



**BRITISH VIRGIN ISLANDS
FINANCIAL SERVICES COMMISSION**

**GUIDANCE NOTES ON REVOCATION OR CANCELLATION OF LICENCES
OR CERTIFICATES OF REGULATED PERSONS, INCLUDING THE
APPROVAL OF SOLVENT LIQUIDATION PROCEDURES**

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INTRODUCTION

These Guidance Notes are issued by the Financial Services Commission (hereinafter referred to as “the Commission”) to provide a framework for the revocation or cancellation of licences or certificates, including the approval of solvent liquidation procedures.

Section 38(1)(c) of the Financial Services Commission Act, 2001 makes provisions for the Commission to revoke the licence of a licensee at any time if the licensee applies to the Commission for its licence to be revoked, and section 29(a) of the Mutual Funds Act, 1996 similarly provides for the voluntary cancellation of the licences or certificates of mutual fund entities at the request of the licence or certificate holder. Under section 200(3) of the BVI Business Companies Act, 2004, the Commission must give prior written consent for a company that is a regulated person to be put into liquidation and must approve the appointment of the individual proposed as voluntary liquidator. A voluntary liquidator may not be appointed in respect of a long term insurance company under section 200(2) of the BVI Business Companies Act, 2004.

The trigger for the Commission’s exercise of its powers under the Financial Services Commission Act, 2001, the Mutual Funds Act, 1996 and the BVI Business Companies Act, 2004 is an application submitted for its consideration and approval. Accordingly, these Guidance Notes do not necessarily replicate the already established statutory provisions under the relevant enactments outlined above (necessary references to the said enactments must be made); they merely outline the relevant considerations for the Commission’s proper exercise of its statutory powers with respect to the revocation or cancellation of a licence or certificate, including cases of voluntary liquidation.

Where a regulated person applies for its licence or certificate to be revoked or cancelled and/or for approval of liquidation, the Commission’s ongoing concern would be that stakeholders are sufficiently protected and that all of the regulated person’s liabilities would be duly settled. The requirements set out in these Guidance Notes therefore provide for the Commission to be satisfied as to these considerations.

It is to be noted that the numbered provisions of these Guidance Notes are expected to be complied with fully. The explanations that follow the numbered provisions are, unless the contexts otherwise requires, designed to serve as guidelines for the interpretation, understanding and application of the provisions for revocation or cancellation of licences or certificates, including approval of liquidation of solvent regulated persons.

These Guidance Notes are issued by the Financial Services Commission with respect to the revocation of licences under the Financial Services Commission Act, 2001, the voluntary cancellation of licences or certificates under the Mutual Funds Act, 1996 and the voluntary liquidation of a company that is a regulated person under the BVI Business Companies Act, 2004.

Interpretation

1. (1) For the purposes of these Guidance Notes,

“financial services legislation” means legislation outlined in Parts I and II of Schedule 2 of the Financial Services Commission Act, 2001;

“good regulatory standing” means that

- (a) registry and regulatory fees and administrative penalties (where applicable), financial statements and other filing requirements in respect of a company are up to date;
- (b) all of the company’s functionaries requiring approval or notification are so approved or notified; and
- (c) no regulatory or enforcement action is pending against the company;

“regulated person” means a person authorised, licensed, registered or recognised or required to be so authorised, licensed, registered or recognised under a financial services legislation; and

“stakeholder” means a person affected by the revocation or cancellation of the licence or certificate of a regulated person, including a depositor, beneficiary, policyholder, investor or company under administration.

(2) Where considered necessary, Explanations are provided for and follow each paragraph or sub-paragraph of these Guidance Notes.

PART I REVOCATION OR CANCELLATION OF LICENCES OR CERTIFICATES OF REGULATED PERSONS

2. In order for the Commission to revoke or cancel a licence or certificate of a regulated person at the request of the holder of such licence or certificate, the following conditions must be met:

- (1) the Commission shall receive a request in writing for revocation or cancellation from the holder of the licence or certificate;

(Explanation:

(i) *Section 38(1)(c) of the Financial Services Commission Act, 2001 provides for the Commission to revoke a licence if the regulated person applies to the Commission for its licence to be revoked. For mutual fund entities, section 29(a) of the Mutual Funds Act, 1996 provides for the cancellation of mutual fund entities at the request of the holder.*

(ii) *In normal circumstances, the Commission requires that this request be made by the directors of the regulated person. However, the Commission may also accept a request from the authorised representative or legal representative of the regulated person, provided that he or she indicates in writing he or she is duly instructed by the regulated person to request revocation or cancellation of the licence or certificate. The written instruction from the regulated person must be appended to the application or request.)*

(2) the Commission shall receive confirmation in writing and be satisfied that the regulated person is in good regulatory standing;

(Explanation:

For the purposes of these guidance notes, “good regulatory standing” bears the meaning assigned in paragraph 1.)

(3) the Commission shall receive the original current licence or certificate issued, for revocation or cancellation. In the case of a lost licence or certificate, the Commission shall receive

(a) an affidavit signed by the directors, stating that the licence or certificate is lost and will be returned to the Commission if found, including an explanation of what has been done to locate the lost licence or certificate; and

(b) where issued, a duly certified copy of the original current licence or certificate;

(Explanation:

It should be noted that only copies of licences or certificates of the original current licence or certificate certified by the Financial Services Commission will be considered acceptable to satisfy the requirement stated in paragraph 2(3)(b.)

- (4) the Commission shall receive and be satisfied with the resolution of the board of directors which should indicate the date on which the regulated person has ceased or will cease to carry on its business in or from within the Virgin Islands and that it will not begin to conduct regulated business in the future unless it obtains the appropriate licence or certificate to do so;
- (5) the Commission shall receive an explanation in writing from the board of directors, or the authorised or legal representative, of the reasons for the regulated person ceasing its business;

(Explanation:

Where the Commission considers that the reasons given pursuant to sub-paragraph (5) are unclear or do not sufficiently explain the rationale for the application or request, or the purported reasons do not in fact represent reasons as envisaged under sub-paragraph (5), it reserves the right to request clarification or sufficient explanation or the provision of actual reasons, as the case may be, before it grants any approval.)

- (6) the Commission shall receive confirmation in writing from the board of directors, or the authorised or legal representative, that the regulated person's business is not being terminated in a manner prejudicial to its investors and creditors; and

(Explanation:

The requirements outlined in sub-paragraphs (5), (6) and (7) are unnecessary in circumstances wherein the regulated person is transferring to another jurisdiction or has never commenced its business.)

- (7) the Commission shall receive and be satisfied with an auditor's confirmation that
 - (a) the regulated person has fully redeemed all of its stakeholders; and
 - (b) there are no outstanding liabilities relating to investors or creditors of the regulated person.

(Explanation:

The requirement outlined in sub-paragraph (7) is not applicable to the revocation of licences of restricted Class II and restricted Class III licences, nor to the

cancellation of the certificates of private and professional funds, nor to the revocation or cancellation of licences of entities not required to have auditors.)

3. In cases of revocation or cancellation of licences or certificates due to actual or intended re-domiciliation of the regulated person to another jurisdiction, the regulated person shall provide to the Commission, in addition to the requirements outlined in paragraph 2,

- (1) statement from the board of directors, or the authorised or legal representative, identifying the jurisdiction to which the regulated person has re-domiciled or intends to re-domicile and the reason(s) thereof; and
- (2) confirmation from the board of directors, or the authorised or legal representative, that stakeholders have been made aware that the regulated person has changed or intends to change its domicile.

(Explanation:

In circumstances where the application for revocation or request for cancellation predates the re-domiciliation, the confirmation must indicate the jurisdiction to which the regulated person wishes to re-domicile. With respect to notification of investors regarding the change in domicile, the Commission may require evidence of that fact either in the form of actual written correspondence to the investors or a board resolution or an affidavit effecting such confirmation.)

4. The following must be provided to the Commission in cases of revocation or cancellation of the licence or certificate of a regulated person that has never conducted regulated business:

- (1) confirmation from the board of directors, or the authorised or legal representative, that the regulated person has never carried on regulated business; and
- (2) an explanation from the board of directors, or the authorised or legal representative, of the reasons the regulated person never commenced regulated business.

PART II
APPROVAL OF SOLVENT LIQUIDATION

5. In order for the Commission to grant approval for the liquidation of a solvent regulated person, the following conditions must be met:

- (1) the Commission shall receive and be satisfied with confirmation in writing from the board of directors, or the authorised or legal representative, that the regulated person is in good regulatory standing;
- (2) the Commission shall receive confirmation in writing that the regulated person is solvent; and

(Explanation:

The Commission must receive the most recent audited financial statements as required to be filed under relevant financial services legislation, where applicable. The Commission must also receive unaudited statements, subsequent to the audited financial statements, for the period up to the date on which the board of the regulated person resolves to apply to liquidate the regulated person. In respect of private and professional funds, this includes the most recent unaudited statement of assets and liabilities.)

- (3) the Commission shall receive confirmation in writing and be satisfied that
 - (a) the liquidation of the regulated person will not have any adverse or potential adverse consequences for customers or investors;
 - (b) the liquidator has liquidation experience and professional competence to liquidate the specific company. Specifically, the liquidator is required to demonstrate that he or she
 - (i) holds an insolvency practitioner's licence issued by the Commission;
 - (ii) has an appropriate professional qualification, such as in law or accountancy, and experience of providing legal or financial advice or support to companies in the relevant financial sector;
 - (iii) has experience of liquidating companies in the relevant financial sector; or

- (iv) is an eligible liquidator pursuant to regulations made under section 240 of the BVI Business Companies Act, 2004, in circumstances where he or she is a director of the company in respect of which he or she is to serve as liquidator; and
- (c) the liquidator is fully conversant with relevant financial services legislation, including industry specific legislation and the BVI Business Companies Act, 2004.

(Explanation:

The voluntary liquidator must be fit and proper to administer the applicable requirements of the relevant financial services legislation and the BVI Business Companies Act as it relates to voluntary liquidation.)

6. The Commission will usually impose conditions on approvals of liquidation and the liquidator, requiring the regulated person or voluntary liquidator, as appropriate, to provide the Commission with copies of

- (1) the board resolution proposing the liquidation;
- (2) the notice of appointment of the liquidator, the declaration of solvency made by the directors and the Liquidation Plan (within 14 days of the board resolution) that are required to be filed with the Registry of Corporate Affairs;
- (3) an advertisement placed in the *Gazette* announcing the appointment of the liquidator;
- (4) a statement of account in respect of the actions and transactions of the liquidator;
- (5) the Certificate of Dissolution issued by the Registry of Corporate Affairs;
- (6) the notice placed in the *Gazette* announcing the regulated person has been struck-off the Register of Companies; and
- (7) such other document or information as the Commission considers appropriate.

(Explanation:

The required confirmation outlined in the paragraphs of these Guidance Notes must be to the satisfaction of the Commission. Thus where considered appropriate in order to satisfy itself, the Commission may require relevant affidavits in support of any application for the liquidation of a company.)

ISSUED by the Financial Services Commission this 1st day of April, 2008.

Kenneth Baker
Deputy Managing Director
BVI Financial Services Commission