Laundering Regulations, 2008, this Code or any other enactment relating to money laundering or terrorist financing;
- (c) an original copy of the agreement on outsourcing is maintained by the entity or professional and will be made available to the Agency or Commission in an inspection or upon request;
- (d) the person to whom the function is outsourced is qualified and competent to carry out the function outsourced to him and is resident in the Virgin Islands or a jurisdiction that is recognized pursuant to section 52; and
- (e) the records required to be maintained by the entity or professional for the purposes of the due execution of the requirements of the Anti-money Laundering Regulations, 2008 and this Code are, unless otherwise required by the Regulations or this Code, maintained in a manner as to be easily retrievable and made available to the Agency or Commission by the entity or professional in an inspection or whenever requested.

(2) No entity or professional shall enter into an outsourcing agreement

- (a) to retain records required by the Anti-money Laundering Regulations, 2008 or this Code if access to those records will or is likely to be impeded by confidentiality or data protection restrictions; or

- (b) if the outsourcing has or is likely to have the effect of preventing or impeding, whether wholly or partly, the full and effective implementation of the requirements of the Anti-money Laundering Regulations, 2008, this Code or any other enactment relating to money laundering or terrorist financing.

(3) Where an entity or a professional outsources a function under this Code, the ultimate responsibility for complying with the requirements of the Regulations and this Code shall remain with the entity or professional.”

“[Explanation:

(i) It is considered that there may arise legitimate reasons for outsourcing the performance of a function or functions that are prescribed under this Code in order to ensure full compliance with the requirements of the Code. That may be the case, for instance, where an entity or a professional may not have the relevant expertise to carry out the necessary function or functions, where the entity is part of a group of body corporate that is subject to and supervised for AML/CFT compliance to the standards of the FATF Recommendations or where the nature, resources and/or volume of business of the entity or professional justifies outsourcing as a better viable mechanism for achieving the requirements of the AMLR and this Code. The issue ultimately is one of judgment to be considered and made by the entity or professional.

(ii) However, it should be noted that outsourcing is permitted only on the conditions outlined in section 46 (1); no outsourcing may be made if the scenarios outlined in section 46 (2) apply. Furthermore, it is fundamental for any entity or professional outsourcing a function to ensure that there is a written agreement to that effect and the person to whom the function is outsourced is qualified and competent to perform the function. Section 46 does not specify any requisite qualification or level of competence such a person must possess and accordingly the Agency and the Commission, in making such an assessment, will take into account the nature, volume and complexity of the business the entity or professional engages in, in addition to the size of the organization (in the case of an entity).

(iii) It is expected that where a function is outsourced, the information relating to compliance with the function will reside with the entity or

professional or would be so located as to be readily available in an inspection or upon request by the Agency or Commission. The duty to fulfil this obligation resides in the entity or professional concerned. Certain records, such as those relating to internal control systems, management policies and procedures, policies and procedures relating to misuse of technological developments, employee training manuals and (where applicable) wire transfer information would generally be expected to reside with the entity or professional for the simple reason that employees (especially new employees) are expected to learn and know those systems and policies and procedures and routinely refer to them for guidance and, in the case of wire transfer information, to use them as reference material in relation to the conduct of business relationships and transactions with respect to a customer. In any case, where an entity forms the opinion, for instance, that, having regard to its business or the fact that it has no employees in the Virgin Islands or for any other good reason, it is appropriate to outsource the retention of its records, it may do so but without prejudice to the restrictions outlined in section 46 (2).

(iv) Whatever function an entity or a professional decides to outsource, the ultimate responsibility for complying with the requirements of this Code shall rest with the entity or professional.]”

Section 47
amended.

21. Section 47 of the principal Code of Practice is amended in subsection (4) by deleting the words “, or a manager or administrator of a fund that is licensed,” in paragraph (c).

Section 51
amended.

22. Section 51 of the principal Code of Practice is amended in subsections (1) and (2) by inserting after the words “Terrorist Financing” in both subsections, the word “Advisory”.

Section 52
revoked and
replaced.

23. Section 52 of the principal Code of Practice is revoked and replaced by the following new section:

“Recognised
foreign
jurisdictions.

52. (1) Every entity and professional shall pay special attention to a business relationship and transaction that relates to a person from a jurisdiction which the Commission considers does not apply or insufficiently applies the FATF Recommendations with respect to money laundering and terrorist financing.

(2) The jurisdictions listed in Schedule 2 are, for the purposes of this Code and the Anti-money Laundering Regulations, 2008, recognized as jurisdictions

(a) which apply the FATF Recommendations and which

the Commission considers, for the purposes of subsection (1), apply or sufficiently apply those Recommendations; and

- (b) whose anti-money laundering and terrorist financing laws are equivalent with the provisions of the Anti-money Laundering Regulations, 2008 and this Code.

(3) Where the Commission is satisfied that a jurisdiction listed in Schedule 2 no longer satisfies or insufficiently satisfies the FATF Recommendations, it may amend the Schedule to remove that jurisdiction from the Schedule and from the date of the removal of the jurisdiction from the Schedule, that jurisdiction shall cease to be recognized as having anti-money laundering and terrorist financing laws equivalent to the Anti-money Laundering Regulations, 2008 and this Code.

(4) Where an entity or a professional relies on this section for not effecting any obligation under the Anti-money Laundering Regulations, 2008 and this Code with respect to any business relationship relating to or arising from a recognized jurisdiction to the extent permitted by this Code, it shall, with effect from the date of removal of the jurisdiction from Schedule 2, perform the obligations imposed by the Anti-money Laundering Regulations, 2008 and this Code in relation to business relationships connected to that jurisdiction.

- (5) The Commission may from time to time

- (a) issue advisory warnings to entities and professionals pursuant to the Financial Services Commission Act, 2001 or this Code, advising entities and professionals of weaknesses in the anti-money laundering and terrorist

financing systems of other jurisdictions;

- (b) amend Schedule 2, and every amendment of the Schedule shall be published in the *Gazette*.”

The Explanation to section 52 of the principal Code of Practice is deleted and substituted by the following new Explanation:

“(i) Perhaps the principal advantage of placing reliance on this section and the related Schedule 2 is that business relationships emanating from or relating to listed jurisdictions would generally attract the application of reduced CDD measures, as the listed jurisdictions would be considered by the Agency and the Commission as implementing AML/CFT requirements that are equivalent to the FATF Recommendations as enunciated in the AMLR and this Code. The list of jurisdictions should not be considered as static; the Commission, with the assistance of the Agency as necessary, would review the list from time to time to determine the need or otherwise for amending it. The amendment may entail additions to or removal from the list of jurisdictions as the Commission considers appropriate. While the Commission may be expected to apply the principle of reciprocity in granting recognitions, its principal objective is to identify jurisdictions that it is satisfied comply with AML/CFT standards that are equivalent to those prescribed in the AMLR and this Code.

(ii) The consideration and acceptance of business from an entity in a jurisdiction that is not included in Schedule 2 of the Code is not precluded. However, in relation to such non-listed jurisdictions, the entity or professional considering for acceptance any business from such non-listed jurisdictions has the obligation to ensure full compliance with the AML/CFT due diligence compliance measures outlined in the AMLR and this Code. Thus an introduction from a non-listed jurisdiction, as opposed to a listed jurisdiction, will not be treated by the Agency or the Commission as reliable unless the appropriate CDD and, where applicable ECDD, measures have been carried out with respect to a business relationship.

(iii) It is advisable, however, that entities and professionals should not place too heavy a reliance on the list outlined in Schedule 2 when in appropriate cases prudence dictates otherwise. It is always good practice for consideration to be given to the particular circumstances of the business relationship concerned, the prevailing political and economic circumstances in a listed jurisdiction and the changing commercial environment prevailing at the relevant time. Any of these and other

relevant factors may call for increased vigilance and re-assessment on the part of entities and professionals before placing a “carte blanche” reliance on business emanating from or relating to such listed jurisdiction. It is therefore important for all entities and professionals to keep attuned to developing events around the world, especially those that may relate to or adversely affect listed jurisdictions (notwithstanding that the Commission has not issued any advisory pursuant to the exercise of its powers under the FSC Act, 2001 or this Code).

(iv) In circumstances where a listed jurisdiction is removed from Schedule 2, the Commission will publish that fact in the Gazette and on its website. Entities and professionals that had previously relied on Schedule 2 to apply reduced CDD measures in relation to a listed jurisdiction that has been de-listed are required to apply, from the effective date of the publication or the date notified in the publication, the required CDD measures outlined in the AMLR and this Code. Failure to do so would be contravening the requirements of section 52 of the Code.

(v) In circumstances where an entity does not have any employees in the Virgin Islands or is not managed or administered in the Virgin Islands, it would nevertheless be considered and accepted by the Agency and the Commission as being compliant with this Code if the entity is regulated in a jurisdiction that is recognized pursuant to section 52 (see Schedule 2). Thus a mutual fund that is registered or recognized under the Mutual Funds Act, 1996 but whose administrator or manager does not reside in the Virgin Islands will be accepted to be compliant with the requirements of this Code if two conditions are met: firstly, that there is a written contractual agreement between the fund and the administrator or manager for the latter to perform the requisite CDD requirements; and secondly, that the fund complies with the anti-money laundering and terrorist financing obligations of a jurisdiction that is recognized pursuant to section 52; the recognized jurisdiction is treated as having AML/CFT measures equivalent to those established in the AMLR and this Code. On the other hand, a fund that is not registered or recognized under the Mutual Funds Act, 1996 does not fall within the scope of this Code (as it is subject to the laws of the jurisdiction in which it is established). However, if such fund wishes to engage in any business activity, such as soliciting investors in the Virgin Islands, it must first comply with the Mutual Funds Act, 1996, in which case the provisions of this Code would apply accordingly. For guidance on solicitation in the Virgin Islands by mutual funds, reference may be made to the Policy Guidance issued by the Commission under the Mutual Funds Act, 1996.

(vi) In terms of recognizing a foreign jurisdiction which has equivalent AML/CFT requirements to the standard of the FATF Recommendations, the Commission considers whether the jurisdiction has laws, regulations

or other enforceable means to effectively combat money laundering and terrorist financing. It is guided in this process by the following factors (which may be considered individually or in combination):

- whether the jurisdiction is a member of the FATF, CFATF or other FATF regional style body which has been examined and assessed to have a good compliance and largely compliant rating with respect to the FATF Recommendations;*
- whether the jurisdiction has undergone an independent assessment of its AML/CFT framework by the IMF or other independent body that has responsibility for carrying out such assessment;*
- the enactments in the jurisdiction and other regulatory and enforcement regimes to combat money laundering and terrorist financing (any difference in language or approach in fulfilling the FATF Recommendations is immaterial);*
- other publicly available information relating to the effectiveness of the jurisdiction’s legal, regulatory and enforcement regimes.*

(vii) With respect to determining whether a recognized jurisdiction should cease to be recognized and therefore removed from Schedule 2, the Commission considers whether the jurisdiction continues to maintain the factors that justified its inclusion in Schedule 2. If therefore the jurisdiction alters its AML/CFT enactments in a manner as to reduce the level of effectiveness of the legal framework for AML/CFT compliance, or a subsequent assessment poorly rates the jurisdiction’s AML/CFT compliance level, or other publicly available information demonstrates the ineffectiveness of the jurisdiction’s AML/CFT framework, the Commission will consider the desirability of continuing to recognize the jurisdiction and act accordingly.

(viii) Where an entity or a professional considers that the Commission should recognize a jurisdiction that is not listed in Schedule 2, it may do so in writing addressed to the Commission outlining its reasons. The entity or professional would be expected to have carried out its research into the proposed jurisdiction’s AML/CFT framework using the factors outlined in paragraph (vi) above and provide necessary evidence. The basis of any conclusion must properly and adequately demonstrate that the proposed jurisdiction has laws, regulations and other enforceable means that meet the standards established by the FATF Recommendations. The Commission is also open to receiving similar representation from any relevant authority of a foreign jurisdiction that seeks to have that jurisdiction recognized by the Commission under section 52 of this Code.”

Section 53
amended.

24. Section 53 of the principal Code of Practice is amended

(a) by inserting after subsection (1), the following new subsection:

“(1A) An entity shall, in particular, ensure that the requirement of subsection (1) is observed by its branches, subsidiaries or representative offices that operate in foreign jurisdictions which do not or which insufficiently apply anti-money laundering and terrorist financing standards equivalent to those of the Anti-money Laundering Regulations, 2008 and this Code.”; and

(b) by inserting after subsection (3), the following new subsections:

“(3A) An entity that has branches, subsidiaries or representative offices operating in foreign jurisdictions shall notify the Agency and the Commission in writing if any of the entity’s branches, subsidiaries or representative offices is unable to observe appropriate anti-money laundering and terrorist financing measures on account of the fact that such observance is prohibited by the laws, policies or other measures of the foreign jurisdiction in which it operates.

(3B) Where a notification is provided pursuant to subsection (3A),

(a) the entity concerned may consider the desirability of continuing the operation of the branch, subsidiary or representative office in the foreign jurisdiction and act accordingly; and

(b) the Agency and the Commission shall liaise and consider what steps, if any, need to be adopted to properly and efficiently deal with the notification, including the need or otherwise of providing necessary advice to the entity concerned.”.

Section 56
amended.

25. Section 56 of the principal Code of Practice is amended

(a) in subsection (1) by deleting “Schedule 1” and replacing it with “Schedule 3”; and

(b) in the marginal note by deleting “Schedule 1” and replacing it with “Schedule 3”.

Section 57
amended.

26. Section 57 of the principal Code of Practice is amended

- (a) in subsection (2) by deleting “Schedule 2” and replacing it with “Schedule 4”; and
- (b) in the marginal note by deleting “Schedule 2” and replacing it with “Schedule 4”.

Schedules
renumbered
and new
Schedules
inserted.

27. The principal Code of Practice is amended
- (a) by renumbering Schedule 1 and Schedule 2 as Schedule 3 and Schedule 4 respectively; and
 - (b) by inserting the following Schedules before Schedule 3 (as renumbered):

“SCHEDULE 1

[Section 4A (8)]

**BEST PRACTICES FOR CHARITIES
AND OTHER ASSOCIATIONS NOT
FOR PROFIT**

A. Introduction

It is generally recognized globally that the set-up and operation of charities and other associations not for profit are susceptible to misuse for money laundering and terrorist financing purposes. While taking on different forms (such as association, organization, foundation, corporation, committee for fund raising or community service, limited guarantee company and unlimited company, all of which may be formed pursuant to the BVI Business Companies Act, 2004 or some other enabling enactment) to provide “noble” services for charitable, educational, cultural, religious, community, social and fraternal purposes, recent developments have shown that charities and other associations not for profit have become convenient conduits for facilitating the laundering of ill-gotten gains and for providing funding to organizations that carry out or facilitate the carrying out of terrorist activities. Accordingly, it is essential that every charity or other association not for profit exercises vigilance in its dealings with persons who present themselves or appear to be friends of and benevolent givers of donations for general or specific activities.

It is therefore significant that every charity and other association not for profit understands and appreciates its objectives and adopt appropriate measures designed to protect it from misuse for money laundering, terrorist or other financial criminal activities. These Best Practices are not designed to prevent or discourage charities and other associations not for profit from sourcing and accepting funds from reliable and legitimate sources. Rather, they are designed to

assist charities and other associations not for profit to better insulate themselves against abuse for money laundering, terrorist financing and other financial crime activities.

In this vein, charities and other associations not for profit should note that there may be business relationships or transactions their organizations may be concerned with which their managers may not be fully aware or have full appreciation of. The same may apply to donors who give out in good faith (whether through solicitation or otherwise), just to have their donations channeled for unlawful or other unintended purposes. Thus it becomes incumbent on everyone (charities and other associations not for profit, their employees, donors and supervisors or regulators) to guard the perimeter against abuse and misuse.

B. Guiding Principles

These Best Practices are guided by the following principles:

1. Charities and other associations not for profit will be encouraged to promote, encourage and safeguard within the context of the laws of the Virgin Islands the practice of charitable giving and the strong and diversified community of institutions through which they operate.
2. The effective oversight of charities and other associations not for profit and their activities is a cooperative undertaking which requires the effective participation of the Agency, Commission, Government, charity supporters (donors and other philanthropic persons) and the persons whom charities and other associations not for profit serve.
3. The Agency (as supervisor or any other body replacing the Agency as such) and charities and other associations not for profit must at all times seek to promote transparency and accountability and, more broadly, common social welfare and security goals with respect to the operations of the charities and other associations not for profit.
4. While small charities and other associations not for profit which by their operations do not engage in raising significant amounts of money in excess of fifty thousand dollars per annum from private and public sources or which merely concentrate on redistributing resources among their members may not pose serious threats to money laundering or terrorist financing activity and therefore not require regular and enhanced oversight, they must recognize that they are susceptible to unlawful laundering and financing activity

and adopt appropriate measures to protect themselves and the reputation of the Virgin Islands.

5. In particular, charities and other associations not for profit must establish transparency, accountability and probity in the manner in which they collect, transmit or distribute funds.
6. All charities and other associations not for profit must recognize that no charitable endeavour must be undertaken that directly or indirectly supports money laundering, terrorist financing or other financial crime, including actions that may serve to induce or compensate for participation in such activity.
7. While charities and other associations not for profit are (until otherwise replaced by an overriding enactment) supervised by the Agency pursuant to section 9 (2) of the Code, they are encouraged to develop, maintain and strengthen mechanisms for self-regulation as a significant means of decreasing the risks associated with money laundering, terrorist financing and other financial crimes.

C. Adopting Preventive Measures

The measures outlined hereunder must be viewed as supplementing the provisions of the Code and are not designed to derogate from the intent, objectives or obligations of the Code.

(a) Charities and other associations not for profit must adopt measures that ensure transparency in their financial dealings. This must take into account the nature, volume and complexity of, as well as the risk that may be associated with, the financial dealings. In this respect, charities and other associations not for profit with significant annual transactions not exceeding [twenty-five thousand dollars] must, to the extent feasible and necessary, observe the following guidelines:

- (i) prepare and maintain full and accurate programme budgets that reflect all programme expenses, including recording the identities of recipients and how funds are utilized;
- (ii) adopt and maintain a system of independent auditing as a means of ensuring that accounts accurately reflect the reality of finances; and
- (iii) maintain registered bank accounts in which to keep funds and to utilize formal channels for transferring funds, whether locally or overseas, and perform other financial transactions.

(b) It is essential that every charity and other association not for profit adopts appropriate policies and procedures which ensure the adequate verification of their activities, especially where they operate foreign activities. This aids the process of determining whether planned programmes are being implemented as intended. The following guidelines must therefore be observed:

- (i) every solicitation for a donation must accurately and transparently inform donors the purpose and intent for which the donation is being collected;
- (ii) funds collected through solicitation and funds received through unsolicited donations must be utilized for the purpose for which they are collected or received;
- (iii) in order to ensure that funds are applied for the benefit of intended beneficiaries, the following must be carefully considered:
 - whether the programme or project for which funds are provided have in fact been carried out;
 - whether the intended beneficiaries exist;
 - whether the intended beneficiaries have received the funds meant for them; and
 - whether all the funds, assets and premises have been fully accounted for.
- (iv) where, having regard to the nature, size and complexity of and risk associated with a programme or project, it becomes necessary to conduct direct field audits, this must be carried out in order to guard against malfeasance and detect any misdirection of funds; and
- (v) where funds are delivered to an overseas location, appropriate measures must be adopted to account for the funds and make a determination as regards their use.

(c) Central to the efficient and effective functioning of a charity and other association not for profit is the establishment of a robust administrative machinery that ensures the appropriate and routine documentation of administrative, managerial, compliance and policy development and control measures with respect to the operations of the organization. Accordingly, the following guidelines must be observed:

- (i) directors and/or managers (or persons appointed or deputed to perform such functions) must act with due diligence and ensure that the organization functions and operates ethically;
- (ii) directors and/or managers (or persons appointed or deputed to perform such functions) need to know the persons acting in the name of the organization (such as executive directors, diplomats, fiduciaries and those with signing authority on behalf of the organization);
- (iii) directors and/or managers (or those appointed or deputed to perform such functions) must exercise due care, diligence and probity and, adopt where necessary, proactive verification measures to ensure that their partner organizations and those to which they provide funding, services or material support are not being penetrated or manipulated by criminal groups, including terrorists;
- (iv) the directors and/or managers (or persons appointed or deputed to perform such functions) have responsibilities to
 - their organization and its members to act honestly and with vigilance to ensure the financial health of the organization;
 - their organization and its members to diligently dedicate their service to the mandate(s) of the organization;
 - the persons, such as donors, clients and suppliers, with whom the organization interacts;
 - the Agency which has supervisory responsibility over the organization; and
 - the persons, including the Government, who provide donations or other forms of financial assistance to the organization, whether on a regular basis or otherwise;
- (v) where a charity or other association not for profit functions with a board of directors, the board must
 - have in place adequate measures to positively identify every board member, both executive and non-executive;
 - meet on a reasonably periodic basis, keep records of its proceedings (including the decisions taken);

- have in place appropriate formal arrangements regarding the manner in which appointments to the board are effected and how board members may be removed;
- adopt appropriate measures to ensure the conduct of an annual independent review of the finances and accounts of the organization;
- adopt policies and procedures which ensure appropriate financial controls over programme spending, including programmes that are undertaken through agreements with other organizations;
- ensure that there is an appropriate balance between spending on direct programme delivery and administration; and
- ensure that there are appropriate policies and procedures to prevent the use of the organisation's facilities or assets to support or facilitate money laundering, terrorist financing or other financial crime.

SCHEDULE 2

[Section 52]

RECOGNISED JURISDICTIONS

- | | |
|--------------------|--------------------------|
| 1. Argentina | 25. Isle of Man |
| 2. Aruba | 26. Italy |
| 3. Australia | 27. Japan |
| 4. Bahamas | 28. Jersey |
| 5. Barbados | 29. Luxembourg |
| 6. Bermuda | 30. Malta |
| 7. Belgium | 31. Mauritius |
| 8. Brazil | 32. Mexico |
| 9. Canada | 33. Netherlands |
| 10. Cayman Islands | 34. Netherlands Antilles |
| 11. Chile | 35. New Zealand |
| 12. China | 36. Norway |
| 13. Cyprus | 37. Panama |
| 14. Denmark | 38. Portugal |
| 15. Dubai | 39. Singapore |
| 16. Finland | 40. Spain |

- 17. France
- 18. Germany
- 19. Gibraltar
- 20. Greece
- 21. Guernsey
- 22. Hong Kong
- 23. Iceland
- 24. Ireland
- 41. South Africa
- 42. Sweden
- 43. Switzerland
- 44. United Kingdom
- 45. United States of America”.

Schedule 4 amended.

28. Schedule 4 of the principal Code of Practice (as renumbered) is amended

- (a) in Column 1 by deleting section “4 (3), (6) and (7)” and replacing it with section “4A (3), (5), (6) and (8)”;
- (b) by inserting after section “4A (3), (5), (6) and (8)” in Column 1 and the related Columns 2, 3 and 4, the following new section and the related information in the respective Columns:

11	Failure to maintain appropriate policies, procedures and other measures to prevent misuse of technological developments	\$3,000	\$2,000
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- (c) in
 - (i) Column 1 by deleting section “46” and replacing it with section “46 (2)”;
 - (ii) Column 2 by deleting the words “Entering into outsourcing arrangement for the retention of records whereby access to such records is impeded by confidentiality or data protection restrictions” and replacing them with the words “Entering into outsourcing agreement for the retention of records whereby access to such records is impeded by confidentiality or data protection restrictions, or the outsourcing prevents or impedes the implementation of the Anti-money Laundering Regulations, 2008, this Code or other enactment relating to money laundering or terrorist financing”;
- (d) by inserting after section “48 (1) and (2)” in Column 1 and the related Columns 2, 3 and 4, the following new sections and the related information in the respective Columns:

52	Failure to pay special attention to business relationships or transactions connected to a jurisdiction that does not apply or insufficiently applies FATF Recommendations, or to perform obligations in relation to a jurisdiction that is no longer recognized	\$3,500	\$3,000
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Issued by the Financial Services Commission this 22nd day of January, 2009.

Signed: Robert Mathavious
Managing Director/CEO
Financial Services Commission