

**British Virgin Islands
Financial Services Commission**



Insurance Guidelines

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INTRODUCTION

The Insurance Act, 2008 (“the Act”) and the Insurance Regulations, 2009 (“the Regulations”) require persons (legal and natural) to be licensed by the Financial Services Commission (“the Commission”), in order to carry on insurance business in or from within the Virgin Islands, unless otherwise exempted, and sets out provisions relative to the regulation and supervision of such persons.

2. In 2015 the Act and the Regulations were amended to expand the scope of insurance related business, especially in relation to the captive insurance sector, while at the same time providing clarification with respect to specific provisions of the Act and the Regulations. A key reform introduced ensures that an insurance licensee will at all times represent the best interests of the Virgin Islands and its policy holders and other customers. Insurance licensees are therefore prohibited from engaging in any activity, whether within or outside the Virgin Islands, which may be damaging to the reputation of the Virgin Islands or any of its systems and services; or which misleads or is likely to mislead its policy holders or other customers.

3. One of the most substantive changes to the Act is the creation of two (2) new categories of insurance licences (categories E and F) that can be issued by the Commission. This change allows for a flexible regulatory regime for the regulation of pure captives, and distinguishes between a pure captive and one that underwrites a certain amount of unrelated party business in order to qualify as an insurer for such purpose as may be allowable under the laws of a foreign jurisdiction. Additionally, for improved policyholder protection, a BVI domestic insurer is now required to include a “Cut Through Endorsement Clause” to its reinsurance contract(s) if it is not rated A- or better by AM Best or a similar rating agency. The amendments also provide an appropriate framework for the formation of segregated portfolio companies pursuant to the provisions of the BVI Business Companies Act.

4. The amendments to the Regulations allow a BVI insurer that carries on domestic business or a specified foreign insurer licensee to opt for a regulatory deposit by paying such deposit to the Commission as opposed to establishing a trust with trust assets that must be maintained in the Virgin Islands.

5. These Guidelines have, therefore, been designed to provide guidance to licensees and potential licensees in filing any necessary applications and other documents with the Commission (in addition to facilitating compliance), and to understand the general requirements relative to the provisions of the Act and the Regulations.

1. Commencement

- 1.1 These Guidelines come into force on the 1st day of November, 2016.

2. Insurer Licences

- 2.1 Two new categories of insurer licences have been established that will allow licensees greater flexibility and greater opportunities for the use, and carrying out, of captive insurance business in and from within the BVI.
- 2.2 A **Category E** licence relates solely to pure captive insurers and may be issued only to a BVI business company. It entitles the holder to underwrite related party business only and no unrelated party business may be underwritten.
- 2.3 A **Category F** licence relates to a captive insurer that underwrites related party business, with a maximum un-related party business underwritten in order to qualify as an insurer under the laws of a foreign jurisdiction. A Category F licence may be issued to a BVI business company only. An example of such a licensee would be a captive that qualifies under US Internal Revenue Code 831(b) that has taken the 953(d) election to be taxed as a U.S. Corporation, or similar legislation.
- 2.4 Additionally, persons may now apply for a licence to carry on both life and health, and property and casualty insurance (previously referred to as “long-term insurance business” and “general business”, respectively).

3. Application for Licensing

3.1 Completing the Application

- 3.1.1 A person wishing to be licensed as a Category E or Category F insurer, or to carry on both life and health, and property and casualty insurance business must prepare and submit an ***Application for a Licence or Certificate as a Financial Services Business Provider (“the Application Form”)*** as found in the Schedule to the ***Financial Services Commission Approved Forms and Related Guidelines***.
- 3.1.2 In order for an application to be considered complete all relevant sections of the application must be completed and submitted to the Commission, along with all necessary supporting documents. Every application contains a declaration which must be properly completed by the applicant or the applicant’s agent submitting the application on behalf of the applicant.
- 3.1.3 An application under this section must comply with the requirements of section 8 of the Act.

3.2 Processing of application

- 3.2.1 Upon receipt of a completed application, the Commission will endeavour to process such application and communicate its decision to the applicant or its agent within the time stipulated

in the Commission's *Performance Accountability and Supervisory Service Standards* (which is available on the Commission's website at www.bvifsc.vg).

3.3 Payment of Application Fee

- 3.3.1 Every application filed must be accompanied by the requisite fee in relation to the application. No application will be processed by the Commission unless the full fee payable is received. The fees payable are prescribed in the Financial Services (Fees) (Amendment) Regulations, 2016.

3.4 Application Considered Properly Filed

- 3.4.1 The Commission will consider an application received to be fully completed when all the required applicable information in respect of the application is provided. However, this does not derogate from any request the Commission may make under **paragraph 3.8.1**.
- 3.4.2 Once the completed application form containing all the relevant information, along with any other additional information that may be requested, has been reviewed and the Commission is satisfied that the applicant has met the requirements for approval, approval for the issue of the licence may be granted.

3.5 Payment of Approval Fee

- 3.5.1 Approval of a licence to act as a Category E or F insurer, or to carry on both life and health, and property and casualty insurance, may only be considered final when the requisite approval fee has been paid to the Commission as prescribed in the Financial Services (Fees) (Amendment) Regulations, 2016. The approval fee is not the same as the application fee and must therefore be paid separately once the Commission communicates its approval of a licence.

3.6 Application Not Considered Properly Filed

- 3.6.1 An application that does not contain all of the required applicable information, or is not accompanied by the requisite fee will be considered incomplete and may be denied by the Commission and, in any case, its processing will be delayed until it is completed. Where an applicant is unsure about any matter contained in the application form, the applicant may seek legal advice or contact the Insurance Division of the Commission if the matter concerned does not relate to legal advice.
- 3.6.2 An application for which additional information required to be submitted in accordance with **paragraph 3.8.1** is not received will be considered incomplete and may be refused/denied by the Commission and/or its processing delayed until it is completed.

3.7 Information to be Submitted with an Application

General Information Required

- 3.7.1 The basic information required to be submitted by persons wishing to be approved as a Category E or F insurer, or to carry on both life and health, and property and casualty insurance is specified in the ***Application Form***. Applicants must review the basic information and ensure they understand what is required of them before completing an application form.

Application for a Category E Insurer's Licence

- 3.7.2 In the case of an application for a Category E insurer's licence Parts 1, 3 and 7 of the ***Application Form*** should be completed and submitted along with the following information:

- Business plan and five year financial projections;
- **Form B-1** of the ***Guidelines for Approved Persons Regime (GAPR)*** for the approval of the applicant's auditor. If the applicant wishes to be exempted from appointing an auditor, details of the accountant to be responsible for preparing the unaudited or management accounts of the insurer must be submitted with the application;
- **Form B-1 of the GAPR** with respect to the designated insurance manager;
- **Form A of the GAPR** for each director and senior officer;
- Duly notarised or certified¹ written confirmation that the applicant will
 - (a) solely underwrite related party business; and
 - (b) if granted a licence, notify the Commission of changes of directors, senior officers and in the case of shareholders, where notification is required (see **section 6.5** below), as soon as practicable, and in any case, not more than 14 days after the occurrence of any change;
- The requisite application fee;
- Any other information or documentation required by the Commission. It should be noted that additional information may be required by the Commission after reviewing an applicant's initial application; where that happens, the Commission will stipulate the period within which such additional information must be provided in order to make the application complete.

Application for a Category F Insurer's Licence

- 3.7.3 In the case of an application for a **Category F** insurer's licence Parts 1, 3 and 7 of the ***Application Form*** should be completed and submitted along with the following information:

- Business plan and five year financial projections;
- **Form B-1 of the GAPR** for the approval of the applicant's auditor;
- **Form B-1 of the GAPR** with respect to the designated insurance manager;
- **Form A of the GAPR** for each director and senior officer;

¹ An affidavit or similar type document would be acceptable, or documents may be certified by a director of the applicant or the proposed insurance manager of the applicant.

- Duly notarised or certified² written confirmation of the maximum unrelated party business underwritten to qualify the applicant as an insurer for such purpose, as may be allowable under the laws of a foreign jurisdiction (specifying the foreign jurisdiction);
- The requisite application fee;
- Any other information or documentation required by the Commission. It should be noted that additional information may be required by the Commission after reviewing an applicant's initial application; where that happens, the Commission will stipulate the period within which such additional information must be provided in order to make the application complete.

Application to Carry on Both Life and Health and Property and Casualty Insurance Business

3.7.4 In the case of an applicant wishing to carry on both life and health, and property and casualty insurance business, Parts 1, 3 and 7 of the ***Application Form*** should be completed and submitted along with the following information:

- Business plan and five year financial projections showing separately projections for each line of business;
- **Form B-1 of the GAPR** for the approval of the applicant's auditor;
- **Form B-1 of the GAPR** with respect to the designated insurance manager;
- **Form A of the GAPR** for each director and senior officer;
- In the case of a category B (foreign domestic insurer licence) applicant, written evidence from the regulator in its home jurisdiction that it is licensed in that jurisdiction to carry on life and health, and property and casualty, insurance business;
- The requisite application fee;
- Any other information or documentation required by the Commission. It should be noted that additional information may be required by the Commission after reviewing an applicant's initial application; where that happens, the Commission will stipulate the period within which such additional information must be provided in order to make the application complete.

3.8 Additional Information

3.8.1 It should be noted that the Commission, in the exercise of its general powers reserves the right to seek clarification or request additional information on any application submitted for processing. Where such clarification is sought or a request for additional information made, this information must be provided within the timeframe specified in the request for the information. It is therefore essential that where, for any reason, clarification sought or requested information is not available or cannot be provided, that fact is notified to the Commission as quickly as possible in order to enable the Commission to dispose of the application appropriately.

² Ibid

3.9 Reclassification of Existing Licensed Insurers

- 3.9.1 An existing captive insurer may volunteer to be reclassified, if qualified, as the holder of one of the two new categories (i.e. Category E or F) of licences based on its business plan or operation. For licensed captive insurers that wish to be reclassified to one of the new categories of licence, a new application as outlined in **paragraph 3.7.2 or 3.7.3** (as the case may be) must be submitted to the Commission. Each application received will be considered on a case by case basis.
- 3.9.2 Existing licensees holding licences to carry out long-term insurance business and general insurance business will need to be reclassified as life and health insurance licensees and property and casualty insurance licensees, respectively.
- 3.9.3 To accommodate this reclassification the Commission will, as of the date of the coming into force of the Insurance (Amendment) Act, 2015, recognise licensees holding licences to carry out long-term insurance business as holding licences to provide life and health insurance, and licensees holding licences to carry out general insurance business as holding licences to provide property and casualty insurance.
- 3.9.4 Where an existing insurance licensee wishes to engage in the provision of both life and health insurance and property and casualty insurance, the insurance licensee must submit an application as outlined in **paragraph 3.7.4** above.

3.10 Application for a Licence as a Segregated Portfolio Company

- 3.10.1 A BVI insurer may be incorporated or registered as a segregated portfolio company ("SPC) under sections 135 and 136 of the BVI Business Companies Act, 2004. However, in order to carry on business as a BVI insurer it must also be licensed by the Commission as an SPC.
- 3.10.2 A BVI insurer may apply to the Commission to be licensed as an SPC to carry out insurance business at the same time of submitting its application to be incorporated or registered as an SPC.
- 3.10.3 A BVI insurer wishing to be licensed as an SPC will be licensed as a **Category C** insurer. The basic information required to be submitted with this application is specified in the **Application Form**. Parts 1, 3 and 7 of the **Application Form** should be completed and submitted along with the following information:
- Business plan and five year financial projections;
 - **Form B-1 of the GAPR** for the approval of the applicant's auditor;
 - **Form B-1 of the GAPR** with respect to the designated insurance manager;
 - **Form A of the GAPR** for each director and senior officer;
 - Details of the segregated portfolios to be formed initially and proposed (once information is available) including but not limited to, ownership, intended purpose, policyholders and business plans with five year projections for each segregated portfolio;
 - The requisite application fee;

- Any other information or documentation required by the Commission. It should be noted that additional information may be required by the Commission after reviewing an applicant's initial application where that happens, the Commission will stipulate the period within which such additional information must be provided in order to make the application complete.

3.11 Licensing of Insurance Agents and Insurance Brokers

- 3.11.1 In order for an insurance agent or insurance broker to conduct business in or from within the Virgin Islands the insurance agent or insurance broker must be licensed by the Commission.
- 3.11.2 To qualify for licensing by the Commission, the insurance agent or insurance broker must be a registered BVI business company and must submit the requisite **Application Form** by completing Parts 1, 3 & 7 and providing any other required documentation, along with the requisite application fee for approval by the Commission.
- 3.11.3 Upon review of the application the Commission may grant a licence to act as an insurance agent or insurance broker if the Commission is satisfied that:
- (a) the applicant intends, if issued with a licence, to carry on business as an insurance agent or an insurance broker, as the case may be;
 - (b) the applicant satisfies the requirements of the Act and the Regulatory Code with respect to the application;
 - (c) the applicant will, on the issuance of the licence, be in compliance with the Act and the Regulatory Code;
 - (d) the applicant and its senior officers satisfy the Commission's fit and proper criteria and, in the case of a company, that includes its directors, senior officers and any persons having a significant interest or controlling interest in the applicant; and
 - (f) issuing the licence is not against the public interest.
- 3.11.4 Where the Commission has assessed an application and is of the view that any person having a share or other interest in the applicant, whether legal or equitable, is not fit and proper in accordance with Part 1 of Schedule 1A of the Regulatory Code, based on the Commission's fit and proper criteria, the Commission may refuse to grant the licence. The same applies in relation to the applicant itself and its directors and senior officers. However, in the case of directors and senior officers that are considered as not satisfying the Commission's fit and proper criteria, the Commission will notify its view thereon to the applicant giving it the opportunity to submit alternative candidates that will likely satisfy the fit and proper criteria.

3.12 Authority to Act as an Insurance Agent

- 3.12.1 Once licensed, an insurance agent may be appointed and authorised by an insurer to solicit applications for insurance, negotiate for insurance business or provide advice to clients of the insurer. However, the insurance agent may not act for an insurer unless the name of the insurer is stated on the insurance agent's licence.

- 3.12.2 In order for an insurance agent to add a licensed insurer to, or remove a licensed insurer from, its licence, the insurance agent must submit an application to the Commission requesting the change to its licence. This application may be in the form of a letter written on the insurance agent's letterhead.
- 3.12.3 Where the application is to add a licensed insurer to the licence, the application must be accompanied by written confirmation from the licensed insurer concerned that, on the amendment of the licence, it will appoint the applicant as its insurance agent.
- 3.12.4 Where a licensed insurance agent ceases to act as the insurance agent for an insurer, it must notify the Commission in writing, within 14 days of ceasing to so act, and apply for the removal of the insurer from its licence.

3.13 Authority to Act as Both Insurance Agent and Insurance Broker

- 3.13.1 An insurance agent, once licensed by the Commission to act as such, may place business with an insurer as the representative of the insured (i.e. act as an insurance broker), or through an insurance agent of an insurer, provided that it is not also acting as agent for the insurer, and the insurer is either licensed to carry on insurance business in the Virgin Islands or is properly exempted from the requirements of licensing.
- 3.13.2 A licensed insurance broker, however, may only act as an insurance broker and may not act as an insurance agent under its insurance broker's licence.
- 3.13.3 For the purposes of the Act and these guidelines an insurance broker is a person who acts as an independent contractor or consultant and who, for commission or other compensation, carries out any of the following activities:
 - (a) the soliciting or negotiating of insurance business, including the renewal and continuance of such business, on behalf of an insured or a prospective insured other than the insurance broker itself;
 - (b) the bringing together, either directly or through the agency of a third party, with a view to the insurance of risks, of persons seeking insurance and insurers, and carrying out work preparatory to the conclusion of contracts of insurance; or
 - (c) the provision of advice to clients concerning their insurance requirements;
- 3.13.4 Where a licensed insurance broker wishes to act as an insurance agent, the insurance broker must submit an application, in writing, comprising of Parts 1, 3 and 7 of the **Application Form** to the Commission requesting that its licence be converted to an insurance agent's licence.
- 3.13.5 If, after review of the application by the Commission, the application is approved, the insurance broker will be notified of this fact in writing. Upon notification of approval, the insurance broker must return its insurance broker's licence to the Commission. Once the licence is returned, and the requisite approval fees have been paid, the Commission will issue a new insurance agent's licence.

4 Varying an Insurer's Licence

- 4.1 A licensed insurer may apply to the Commission to vary its licence to allow for the inclusion of an additional class of insurance business, or for the removal of an existing class of insurance business.
- 4.2 In considering such an application, the Commission must be satisfied, in the case of including a new class of insurance business that the variation is appropriate and is not against the public interest. In the case of the removal of a class of business, the Commission must be satisfied that the insurer will not be absolved from any obligation or liability to which it would otherwise be bound and it is not against the public interest to approve the removal.
- 4.3 An application for the variation of a licence must be in the form of a letter addressed to the Commission, providing details of the requested variation and giving the reason(s) for the request. The application should be accompanied by an updated business plan reflecting the changes resulting from the requested variation, along with the applicable fee(s) in order to be considered.

5 Evidence of Cut Through Endorsement Clause

- 5.1 In the event an insurer becomes insolvent, a Cut Through Endorsement Clause will allow claims to be paid directly by the insurer's reinsurer to the insured and to a loss payee or mortgagee if one is included on the policy. Schedule 1 of the Insurance (Amendment) Act, 2015 provides a sample of a Cut Through Endorsement Clause which licensees may use to draft their own Clause.
- 5.2 A BVI insurer that carries on domestic business which is not rated A- or better by A. M. Best or another similar rating agency or institution is required to include a cut-through endorsement clause in its reinsurance contract(s). This provision is intended to minimize the risk of loss to insureds or policyholders in the event that such a BVI insurer is unable to meet its liabilities.
- 5.3 A BVI insurer that has not received a rating of A- or better must submit to the Commission written evidence that it has included in its reinsurance contract(s) the required Cut Through Endorsement Clause. Such evidence should include a copy of the endorsement or addendum to the said reinsurance contract(s).

6. Notifications and Approvals

6.1 Filing of Amended Business Plans

- 6.1.1 A licensed insurer which makes any material changes to its business plan must notify the Commission in writing immediately of the changes. Such notification should be submitted in the form of a letter to the Commission detailing the changes that have been made to the business plan and should be accompanied by a copy of the amended business plan.

6.2 Notification of Changes in Directors and Senior Officers of a Category E Insurer

- 6.2.1 Where a Category E licensed insurer appoints a director or senior officer, notification must be made to the Commission within 14 days of the appointment.

6.2.2 Similarly, where a director or senior officer of a Category E licensed insurer ceases to hold office or to be employed by the licensed insurer notification must be made to the Commission within 14 days of the change in the director or senior officer's position.

6.2.3 The notification must be submitted to the Commission in writing and should include the following:

- In respect of a person being appointed as director or senior officer, full details/particulars of the individual (i.e. name, date of birth, certified copies of the individual's passport page, recent utility bills, and driver's licence, and any other due diligence information that may be required by the Commission); or
- In respect of a person who has ceased to hold office, the reason(s) for the person no longer holding the post or having resigned.

6.3 Notification that a BVI Insurer has Less than Two Directors

6.3.1 A BVI insurer is required to have at least 2 directors at all times and these directors must be individuals.

6.3.2 If a BVI insurer finds itself in a position where it is unable to maintain the required 2 directors, it must notify the Commission in writing immediately indicating this fact. This notification should include the date from which this change in position occurred.

6.3.3 Within 21 days of the BVI insurer failing to maintain the relevant number of directors, it must identify a replacement director or replacement directors and submit an application to the Commission for the approval of the appointment(s) of the identified person(s). An application for the approval of the appointment of a director should be submitted using **Form A of the GAPR**.

6.3.4 Where the BVI insurer is the holder of a Category E licence that is unable to maintain the required two directors, it is only required to notify the Commission as to the person identified to be the replacement director(s) as specified in **paragraph 7.3.2** below.

6.3.5 If an application is submitted to the Commission within the specified 21 day period and the Commission assesses, based on the criteria outlined in **paragraph 6.3.6** below, that the BVI insurer may require additional time to appoint a replacement director, and that such additional time is not against the public interest, the Commission may extend the application period for up to an additional 21 day period.

6.3.6 An extension to the application period for the appointment of a replacement director may be granted by the Commission if:

- the BVI insurer can prove that it was not aware in a timely manner, and could not reasonably have known that the individual had ceased to be a director of the BVI insurer;

- the director died and the circumstances were of such a nature that it would be unreasonable for the BVI insurer to identify a replacement director and submit an application within the stipulated period; or
- the BVI insurer is going through a restructuring (such as a merger or consolidation) which has resulted in the departure of the director before the restructuring could be completed, and the identification and appointment of a replacement director is part of the restructuring process.

6.4 Disposing or Acquiring of a Significant Interest or Controlling Interest in a BVI Insurer

- 6.4.1 An application for a licence to act as a BVI insurer must include the ownership structure of the BVI insurer. As part of the application process, this structure must be submitted to, and approved by the Commission prior to a licence being granted.
- 6.4.2 Once a licence is granted to a BVI insurer, any change in the ownership structure of the BVI insurer that will cause the acquisition or disposal of a significant interest or controlling interest in the BVI insurer must be approved by the Commission.
- 6.4.3 A request for approval of a disposal of or acquisition of a significant interest or controlling interest in a BVI insurer should be submitted to the Commission in the form of a letter outlining the change in structure. Such information should include the name(s) of the person(s) and/or entity(ies) affected by the change in structure and the amount of interest being acquired or disposed of. The request should be accompanied by the applicable fee(s).
- 6.4.4 For the purposes of the Act and these Guidelines, the following definitions apply:
- (a) **Significant interest** - a holding or interest in the BVI insurer, or in any holding company of the BVI insurer held or owned by a person, either alone or with any other person, and whether legally or equitably, that entitles or enables the person, directly or indirectly to:
- (a) control ten per cent or more of the voting rights of the BVI insurer at a meeting of the BVI insurer or of its members;
 - (b) a share of ten per cent or more in any distribution made by the BVI insurer;
 - (c) a share of ten per cent or more in any distribution of the surplus assets of the BVI insurer; or
 - (d) appoint or remove one or more directors of the BVI insurer.
- (b) **Controlling interest** - ownership or interest in the BVI insurer or in any holding company of the BVI insurer by a person of:
- (a) more than fifty per cent of the voting rights of the company; or
 - (b) a significant interest in the company which, although not constituting more than fifty per cent of the voting rights of the BVI insurer (in aggregate or otherwise), gives the person a considerable advantage in the voting rights of the BVI insurer if the remaining votes in the BVI insurer are not voted on.

6.5 Disposing of an Interest that is not Significant or is a Non-controlling Interest in a BVI Insurer

- 6.5.1 In an instance where there arises a change in the ownership structure of the BVI insurer that does not cause the disposal of a significant interest or controlling interest in the BVI insurer, the BVI insurer need not seek approval from the Commission. The BVI insurer, however, is required to notify the Commission of any such change within 14 days of the change.
- 6.5.2 Notification should be in the form of a letter submitted to the Commission outlining the change(s), the date on which the change(s) occurred, and giving the reason(s) for the change(s).

6.6 Disposing or Acquiring of a Significant Interest in an Insurance Manager or Insurance Intermediary

- 6.6.1 An application for an insurance manager's or insurance intermediary's licence must include the ownership structure of the insurance manager or insurance intermediary. As part of the application process this structure must be submitted to, and approved by, the Commission prior to a licence being granted.
- 6.6.2 Once a licence is granted to an insurance manager or insurance intermediary, any change in the ownership structure of the insurance manager or insurance intermediary that will cause the acquisition or disposal of a significant interest or controlling interest in the insurance manager or insurance intermediary must be approved by the Commission.
- 6.6.3 A request for approval of a disposal or acquisition of a significant interest or controlling interest in an insurance manager or insurance intermediary should be submitted to the Commission in the form of a letter outlining the change in structure. Such information should include the name(s) of the person(s) and/or entity(ies) affected by the change in structure and the amount of interest being acquired or disposed of. The request should be accompanied by the applicable fee.

6.7 Application for the Appointment of an Actuary and a Replacement Actuary

- 6.7.1 A BVI insurer that is licensed as a Category A (life and health) insurer is required to appoint and have an actuary at all times. Appointment of an actuary by a BVI insurer must be approved by the Commission prior to the appointment taking effect.
- 6.7.2 An application for approval of the appointment of an actuary should be submitted to the Commission using **Form B-1 of the GAPR**. The application should provide sufficient evidence to satisfy the Commission that the identified person is qualified to act as an actuary, and should be accompanied by the requisite fee.
- 6.7.3 Where, for whatever reason, a person ceases to act as actuary of a BVI life and health insurer, the BVI insurer must appoint another actuary within 2 months of the date that the person who was previously appointed as actuary ceased to hold that appointment.
- 6.7.4 Appointment of a replacement actuary must be approved by the Commission and an application for approval should be submitted in accordance with **paragraph 6.7.2** above.

6.8 Application for an Extension of Time to Appoint a Replacement Actuary

- 6.8.1 If a BVI insurer is unable to appoint a replacement actuary within the 2 month timeframe as specified in **paragraph 6.7.3** above, an application for an extension of time within which to appoint the actuary may be made to the Commission by the BVI insurer.
- 6.8.2 An application for an extension of time within which to appoint an actuary must be made in writing and should specify the reason(s) that the request for extension is being made, and should be accompanied by the requisite application fee.
- 6.8.3 Any such application must be received by the Commission before the expiration of the initial 2 month time period specified in **paragraph 6.7.3** above.
- 6.8.4 Once the Commission reviews the application and determines that the application is based on reasonable ground(s), the Commission may approve the request for extension for a period of up to another 2 months.

6.9 Relevant Licensees to Appoint Auditor

- 6.9.1 A licensed BVI insurer, insurance manager or insurance intermediary is required to appoint and at all times have an auditor for the purpose of auditing its financial statements.
- 6.9.2 A person identified to act as an auditor of a licensed BVI insurer, insurance manager or insurance intermediary must be qualified under the Regulatory Code, 2009 to act as an auditor and must consent in writing to do so.
- 6.9.3 An application for the approval of an auditor must be submitted to the Commission using **Form B-1 of the GAPR** and must be accompanied by supporting evidence as provided in the Form and the GAPR.
- 6.9.4 Before appointing an auditor, a licensed BVI insurer, insurance manager or insurance intermediary must receive written approval from the Commission to make the appointment. In considering its approval, the Commission will satisfy itself that the auditor is qualified, has sufficient experience and is competent to audit the financial statements of the licensee.
- 6.9.5 Approval to appoint an auditor is not required where:
- an auditor has already been approved by the Commission in respect of any other financial services business and such approval has not been revoked or withdrawn; or
 - where the auditor had acted as auditor of the licensee in the previous financial year and the approval of his appointment by the Commission has not been revoked.

Where such approval is not required the licensee must submit to the Commission a notice of appointment of the auditor within 14 days of the appointment.

6.10 Commission May Require Licensee to Change Name

- 6.10.1 Where the Commission forms the opinion that the name of an insurance licensee is identical to the name of another entity, whether within or outside the Virgin Islands, or that the name so nearly resembles that of another entity that it is likely to deceive, or may otherwise be misleading or undesirable, the Commission may direct the licensee to change its name.
- 6.10.2 A direction issued by the Commission to an insurance licensee to change its name will be made in writing and will relate to, with respect to a foreign insurer the name under which it carries on business in the Virgin Islands and, in relation to any other licensee, the name under which it is incorporated or it carries on business.

7. Designated Representative

For the purposes of the Act and these Guidelines, a designated representative is a person who has been appointed to act as a representative of an insurance manager or insurance intermediary.

7.1 Appointment of a Designated Representative

- 7.1.1 Every insurance manager and insurance intermediary is required to appoint and at all times have a designated representative in the Virgin Islands who must be approved by the Commission and must meet the Commission's fit and proper criteria.
- 7.1.2 Additionally, the designated representative must be physically resident in the Virgin Islands. In order to meet the residency requirement, the designated representative cannot be absent from the Virgin Islands for an aggregate period exceeding 120 days in any one calendar year.
- 7.1.3 Where the designated representative fails to meet the residency requirement specified in **paragraph 7.1.2** above, the Commission may terminate the appointment of the designated representative and require the insurance manager or insurance intermediary to identify and seek approval by the Commission to appoint a new designated representative.
- 7.1.4 An application for the approval of a designated representative should be submitted using **Form A of the GAPR** and should be accompanied by the requisite application fee.
- 7.1.5 Once the completed application containing all the relevant information, along with any other additional information that may be requested, has been reviewed and the Commission is satisfied that the application has met the requirements for approval, the approval may be granted.
- 7.1.6 After approval of the designated representative has been granted, such approval will be communicated in writing by the Commission to the insurance manager or insurance intermediary as the case may be.
- 7.1.7 Upon receipt of approval, the insurance manager or insurance intermediary may appoint the designated representative and is required to notify the Commission in writing of the appointment within 14 days of so doing.

- 7.1.8 In the event the insurance manager or insurance intermediary terminates the appointment of the designated representative, the insurance manager or insurance intermediary is required to notify the Commission of such termination within 14 days of its occurrence. Such notification must be in writing and must include a statement setting out the reason(s) for the termination of its designated representative's appointment.
- 7.1.9 If the notice of termination submitted to the Commission by the insurance manager or insurance intermediary does not include a statement setting out the reason(s) for the termination of the appointment, the Commission will deem the notice not submitted. This may result in proceedings being commenced against the licensee and appropriate penalties imposed.

7.2 Exemption from Appointing a Designated Representative

- 7.2.1 An insurance intermediary that has 3 or fewer employees and whose annual turnover is not likely to exceed \$200,000 may apply, in writing, to the Commission for an exemption from appointing a designated representative.
- 7.2.2 An application submitted by an insurance intermediary for an exemption from appointing a designated representative should be in the form of a letter, and should include:
- the reason(s) for the exemption request (e.g. nature, size, complexity, 3 or less employees);
 - an indication of the duration of the exemption request; and
 - confirmation of the person who will be charged with performing the functions of the designated representative if the requested exemption is granted by the Commission.

The application letter should be accompanied by the relevant application fee.

- 7.2.3 An exemption from having to appoint a designated representative does not absolve the insurance intermediary from performing the functions of the designated representative. As such, the Commission requires the insurance intermediary to identify a person within the insurance intermediary who will perform the functions of the designated representative.
- 7.2.4 In a case where the Commission requires the insurance intermediary to notify the Commission of a person identified to perform the functions of a designated representative, that notification must be in writing providing information on the person's name, date of birth, physical address, qualifications, profession, current employment, name and address of employer (if applicable) and relevant proof of identification such as certified copies of the individual's passport page, recent utility bills and driver's licence, and any other due diligence information that may be required by the Commission.
- 7.2.5 In considering the application the Commission will determine, based on the nature, size and complexity of the insurance intermediary, whether the exemption should be granted to the insurance intermediary.
- 7.2.6 Once the Commission satisfies itself that the application is complete and that the insurance intermediary has satisfied the requirements for exemption and it is not against the public

interest to grant an exemption, the Commission may grant the insurance intermediary an exemption from having to appoint a designated representative.

7.3 Designated Representative May Act as Director or Senior Officer

- 7.3.1 An approved designated representative of an insurance manager may act as a director or senior officer of a BVI insurer. However, where the designated representative is a shareholder in a BVI insurer, he or she is prohibited from serving as a director or senior officer of that BVI insurer.
- 7.3.2 In the case of a category E insurer, written notification of the appointment of the designated representative as a director or senior officer must be submitted to the Commission before or at the time of the appointment.
- 7.3.3 In the case of category C, D and F insurers, prior written approval must be granted to the designated representative by the Commission before the designated representative may act as a director or senior officer for the relevant insurer.
- 7.3.4 An application for the approval to act as a director or senior officer of a Category C, D or F insurer should be submitted using **Form A of the GAPR** and should be accompanied by the requisite application fee.
- 7.3.5 Additionally, the designated representative may not act as director or senior officer for more than 10 BVI insurers at any one time unless prior written approval of the Commission is sought and obtained.
- 7.3.6 Where a designated representative wishes to act as a director or senior officer for more than 10 BVI insurers, an application must be submitted to the Commission, in writing, along with the applicable fee for each BVI insurer for which the designated representative wishes to act as director or senior officer.
- 7.3.7 The Commission may, upon consideration of the application and being satisfied that the application has met all requirements, the requisite fee has been paid and it is not against the public interest to grant approval, approve the appointment of the designated representative to act as director or senior officer for a BVI insurer and will communicate such approval in writing to the designated representative. Once approval is granted, notification of each appointment should be made to the Commission. It is acceptable to make multiple appointments in a single notification provided that each appointment is specified in the notification.

8. Record Keeping and Reporting Obligations

8.1 Maintenance of Records

- 8.1.1 As part of its oversight function, the Commission is required to monitor the financial soundness of all the entities it supervises. It is essential, therefore, for a licensed insurer to maintain proper financial and other records and make these records available to the Commission upon request.

8.1.2 In the case of a BVI insurer, a licensed insurance manager, and a licensed insurance intermediary, records must be maintained at its office located in the Virgin Islands, and must be sufficiently detailed to:

- (a) show and explain its transactions, including all financial transactions;
- (b) enable its financial position to be determined at any time, and with reasonable accuracy;
- (c) enable it to prepare financial statements and to prepare and make any such returns that may be required under the Act; and
- (d) where applicable, enable its financial statements to be audited in accordance with the provisions of the Act.

8.1.3 In the case of an insurer that is required to appoint an insurance manager, these records should be maintained at the office of the appointed insurance manager.

8.1.4 In the case of a foreign insurer that is a branch, records must be maintained at its Virgin Islands office, and must be sufficiently detailed to:

- (a) show and explain all transactions, including financial transactions, in respect of the business it carries on in the Virgin Islands; and
- (b) enable it to prepare and make any such returns that may be required under the Act and the Regulatory Code.

8.1.5 In the case of a foreign insurer that is required to appoint a designated representative, these records should be maintained in the Virgin Islands at the office of the appointed representative.

8.1.6 Where a foreign insurer maintains financial records, other than those specified in **paragraph 8.1.4** above, the foreign insurer must notify the Commission in writing of the place where these financial records are kept.

8.1.7 The records listed under this section must be maintained for a period of **at least five years** after the termination of the business relationship to which the records relate. The obligation to retain these records is the responsibility of every licensee, and former licensee where the licence of a licensee has been cancelled or revoked.

8.2 Submission of Financial Statements to the Commission

8.2.1 For the purposes of this section, a “relevant insurance licensee” includes a BVI insurer, a licensed insurance manager and a licensed insurance intermediary.

8.2.2 Financial statements must be submitted to the Commission by a relevant insurance licensee within 6 months of the end of the financial year to which they relate, and must comply with prescribed accounting standards outlined in the Regulatory Code.

8.2.3 Where financial statements do not provide a true and fair view of the matters to which they relate, the notes to the financial statements must contain sufficient information and explanations in order to provide a true and fair view of those matters.

- 8.2.4 In preparing audited financial statements relevant insurance licensees must ensure that a valid exchange rate, as at the end of the relevant financial year, is stated for any financial statement that is not prepared in the currency of the United States of America. The exchange rate may be stated as a note to the financial statements.
- 8.2.5 There is no requirement for a director's certificate to be submitted when submitting audited financial statements. However, audited financial statements should be signed by a director indicating that they have been approved and that they are a true reflection of the financial results of the insurance licensee for the relevant financial period.
- 8.2.6 Where relevant insurance licensees are required to submit unaudited financial statements to the Commission, these unaudited financial statements must be accompanied by a director's certificate, a report on the affairs of the insurance licensee made in respect of the relevant financial year or period, and any other documents that may be required by the Commission. (The directors' certificate form can be found in the Commission's **Approved Forms (Amendment) Guidelines**).
- 8.2.7 Unaudited financial statements submitted to the Commission by a relevant insurance licensee must be approved by the directors of the relevant insurance licensee, and signed by at least one director on behalf of all the directors. The approval of the directors must be attested through a resolution of the directors.
- 8.2.8 Unless accompanied by the relevant certificates, reports and documents specified in **paragraph 8.2.6** above, the Commission will treat the financial statements as not submitted.
- 8.2.9 The Commission may require a licensee to resubmit or replace any document it considers to be incomplete, inaccurate or not prepared in accordance with the relevant applicable provisions of the Act, the Regulations and/or the Regulatory Code.
- 8.2.10 If a licensee fails to meet the requirements of **paragraph 8.2.6 and/or 8.2.9** above, the relevant document(s) may be rejected by the Commission.

8.3 Extension of Time to Submit Financial Statements

- 8.3.1 If the relevant insurance licensee is unable to submit its financial statements within the 6 month timeframe as specified in **paragraph 8.2.2** above, or any other specified timeframe as it relates to unaudited financial statements, an application for an extension of time within which to submit such financial statements may be made to the Commission by the relevant insurance licensee.
- 8.3.2 An application for an extension of time within which to submit its financial statements must be made in writing and should specify the reason(s) that the request for the extension is being made, and should be accompanied by the requisite application fee.
- 8.3.3 Any such application must be received by the Commission before the expiration of the initial 6 month period specified in **paragraph 8.2.2** above. Where an additional extension is requested,

any application for the additional extension should be submitted before the expiration of the initial extension that has been granted.

- 8.3.4 Once the Commission reviews the application and determines that the application is based on reasonable grounds, the Commission may approve the request for the extension. Where additional requests for extensions are made they may only be approved, in aggregate, for a period of no more than 3 months from the end of the initial 6 month period specified in paragraph 8.2.2 above.

9. Maintenance of Assets in the Virgin Islands

9.1 Regulatory Deposit

- 9.1.1 A BVI insurer carrying on domestic business (i.e. holds a Category A insurer's licence), or a foreign insurer that holds a Category B insurer's licence and does not have a financial strength rating of A- or better assigned to it by the A. M. Best Company or similar rating agency or institution, is required to maintain assets in the Virgin Islands at a value specified by the Regulations that is considered sufficient to cover its domestic liabilities.

- 9.1.2 In order to meet this requirement a BVI insurer or foreign insurer must establish a domestic business trust, or establish a regulatory deposit with the Commission. A regulatory deposit established with the Commission must be in the sum of \$250,000, or a value equal to its liabilities in the Virgin Islands, whichever is higher. Every BVI insurer and foreign insurer must assess its liabilities first to determine the value thereof in order to enable a proper assessment of the regulatory deposit applicable. If the value in relation to its liabilities exceeds \$250,000, then the regulatory deposit will be assessed and will be payable based on that value.

9.2 Variation on Regulatory Deposit

Reduction of Regulatory Deposit

- 9.2.1 Where the liabilities of a BVI insurer or foreign insurer are less than \$250,000, the BVI insurer or foreign insurer may apply to the Commission, in writing, for the amount of the regulatory deposit to be reduced.
- 9.2.2 The Commission may, after careful consideration of an application to reduce the amount of the regulatory deposit, approve the payment of a lower sum, the value of which will be determined by the Commission. However, in order to assist the Commission in making this determination, the BVI insurer or foreign insurer applying for a reduction of the regulatory deposit must provide an indication of its liabilities at the time of application.

Increase in Regulatory Deposit

- 9.2.3 Where at any time the liabilities of the BVI insurer or the foreign insurer exceed the amount of the regulatory deposit being held by the Commission, the BVI insurer or foreign insurer must notify the Commission immediately in writing of this fact, and arrange to pay to the Commission

the difference between the value of its liabilities and the amount of the regulatory deposit being held.. This will bring the regulatory deposit to a level that is equal to the total of the liabilities of the BVI insurer or the foreign insurer. However, where the liabilities are subsequently reduced, provided they do not fall below the \$250,000 threshold, the difference paid will not be recoverable from the Commission.

9.3 Termination of Domestic Business Trust for Establishment of Regulatory Deposit

- 9.3.1 Where an existing insurance licensee already has a domestic business trust established, it may apply to the Commission for the termination of the domestic business trust in order to replace the trust with a regulatory deposit.
- 9.3.2 An application to terminate a domestic business trust and replace it with a regulatory deposit must be submitted to the Commission in writing and should be sufficiently detailed in the rationale for the conversion to allow the Commission to make a decision on whether to approve the request and, if approval is to be granted, to make a proper assessment on the amount of the regulatory deposit payable.
- 9.3.3 Upon receiving the application, the Commission may, after review and being satisfied therewith, approve the termination of the domestic business trust and the establishment of the relevant regulatory deposit.

9.4 Use of Regulatory Deposit

- 9.4.1 Any regulatory deposit held by the Commission will be retained by the Commission until the BVI insurer or foreign insurer ceases to be licensed. The Commission may, however, use the regulatory deposit to pay:
 - (a) any outstanding fees or penalties owed to the Commission;
 - (b) the costs of or costs associated with any enforcement action taken by the Commission against the licensee;
 - (c) the costs associated with winding up the licensee; or
 - (d) any liabilities in respect of insurance policies that may be outstanding as at the date of winding up of the licensee.

9.5 Termination of Regulatory Deposit

- 9.5.1 Any regulatory deposit held by the Commission will be placed in an interest bearing account and upon termination of its licence the BVI insurer or foreign insurer, as the case may be, will be entitled to any interest accumulated during the period the deposit is held with the Commission.
- 9.5.2 Where a BVI insurer or foreign insurer ceases to be licensed, the regulatory deposit, inclusive of any interest income accrued, will be returned to the entity by the Commission upon cancellation of the licence, once the Commission is satisfied that the entity is no longer required to maintain the deposit and that it has paid all of its liabilities.

9.5.3 The Commission is legally entitled to retain twenty-five percent of any interest income accrued in respect of the regulatory deposit to cover administrative or other expenses that may be incurred in relation to the licensee.

These Guidelines are issued by the Financial Services Commission this 10th day of October, 2016.

A handwritten signature in black ink, appearing to read 'R. Mathavious', is written over a faint circular stamp or watermark.

Signed:
Robert Mathavious
Managing Director/CEO