

BANKS AND TRUST COMPANIES REGULATIONS

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BANKS AND TRUST COMPANIES REGULATIONS – SECTION 28

(S.I.s 18/1991 and 20/2011 and Act 12 of 2001)

Commencement

[14 June 1991]

Short title

1. These Regulations may be cited as the Banks and Trust Companies Regulations.

Application form for banking and trust licences

2. The application to the Commission for licences under section 4(1) of the Act, shall be made in accordance with Guidelines issued pursuant to the Financial Services Commission Act and set forth in Schedule 1. *(Repealed by S.I. 20/2011, replaced 2010 and amended 2012)*

Form of notice of principal office and authorised agents

3. The notice to be given to the Commission under section 9(1) of the Act shall be in duplicate in the form set forth in Schedule 2. *(Amended by Act 12 of 2001)*

Application for approval of issue or transfer of shares and other interests

4. The application to be made to the Commission for written approval of the issue, transfer or other disposal of shares or other interests pursuant to section 14 of the Act shall be in duplicate in the form set forth in Schedule 3. *(Amended by Act 12 of 2001)*

Application for exemption from approval of issue or transfer of shares and other interest

5. (1) The application to the Commission for exemption from the written approval of the issue, transfer or other disposal of shares or other interests required pursuant to section 14 of the Act shall be in duplicate in the form set forth in Schedule 4. *(Amended by Act 12 of 2001)*

(2) The names of banks and trust companies exempt from the provisions of section 14 of the Act shall be published in the *Gazette* in January of each year.

Application for use of restricted word by non-licensee

6. (1) The application to be made to the Commission by a person not applying for a licence for the use of a word in its name that is restricted by section 16(1) and (2) of the Act shall be in accordance with Guidelines issued pursuant to the Financial Services Commission Act set out in Schedule 5A and other guidelines set forth in Schedule 5B. *(Amended by Act 12 of 2001 and replaced 2011)*

(2) The name of each company approved under section 16(1) and (2) of the Act shall be published in the *Gazette*.

Application for approval of directors and senior officers

7. The application to be made to the Commission for written approval of the appointment of a director or other senior officer pursuant to section 19(2) of the Act shall be in accordance with Guidelines issued pursuant to the Financial Services

Commission Act set forth in Schedule 6. (*Amended by Act 12 of 2001 and replaced 2009*)

Application for exemption from approval of directors and senior officers

8. (1) The application to be made to the Commission for exemption from the written approval of the appointment of a director or other senior officer pursuant to section 19(3) of the Act shall be in duplicate in the form set forth in Schedule 7. (*Amended by Act 12 of 2001*)

(2) The names of banks and trust companies exempt from the provisions of section 19(2) of the Act shall be published in the *Gazette* in January of each year.

Exemptions from particulars to be specified in application for a banking licence

9. The holder of a banking licence in the year prior to the commencement of this Act shall be exempt from providing the following particulars set forth in Schedule 1 to the Act—

- (a) in the case of a bank granted an exemption pursuant to section 14 of the Act, the names and addresses of all shareholders;
- (b) in the case of a bank granted an exemption pursuant to section 19(3) of the Act, the names and addresses of all officers and managers in branches outside the Virgin Islands;
- (c) evidence in writing that the applicant itself or some person directly or indirectly connected with the applicant is possessed of solid and practical experience in banking business or trust business, as the case may be;
- (d) an undertaking in writing to provide and set apart a fully paid up capital before or at the time it commences business, such as the Commission may in its absolute discretion determine, or by a guarantee under seal of such sum given by a holding or parent company or other company approved by the Commission; (*Amended by Act 12 of 2001*)
- (e) in the case of a bank granted an exemption pursuant to section 19(3) of the Act, character references in writing, together with such other evidence as the Commission may require, that neither the applicant nor any director or officer of the applicant has a criminal record either in the Virgin Islands or elsewhere; (*Amended by Act 12 of 2001*)
- (f) in the case of banks granted an exemption pursuant to section 14 of the Act, the names of all non-Virgin Islands subsidiaries with addresses of their registered offices;
- (g) references, including one from a bank or trust company;
- (h) statement of assets and liabilities at the end of the month prior to the submission of the application certified by a director or senior officer; and
- (i) statement of capital of any other company held, directly or through a subsidiary, as an asset of the applicant.

Exemption from particulars to be specified in application for a general trust licence

10. A trust company that is the holder of a licence issued under the Business, Professions and Trade Licences Act in the year prior to the commencement of this Act shall be exempt from providing a statement of assets and liabilities at the end of the month prior to the submission of the application certified by a director or senior officer.

11. *(Repealed by S.I. 20/2011)*

12. *(Repealed by S.I. 20/2011)*

13. *(Repealed by S.I. 20/2011)*

SCHEDULE 1*(Regulation 2)***FINANCIAL SERVICES COMMISSION
APPROVED FORMS AND RELATED GUIDELINES**

Issued by the Financial Services Commission pursuant to section 41B of the Financial Services Commission Act and published in accordance with the Financial Services (Approved Forms Publication) Regulations.

Approved by the Board of Commissioners	26 October 2009
Issued by the Financial Services Commission	30 March 2010
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AMENDED BY FINANCIAL SERVICES COMMISSION APPROVED FORMS AND RELATED GUIDELINES (AMENDMENT) GUIDELINES 2012 (with effect from 1 February, 2012) (Published in *Gazette* 9 February 2012)

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SCHEDULE

General Part: Application for a licence or certificate as a Financial Services Business Provider (General)

Part 1: Application for a licence or certificate as a Financial Services Business Provider

- Part 2: Additional information required in the case of a Banking and Fiduciary Services Business Licence Application
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INTRODUCTION

Section 41B of the Financial Services Commission Act, ("the Act") empowers the Commission to approve forms for the purposes of the regulatory legislation. When such forms are approved by the Commission, they are to be published in the manner specified in regulations made pursuant to section 62(2) of the Act. The Financial Services (Approved Forms Publication) Regulations, provide that such approved forms are to be published in the *Gazette* and on the Commission's website. These statutory requirements in relation to the forms outlined in the Schedule hereto have been adhered to.

It is therefore a requirement that any person wishing to submit an application to the Commission in respect of a licensed business activity must do so utilising the approved forms outlined in the Schedule. Applicants are to be guided by the guidelines provided hereunder and any applicant who may be uncertain as to the requirement or meaning of any subject contained in or connected with any approved form should consult the Commission for clarification.

All parts of the approved forms as applicable to an applicant for any specific licensable business must be properly and accurately completed. No information should be provided which has the effect of misleading the Commission in its consideration of an application. It should be noted that the approved forms outlined in the Schedule are designed to facilitate the receipt and efficient consideration of all applications for licences and certificates. This process would be immensely aided and progressed in a timely manner if complete and accurate information is provided at the time of submission of an application.

The Commission has been moving towards an electronic filing system and applicants are encouraged to submit their applications electronically. Where attachments to an application cannot be forwarded in electronic form, the hard copies thereof must be submitted at the time or shortly after the submission of the electronic application. It is expected that once the relevant electronic filing system of the Commission is fully functional, all future applications would be received and processed electronically.

The Schedule is divided into a General Part and 6 specific Parts. The General Part guides applicants with respect to the specific Parts applicable to them which they must complete. In addition, each specific Part outlines its scope of application consistent with the instructions for completion provided in the third column of the General Part. The last Part

on declarations must be completed by all applicants where applicable and completion of the fifth Part is optional. (*Amended 1 February 2012*)

GUIDELINES

Application

- 1.1 These Guidelines apply in relation to the approved forms outlined in the Schedules. In completing an approved form, every applicant is required to have regard to these Guidelines to assist them in properly completing the approved forms applicable in their case.
- 1.2 The approved forms generally relate to applications for licences under the regulatory legislation as provided in the first column of the General Part. While segregated portfolio companies are incorporated or registered under the BVI Business Companies Act, approval must first be obtained from the Commission and hence the need for compliance with the application process outlined hereunder.
- 1.3 An application for incorporation as a segregated portfolio company must be accompanied by an application for recognition or registration as a mutual fund, and must be submitted at the same time. In such a case the applicant should tick the relevant boxes in the General Part of the Schedule in relation to the recognition or registration of a mutual fund as well as the incorporation as a segregated portfolio company. In this regard, there is no need to complete the same forms twice.
- 1.4 While the approved forms outlined in Parts 1 through 5 of the Schedule generally relate to applications for licences under the regulatory legislation, some post-licensing transactions are also required to be carried out using an approved form as stipulated in the relevant regulatory legislation. The submission of a director's/trustee's certificate at the time of submission of a licensee's audited financial statements is one such post-licensing transaction and must be submitted using the approved form as provided for in Part 5A of the Schedule. (*Inserted by amendment 1 February 2012*)

Definitions

- 2.1 For the purposes of completing an approved form, an applicant should have regard to these definitions—
 - “approved form” means a form outlined in the Schedule as applicable in relation to an application for a licence;
 - “Commission” means the Financial Services Commission established under section 3(1) of the Financial Services Commission Act;
 - “licence” means an authorisation, licence, registration or recognition issued or granted under a regulatory legislation for purposes of carrying out financial services business as defined in section 2(1) of the Financial Services Commission Act;
 - “licensee” means a person that holds a licence;
 - “regulatory legislation” means any financial services legislation that is listed in Part I of Schedule 2 of the Financial Services Commission Act;

“senior officer” has the meaning assigned to it in the Regulatory Code and the Approved Persons Regime.

- 2.2 Any term not defined in these Guidelines will be construed in accordance with the provisions of the Financial Services Commission Act and/or a relevant regulatory legislation.
- 2.3 Any reference to “application form” will be construed to relate to the approved form.
- 2.4 Any reference to “licence” will be construed to include a “certificate” as the context requires.

Division of approved forms

- 3. The approved forms are divided as follows—
 - (a) General Part: this Part outlines the applicable regulatory legislation, the type of authorisation that is being sought by an application and the instructions that guide the applicant on the additional Parts of the Schedule to be completed;
 - (b) Part 1: this Part is to be completed by all applicants;
 - (c) Part 2: this Part requires additional information to be provided in the case of an application for a banking or fiduciary services business licence;
 - (d) Part 3: this Part requires additional information to be provided in the case of an application for insurance licence;
 - (e) Part 4: this Part requires additional information to be provided in the case of an application for an investment business licence, recognition and registration of mutual funds and licensing of related functionaries under the Securities and Investment Business Act;
 - (f) Part 5: this Part is of general application in relation to all applications and provides an avenue for applicants to volunteer information which may assist with the consideration of their applications or simply be of interest to the Commission;
 - (fa) Part 5A: this Part is to be completed by a director or trustee of a licensee or public fund (where applicable) at the time of submission of the licensee’s or public fund’s audited financial statements; and (*Inserted by amendment 1 February 2012*)
 - (g) Part 6: this Part provides a declaration form which every applicant must subscribe to.

Completing approved forms

- 4.1 Every applicable Part of the Schedule with respect to an application is to be fully and accurately completed before the application is filed with the Commission. Where an applicant is uncertain regarding the information to be provided in respect of any particular Part, he or she should seek clarification from the Commission.

- 4.2 Where any information required in or in respect of an approved form is not available or known to an applicant, then the applicant should state so. It would not assist the processing of an application where information supplied in relation thereto cannot be properly defended or attested.
- 4.3 Where information that is required to be provided in an approved form does not apply in respect of an applicant, that should be stated in the application. However, it should be noted that if, upon consideration of the application, the Commission forms the view that the information is indeed required, the applicant will be notified accordingly and the processing of the application will be discontinued until the required information is provided.
- 4.4 Where in respect of a particular question on the form the required response is not applicable to an applicant, this should be noted on the form by the words “not applicable” or “n/a”.

Attachments to applications

- 5.1 Where information required in an approved form is in the form of a separate document or is required to be attached to an application, the document is to be attached to the application form. Every attachment must be appropriately and, where necessary sequentially, marked through numbering or lettering in the form of exhibits in order to enable proper reference and to facilitate the consideration of an application. In this regard, it might be considered helpful to separately provide a table of contents outlining the title and order of the documents attached to an application.
- 5.2 Where an application is filed electronically online but its attachment is contained in a separate compact disc or other electronic storage device, the compact disc or other electronic storage device must be submitted to the Commission either at the time of filing the application electronically online or shortly thereafter. It should be noted that an application will not be considered as filed until all the relevant attachments are received by the Commission.
- 5.3 Where the responses to any questions that fall under the same paragraph heading in the approved form require the applicant to provide the details of the responses as an attachment to an application, the details of the responses may be contained in a single attachment, but shall be separated and numbered or lettered in a manner that would enable the Commission to easily decipher which particular questions the detailed responses relate to. This does not apply to questions that fall under different paragraph headings of the approved form, responses to which must be contained in separate attachments.

Providing additional information

- 6.1 It is open to every applicant who considers it necessary or helpful to the consideration of an application or for any other reason to provide additional information not specifically requested in an approved form by providing that information in Part 5 of the Schedule.
- 6.2 Full and accurate disclosure is essential to the due processing of an application. In this regard, it is incumbent on an applicant to disclose the details of any significant event that has occurred prior to the filing of an application which may be relevant to the proper determination of the application. If the applicant is uncertain as to

whether or not the event concerned may be relevant, then the details of the event should be provided in Part 5 of the Schedule for the Commission's consideration.

- 6.3 If, following the filing of an application (but before a licence is granted), a significant event occurs that the applicant is aware of and which might affect the Commission's consideration of the application, the applicant must notify the Commission of the event by providing the details thereof.

Effecting corrections to completed application form

- 7.1 If, after filing an application, an applicant becomes aware that information provided in or in relation to the application has changed or is inaccurate or may be misleading, the applicant is required to notify the Commission of that fact forthwith and, in any case, not more than 3 days after becoming so aware. The applicant should identify the changed, inaccurate or misleading information and provide the changed or accurate information.
- 7.2 If it comes to the knowledge of the Commission after granting a licence that the applicant had been aware of any changed, inaccurate or misleading information in or in relation to the application prior to the granting of the licence which, had the Commission been notified of in a timely manner, might have affected the Commission's decision with respect to the application, the Commission may rescind its grant of the licence and/or exercise any of its powers, including taking enforcement action, under the Financial Services Commission Act.

Requiring additional information

8. It should be noted that the Commission, in the exercise of its general powers to determine fitness and propriety, reserves the right to seek clarification or request additional information from an applicant. Where such a clarification is sought or request is made, consideration of the relevant application may be suspended until the clarification sought or requested information is received. 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.

Electronic filing

- 9.1 The Commission encourages the completion and submission of applications online utilising the approved forms provided on the Commission's website. When the Commission's online filing system is fully rolled out and functional, no application shall be received or considered to be properly filed unless it is processed electronically online.
- 9.2 Where, for any reason, an attachment of a supporting or other required document is contained in a compact disc or other electronic storage device which cannot be transmitted online, the applicant shall act in accordance with paragraph 5.2 above.

When application considered to be properly filed

10. The Commission will consider an application received by it to be fully completed and ready for processing 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 for the provision of further or additional information or

documents. In such a case, the completed application will be retained for processing pending receipt of the further or additional information or documents requested.

Payment of fees

11. Every application filed with the Commission must be accompanied by the requisite fee applicable in relation to the application. No application shall be processed by the Commission unless the fee payable is received.

Attestation

- 12.1 Every application must contain the declaration outlined in Part 6 of the Schedule. It must be properly signed by a director, manager or other equivalent functionary or proposed functionary of the applicant and all the required information must be provided. Where available, it is acceptable to append the applicant's seal on the declaration in addition to the functionary's signature. However, the seal must not be so appended as to conceal or obliterate any word of or the signature on the declaration.
- 12.2 The contact details of the person making the declaration should contain the person's physical address, his or her telephone and facsimile numbers and his or her email address. However, the Commission will not insist on the provision of a facsimile number or an email address where the person signing the declaration does not have one. It should be noted nevertheless that the provision of such information is essential in facilitating the processing of an application, especially where the Commission finds the need to communicate information and/or documents on an urgent basis.

Processing of applications

- 13.1 All completed applications received by the Commission will be processed by the relevant Division to which the application relates for the consideration of the Commission's Licensing and Supervisory Committee.
- 13.2 The Commission will endeavour to process all completed applications and communicate the Commission's decisions to the applicants in a timely manner within the framework of the Commission's *Performance Accountability and Supervisory Service Standards*.

Submission of completed applications

14. All completed applications, along with supporting documents and/or other attachments should be addressed to the Financial Services Commission at the address outlined in the General Part of the Schedule for the attention of the appropriate Division of the Commission which has responsibility for the subject matter of the application.
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SCHEDULE
GENERAL PART

**APPLICATION FOR A LICENCE OR CERTIFICATE AS A
FINANCIAL SERVICES BUSINESS PROVIDER (GENERAL)**

Financial Services Commission,
For the Attention of (Division)
Pasea Estate, Road Town,
Tortola
BRITISH VIRGIN ISLANDS

Date:

Ref:

Re:

We attach our application hereunder:

Legislation	Type of authorisation being sought (Tick the applicable type)		Instructions for completion
Section 4(1) of the Banks and Trust Companies Act	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	General Banking Restricted Class I Banking Restricted Class II Banking Class I Trust Class II Trust Class III Trust Class II Restricted Trust Class III Restricted Trust	Complete Parts 1, 2 & 6
Section 17C(1) of the Banks and Trust Companies Act	<input type="checkbox"/>	Director's/Trustee's Certificate	Complete Part 5A
Section 4(1) of the Company Management Act	<input type="checkbox"/>	Company Management	Complete Parts 1 & 6
Section 17C(1) of the Company Management Act	<input type="checkbox"/>	Director's/Trustee's Certificate	Complete Part 5A
Section 12 of the Insurance Act	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Category A, B, C and D Insurer Insurance Agent Insurance Broker Insurance Manager Loss Adjuster	Complete Parts 1, 3 & 6
Section 57(1) of the Insurance Act	<input type="checkbox"/>	Director's/Trustee's Certificate	Complete Part 5A

Legislation	Type of authorisation being sought (Tick the applicable type)	Instructions for completion
Section 6 of the Securities and Investment Business Act	<input type="checkbox"/> Category 1 – Dealing in Investments <input type="checkbox"/> Sub-category A – Dealing as Agent <input type="checkbox"/> Sub-category B – Dealing as Principle <input type="checkbox"/> Category 2 – Arranging Deals in Investments <input type="checkbox"/> Category 3 – Investment Management <input type="checkbox"/> Sub-category A – Managing Segregated Portfolios (excluding Mutual Funds) <input type="checkbox"/> Sub-category B – Managing Mutual Funds <input type="checkbox"/> Sub-category C – Managing Pension Schemes <input type="checkbox"/> Sub-category D – Managing Insurance Products <input type="checkbox"/> Sub-category E – Managing Other Types of Investment <input type="checkbox"/> Category 4 – Investment Advice <input type="checkbox"/> Sub-category A – Investment Advice (excluding Mutual Funds) <input type="checkbox"/> Sub-category B – Investment Advice (Mutual Funds) <input type="checkbox"/> Category 5 – Custody of Investments <input type="checkbox"/> Sub-category A – Custody of Investments (excluding Mutual Funds) <input type="checkbox"/> Sub-category B – Custody of Investments (Mutual Funds) <input type="checkbox"/> Category 6 – Administration of Investments <input type="checkbox"/> Sub-category A – Administration of Investments (excluding Mutual Funds) <input type="checkbox"/> Sub-category B – Administration of Investments (Mutual Funds) <input type="checkbox"/> Category 7 – Operating an Investment Exchange	Complete Parts 1, 4 and 6

Legislation	Type of authorisation being sought (Tick the applicable type)		Instructions for completion
Section 71(1) of the Securities and Investment Business Act	<input type="checkbox"/>	Director's/Trustee's Certificate	Complete Part 5A
Sections 4 and 12 of the Mutual Funds Regulations (Applicable upon enactment and operation of the Mutual Funds Regulations)	<input type="checkbox"/>	Mutual Fund – Private	Complete Part 1 Q.1-5,10,11,15, and Parts 4 and 6
	<input type="checkbox"/>	Mutual Fund – Professional	Complete Part 1 Q.1-5, 9-11,15,16 and Parts 4 and 6
	<input type="checkbox"/>	Mutual Fund – Public	
	<input type="checkbox"/>	Recognised Foreign Fund	
Section 3 of the Segregated Portfolio Companies Regulations	<input type="checkbox"/>	Segregated Portfolio Company (Mutual Funds) Registration	Complete Part 1 Q.1-5,10,11,15, (also 9 & 16 if in relation to a Public Fund), Part 4 and Part 6
	<input type="checkbox"/>	Incorporation	Complete Part 1 Q.1-5,10,11,15, (also 9 & 16 if in relation to a Public Fund), Sections 3 and 4 of Part 4, and Part 6
	<input type="checkbox"/>	Notification of creation of a segregated portfolio	
	<input type="checkbox"/>	Approval to create a segregated portfolio	
Section 9 of the Financing and Money Services Act	<input type="checkbox"/>	Financing Business	Complete Parts 1 & 6
	<input type="checkbox"/>	Money Services Business	

NB: Please note that any applicant may complete Part 5

**APPLICATION FOR A LICENCE OR CERTIFICATE AS A
FINANCIAL SERVICES BUSINESS PROVIDER**

PART 1: TO BE COMPLETED BY ALL APPLICANTS

1. Name of Applicant

Tel:	Fax:	E-mail:

2. Name of Registered Agent

Tel:	Fax:	E-mail:

3. Name of Person completing application (if different from 1 or 2 above)

Tel:	Fax:	E-mail:

4. Addresses

Principal Office in the Virgin Islands	Registered Office

5. Constitutional Documents

Date of Incorporation/Registration

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Place of Incorporation/Registration

--

Registration or Incorporation
Number

--

Provide as an attachment and properly marked, the following (as applicable)—

- (i) Certificate of Incorporation/Limited Partnership (certified by Registry of Corporate Affairs)
- (ii) Memorandum of Association
- (iii) Charter/Articles of Association
- (iv) Trust Deed
- (v) Partnership Deed
- (vi) Evidence of Good Standing

6. Experience in relevant business

Does the Applicant or some other person in an employment relationship with the Applicant possess practical experience in the relevant business? If Yes, please provide as an attachment and properly marked, evidence of the practical experience. Yes No

7. Applicant's Business Record

7.1 Does the Applicant conduct or carry out financial services business from jurisdictions outside of the Virgin Islands?

Yes: No:

If Yes, please provide below details of the address outside the Virgin Islands that financial services business is carried out from.

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- 7.2 Please indicate below the countries or territories in which the Applicant intends to carry out financial services business.

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- 7.3 Has the Applicant applied to regulatory authorities in other jurisdictions?

Yes No

If Yes, please provide details below:

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8. Ownership Structure/Group Structure
(Applicable also for change in ownership/group structure)

8.1 Shareholders and Controllers

Please provide information relating to the legal owner of the Applicant by listing all shareholders and controllers of the Applicant. For each person not yet approved by the Commission Form A of the Approved Persons Regime is required to be appended to the Application and properly marked.

Shareholder's/ Controller's Name	No. of Shares	Type of Shares	Nominal or Par value of Shares	% of the voting rights exercisable directly or indirectly (where applicable)	For Official Financial Services Commission Use Only
					Approved (Y/N)

(Note: Continue on a separate sheet if required)

8.2 Status of Shares

Are any of the shares subject to a charge, lien or other encumbrance?

Yes No

If Yes, please provide below details of the charge, lien, etc., including beneficiary information.

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8.3 Corporate Shareholders

If any of the shareholders listed in question 8.1 above are corporate shareholders please provide the name(s) of the individuals representing each corporate shareholder as well as the beneficial owner of the shares.

Name of Corporate Shareholder	Name of individual representing the Corporate Shareholder	Name of Beneficial Owner	For Official Financial Services Commission Use Only
			Approved (Y/N)

8.4 Trust Relationships

If the Applicant is owned/to be owned by a Trust(s), please provide as attachments and properly marked, the following information:

Information Required	Enclosed?		
	Yes	No	N/A
Copy of the Trust Deed			
Copy of any supplement Deeds removing or adding beneficiaries			
Copy of any supplement Deeds or Appointment and Retirement of Trustees			
Names and addresses of the beneficiaries			
Names and current address of the settlor(s)			
Names and current addresses of the trustee(s)			
Name and address of the relevant supervisory body that regulates the trustee			
Relationship of the settlor to the beneficiaries			

9. Approved Persons

9.1. Directors and Senior Officers of the Applicant

List all the Directors and Senior Officers of the Applicant. For each person not yet approved by the Commission Form A of the Approved Persons Regime is required to be appended to the Application properly marked.

Name	Position(s) held (e.g. Director, Manager, or equivalent position)	Number

(Note: Continue on a separate sheet if required)

9.2 Corporate Directors

If any of the directors listed above are corporate directors, please provide the name(s) of the individual directors representing each corporate director. If any corporate director is represented by an individual who is not a director, this name must also be provided.

Name of Corporate Director	Name of director/individual representing the Corporate Director

10. Financial Statements and Auditors

10.1 Financial Statements

10.1.1. Proposed first accounting period: Start (dd/mm/yyyy) ___/___/___

End (dd/mm/yyyy) ___/___/___

10.1.2. Proposed Financial Year End: (day/month) _____

10.1.3. Please indicate the accounting standard to be used by the Applicant:

10.2 Auditors/Actuaries (the latter in the case of an application for a long-term insurer)

Please provide below the name and address of, and attach a letter properly marked, from, the intended or proposed Auditors/Actuaries confirming their willingness to act for the Applicant.

10.3 Submission of Application for Auditor/Actuary

Where an Auditor/Actuary has expressed willingness to act for the Applicant, has an application been submitted on the Auditor's/Actuaries behalf? Yes No

(NOTE: This is not required for auditors of private and professional funds)

11. Solicitors/Legal Advisers (if any)

Please provide below the name and address of, and attach a letter properly marked, from, the Solicitors/Legal Advisers confirming their willingness to act for the Applicant. *(Please note that Solicitors/Legal Advisers must be independent from directors and shareholders)*

12. Compliance Procedures

Attach and properly mark, a copy of the Applicant's draft compliance manual which should include client acceptance procedures and know-your-customer policies.

13. Financial Resources and Insurance Arrangements

13.1 Paid up capital (information to be provided where applicable)

Intended paid up capital at time business commences

US\$

Provide as an attachment and properly marked—

- (a) an undertaking in writing to contribute capital before or at the time Applicant commences business; or
- (b) a guarantee in writing and under seal from the holding or parent of the Applicant or other company that capital will be contributed and set apart before or at the time Applicant commences business.

13.2. Statement of capital held in other companies

Provide as an attachment and properly marked, a statement of capital of any other company held, directly or through a subsidiary, as an asset of the Applicant.

If none, please state so here

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13.3. Statement of assets and liabilities (where applicant has been established for a period of more than one month prior to application)

Provide as an attachment and properly marked, a statement of the assets and liabilities as at the end of the month prior to the submission of the Application certified by a director or senior officer of the Applicant.

13.4. Accounts of holding company

Provide as an attachment and properly marked, annual accounts, duly audited and certified, of the holding company of the Applicant for the preceding 3 years, if applicable.

13.5. Professional Indemnity Cover

	Yes	No
Does the Applicant have professional indemnity cover?	<input type="checkbox"/>	<input type="checkbox"/>
If Yes, provide as an attachment and properly marked, details of the cover and include a copy of the policy schedule.		

14. Business plan

Provide as an attachment and properly marked, a business plan outlining the background of the Applicant, planned areas, business development and objectives, management structure and operations, sources of business, operating policies and internal controls, and financial projections confirmed by auditor (where applicable).

15. Regulatory or other action against the Applicant

State whether the Applicant has been the subject of any of the following and, if so, provide full details including reasons.

	Yes	No
Refusal of an application for registration, licensing, recognition or authorisation by any authority in any country or jurisdiction?	<input type="checkbox"/>	<input type="checkbox"/>
Suspension, cancellation or revocation of registration, licence or certificate, recognition or authorisation by any authority in any country or jurisdiction	<input type="checkbox"/>	<input type="checkbox"/>
Regulatory or enforcement action by any authority in any country or jurisdiction	<input type="checkbox"/>	<input type="checkbox"/>
Proceedings relating to receivership or creditors' compromise	<input type="checkbox"/>	<input type="checkbox"/>

Provide as an attachment and properly marked, details for any of the questions above to which you have answered yes.

16. Fitness and Propriety

	Yes	No
Has the Applicant or any of its officers at any time been convicted of any criminal offence by any court in the Virgin Islands or elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>
Is the Applicant or any of its officers currently the subject of a criminal investigation or an extradition request?	<input type="checkbox"/>	<input type="checkbox"/>
Has the Applicant, in the last 10 years, been censured or disciplined by any professional body to which it belongs or belonged, or any of its officers been dismissed from office or employment or refused entry to any profession or occupation in the Virgin Islands or elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>
Has the Applicant or any of its officers, in the last 10 years, filed for bankruptcy or been adjudicated bankrupt by a court in the Virgin Islands or elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>
Has the Applicant or any of its officers at any time failed to satisfy any debt due and payable from the Applicant or officer as a judgment-debtor under an order of a court in the Virgin Islands or elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>
Has the Applicant or any of its officers, in the last 10 years, been found liable in a civil suit which elicited dishonest or unlawful conduct?	<input type="checkbox"/>	<input type="checkbox"/>
Has the Applicant or any of its officers, in connection with the formation, control or management of any corporate, partnership or unincorporated institution, within the last 10 years, been adjudged by a court in any jurisdiction civilly liable for any fraud, malfeasance or other misconduct towards such a body or company, or towards any members thereof?	<input type="checkbox"/>	<input type="checkbox"/>
Has any body corporate, partnership or unincorporated institution with which the Applicant was associated as a director, shareholder or controller, anywhere, been compulsorily wound up or made any compromise or arrangement with its creditors where they did not receive or have not yet received full settlement of their claims, either while the Applicant was associated with it or within one year after the Applicant ceased to be associated with it?	<input type="checkbox"/>	<input type="checkbox"/>
Has any body corporate, partnership or unincorporated institution with which the Applicant was associated as a director, shareholder or controller, anywhere, been fined or censured by any securities commission, banking commission or any similar regulatory commission or body?	<input type="checkbox"/>	<input type="checkbox"/>

Note: If the answer to any of the above questions is Yes, full details of the response must be provided as an attachment to the Application.

17. Additional Information

Provide as an attachment and properly marked, details of any other matter which you reasonably believe may be relevant to the assessment of the fit and proper status of the Applicant.

18. References

(required only where Applicant has been established for a period of more than one month prior to filing Application)

Provide as an attachment and properly marked, 2 references for the Applicant, one of which must be from a regulated entity either in the Virgin Islands or elsewhere.

**PART 2: ADDITIONAL INFORMATION REQUIRED IN THE CASE OF A BANKING OR
FIDUCIARY SERVICES BUSINESS LICENCE APPLICATION**

19. Registered Office/Registered Agent Services

Please indicate if the Applicant intends to provide any of the following services:

Registered Office Registered Agent

20. Authorised Agents

Please provide below the names and addresses of persons who have been appointed to act as Authorised Agents for the Applicant:

Name of Authorised Agent	Address, Telephone, Fax and E-mail address

21. Subsidiary companies of Applicant (to be included in the licence)

21.1 List below all the subsidiary companies of the Applicant that are to be included in the licence.

Name	Principal Office	Registered Office	Activity

21.2. Due Incorporation of Subsidiary Companies

Name of Subsidiary		For Financial Services Commission use only
Date of Incorporation		<input type="checkbox"/>
Place of Incorporation		<input type="checkbox"/>
Registration or Incorporation Number		<input type="checkbox"/>
Please attach and properly mark, the following:	Certificate of Incorporation	<input type="checkbox"/>
	Memorandum of Association	<input type="checkbox"/>
	Charter/Articles of Association	<input type="checkbox"/>
	Evidence of Good Standing (where applicable)	<input type="checkbox"/>

Name of Subsidiary		For Financial Services Commission use only
Date of Incorporation		<input type="checkbox"/>
Place of Incorporation		<input type="checkbox"/>
Registration or Incorporation Number		<input type="checkbox"/>
Please attach and properly mark, the following:	Certificate of Incorporation	<input type="checkbox"/>
	Memorandum of Association	<input type="checkbox"/>
	Charter/Articles of Association	<input type="checkbox"/>
	Evidence of Good Standing (where applicable)	<input type="checkbox"/>

Name of Subsidiary		For Financial Services Commission use only
Date of Incorporation		<input type="checkbox"/>
Place of Incorporation		<input type="checkbox"/>
Registration or Incorporation Number		<input type="checkbox"/>
Please attach and properly mark, the following:	Certificate of Incorporation	<input type="checkbox"/>
	Memorandum of Association	<input type="checkbox"/>
	Charter/Articles of Association	<input type="checkbox"/>
	Evidence of Good Standing (where applicable)	<input type="checkbox"/>

Name of Subsidiary		For Financial Services Commission use only
Date of Incorporation		<input type="checkbox"/>
Place of Incorporation		<input type="checkbox"/>
Registration or Incorporation Number		<input type="checkbox"/>
Please attach and properly mark, the following:	Certificate of Incorporation	<input type="checkbox"/>
	Memorandum of Association	<input type="checkbox"/>
	Charter/Articles of Association	<input type="checkbox"/>
	Evidence of Good Standing (where applicable)	<input type="checkbox"/>

Name of Subsidiary		For Financial Services Commission use only
Date of Incorporation		<input type="checkbox"/>
Place of Incorporation		<input type="checkbox"/>
Registration or Incorporation Number		<input type="checkbox"/>
Please attach and properly mark, the following:	Certificate of Incorporation	<input type="checkbox"/>
	Memorandum of Association	<input type="checkbox"/>
	Charter/Articles of Association	<input type="checkbox"/>
	Evidence of Good Standing (where applicable)	<input type="checkbox"/>

Name of Subsidiary		For Financial Services Commission use only
Date of Incorporation		<input type="checkbox"/>
Place of Incorporation		<input type="checkbox"/>
Registration or Incorporation Number		<input type="checkbox"/>
Please attach and properly mark, the following:	Certificate of Incorporation	<input type="checkbox"/>
	Memorandum of Association	<input type="checkbox"/>
	Charter/Articles of Association	<input type="checkbox"/>
	Evidence of Good Standing (where applicable)	<input type="checkbox"/>

22. Subsidiary companies of Applicant (not to be included in the licence)

List below all the subsidiary companies of the Applicant that are NOT to be included in the licence.

Name	Principal Office	Registered Office	Activity

23. Additional Banking Licence Requirements

In the case of an application for a Banking license, the following additional information must be provided with the Application—

- (1) A letter from the home supervisory authority, in the case of an Application to establish a branch or subsidiary, confirming its satisfaction with the Application to establish a branch or subsidiary by the Bank, subject to its supervision.
- (2) A Business Plan which must include the following information—
 - A. Business objectives and rationale for the proposed operation outlining—
 - (i) Background;
 - (ii) Market Environment;
 - (iii) Strategic Objectives; and
 - (iv) Financial Objectives.
 - B. Management structure and operations outlining—
 - (i) Overview of management structure;
 - (ii) Group structure;
 - (iii) Head office/parental support;
 - (iv) Staffing; and
 - (v) Location.
 - C. Business Development outlining—
 - (i) Overall objectives;
 - (ii) Source(s) of funding;

- (iii) Products/types of assets;
 - (iv) Off balance sheet operations;
 - (v) Investment business; and
 - (vi) Marketing Strategy.
- D. Financial Projections (3 years) outlining—
- (i) Balance Sheet;
 - (ii) Income Statement;
 - (iii) Assumptions; and
 - (iv) Sensitivity Analysis.
- E. Operating Policies outlining—
- (i) Capital adequacy;
 - (ii) Liquidity;
 - (iii) Risk concentration (i.e. large exposures, country risk); and
 - (iv) Risk management (i.e. limits, financial controls).
- F. Internal Controls outlining—
- (i) General control environment;
 - (ii) Management information; and
 - (iii) Internal audit.

**PART 3: ADDITIONAL INFORMATION REQUIRED IN THE CASE OF
AN INSURANCE LICENCE APPLICATION**

24. Name and Address of Insurance Manager/Agent

Please provide below the name and address of, and attach a letter properly marked, from, the Insurance Manager/Agent confirming his or her willingness to act for the Applicant.

25. State whether the Applicant insurer proposes to carry on insurance business:

(Tick one)

- | | |
|--------------------------------------|--------------------------|
| In the Territory (domestic business) | <input type="checkbox"/> |
| From within the Territory | <input type="checkbox"/> |
| In and from within the Territory. | <input type="checkbox"/> |

26. Financial Projections

Provide as an attachment and properly marked, 5 year financial projections.

27. Contributed capital

- | | Yes | No |
|--|--------------------------|--------------------------|
| Has the whole of the capital been contributed in cash? | <input type="checkbox"/> | <input type="checkbox"/> |

If the answer is No, provide as an attachment and properly marked, details of why this has not been the case.

28. Increase in capital

- | | Yes | No |
|---|--------------------------|--------------------------|
| Does the Applicant intend to increase the contributed capital before commencing to carry on the insurance business for which the Application is being made? | <input type="checkbox"/> | <input type="checkbox"/> |

If the answer is Yes, provide as an attachment and properly marked, details of the proposed increase.

29. Classes of Business

State what classes of general or long-term business the Applicant insurer proposes to carry on. (Tick as many as are applicable)

General Business		Long-term Business	
Motor Insurance	<input type="checkbox"/>	Annuity Business	<input type="checkbox"/>
Property Insurance	<input type="checkbox"/>	Life Insurance, excluding investment-related life insurance	<input type="checkbox"/>
Liability Insurance	<input type="checkbox"/>	Investment-related life insurance	<input type="checkbox"/>
Pecuniary Insurance	<input type="checkbox"/>	Permanent Health Insurance	<input type="checkbox"/>
Marine and Aviation Insurance	<input type="checkbox"/>		
Accident and Health Insurance	<input type="checkbox"/>		

Note: Approval will not be granted to Applicants seeking to conduct both general and long-term insurance business.

30. Other business

	Yes	No
Is the Applicant carrying on or proposing to carry on any other business? If so, provide as an attachment and properly marked, details of that other business.	<input type="checkbox"/>	<input type="checkbox"/>
If the Applicant answers Yes, are the accounts, assets and liabilities related to insurance being kept separate and distinct from those of such other business?	<input type="checkbox"/>	<input type="checkbox"/>

31. Additional Requirements for Business Plan for Insurance Providers

- (1) General description outlining:
 - Feasibility study
- (2) Marketing outlining:
 - (i) Planned areas and type of business;
 - (ii) Method of solicitation; and
 - (iii) Source of business.
- (3) Technical outlining:
 - (i) Classes and types of policy (standard, claims made/occurrence);
 - (ii) Details of underwriting;
 - (iii) Claim and accounting techniques;
 - (iv) Deductibles/Excess/Retention;
 - (v) Reinsurer(s) names, limits and premiums (provide accounts if possible);
 - (vi) Stop loss or excess protection;
 - (vii) Past history of book(s) of business;
 - (viii) Proportion of unrelated business;

- (ix) Underwriting guidelines; and
 - (x) Commission structure.
- (4) Investment strategy outlining:
 - (i) Dividend policies; and
 - (ii) Details of any loans.
- (5) 5 Year Financial projections.
- (6) Endorsement for intermediaries.

PART 4: ADDITIONAL INFORMATION REQUIRED FOR APPLICATION FOR AN
INVESTMENT BUSINESS LICENCE, RECOGNITION AND REGISTRATION
OF MUTUAL FUNDS AND RELATED FUNCTIONARIES

**SECTION 1 – General Requirements (This section to be completed by all persons
applying for a licence under the Securities and Investment Business
Act)**

32. Address of the Applicant’s place(s) of business (i.e. registered office and, if applicable, other place of business) in the BVI.

.....
.....
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.....
.....

33. The address of any place(s) of business that the Applicant may have outside the BVI.

.....
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.....

34. Authorised Representative

Provide the name and address of the Authorised Representative that has been appointed to act on behalf of the Applicant.

.....
.....
.....
.....
.....

**SECTION II - Additional Information Required for Managers, Administrators or
Manager/Administrator**

- 35. State below the name and address of the Regulatory Authority(ies) to which Applicant or Applicant's group companies report**

--

- 36. Services To Be Provided**

State below the details of Mutual Funds for which the manager/administrator will act and describe the services to be provided (continue on separate sheet if necessary).

Fund Name of Mutual Fund	Public, Private or Professional	Jurisdiction of Domicile	Services to be Provided

Note: *Copies of all sub-delegation agreements must be provided where management or administrative services are sub-delegated to other persons.*

- 37. Resourcing**

Provide as an attachment and properly marked, a description of the human resources and administrative facilities available to the Applicant, including details of the use of information technology. Also include details of any data security and back-up arrangements.

38. Bankers

State below the name and address of the bank(s) with which the manager/administrator will maintain client's money accounts (indicate the main bankers) and which the Applicant would utilise for the performance of its day to day activities, including the collection of fees.

SECTION III – Fund Recognition or Registration (General)

39. Name of Fund/SPC: _____

40. Type of Fund: Public Private Professional

41. Legal Constitution of Fund: (Attach and properly mark all copies of the Fund's constitutional documents)

- Company Partnership Unit Trust
- Segregated Portfolio Company

42. Country or jurisdiction where legally constituted: _____

43. Date Fund legally constituted:
 dd mm yy

44. If the Fund is a non-BVI Fund, please describe the nature and scope of business of the Fund:

.....

.....

.....

.....

.....

45. Details of Functionaries:

State the following details for each functionary of the Mutual Fund. If the application is for a Mutual Fund SPC, state the functionaries that will be appointed to act in respect of each segregated portfolio.

(a) Manager(s)

Name	Jurisdiction of Incorporation	Address of place of business	Business Activities	Name of portfolio(s) for which the functionary is appointed (if applicable)

(b) Administrator(s)

Name	Jurisdiction of Incorporation	Address of place of business	Business Activities	Name of portfolio(s) for which the functionary is appointed (if applicable)

(c) Investment Advisor(s)

Name	Jurisdiction of Incorporation	Address of place of business	Business Activities	Name of portfolio(s) for which the functionary is appointed (if applicable)

(d) Custodian(s)

Name	Jurisdiction of Incorporation	Address of place of business	Business Activities	Name of portfolio(s) for which the functionary is appointed (if applicable)

(e) Trustee(s)

Name	Jurisdiction of Incorporation	Address of place of business	Business Activities	Name of portfolio(s) for which the functionary is appointed (if applicable)

(f) Prime Broker(s)

Name	Jurisdiction of Incorporation	Address of place of business	Business Activities	Name of portfolio(s) for which the functionary is appointed (if applicable)

(g) Other(s)

Name	Jurisdiction of Incorporation	Address of place of business	Business Activities	Name of portfolio(s) for which the functionary is appointed (if applicable)

SECTION IV – Additional Information for the Recognition of a Private or Professional Fund

46. Proof of classification (Private Fund): (To be completed by private mutual fund Applicants only)

(a) Do the Fund’s constitutional documents limit the Fund to no more than 50 investors?

YES NO

(b) If Yes, indicate the relevant clause in the constitutional documents:

(c) If No, state the provision which requires invitations to purchase shares to be made on a private basis*. Also provide an explanation of the method of making such invitation and an indication of how many invitations will be made.

.....

**“Private basis” could be evidenced by a prohibition placed on the making of invitations to purchase shares other than to specified persons (however described) and in a manner which is not calculated to lead to shares becoming available to other persons or to a large number of persons; or a restriction to invitations which are made only by reason of a private or business connection between the respective parties. In all cases, an indication of the number of invitations that will be made to purchase shares must be provided.*

47. Proof of Classification (Professional Fund)
(To be completed by **professional** mutual fund Applicants only)

Please indicate the condition the mutual fund meets in order to be classified as a Professional Fund:

Minimum initial investment of US\$100,000 (or its equivalent in any other currency) for each investor.

State relevant section in offering document: _____

Professional investor declaration filed.**

***The shares of a professional fund must be made available only to “professional investors”, defined in section 40(1) of the Act as a person—*

- (a) whose ordinary business involves, whether for that person’s own account or the account of others, the acquisition or disposal of property of the same kind as the property, or a substantial part of the property, of the fund; or*
- (b) who has signed a declaration that he or she, whether individually or jointly with his or her spouse, has net worth in excess of such sum as shall be specified in the Mutual Fund Regulations or its equivalent in any other currency and that he or she consents to being treated as a professional investor. In this respect, incorporation of the professional investor declaration within the subscription document would be acceptable. See example declaration below:*

Professional Investor Declaration: (To be subscribed by a Professional Fund as necessary under paragraph 47 above)

I/We* hereby declare that in subscribing for shares/units/limited partnership interests* in the Fund I am/each of us is* a Professional Investor within the meaning of the Securities and Investment Business Act, in that:

[Check one or both]

my/our ordinary business involves, whether for my/our own account or the account(s) of (an)other(s), the acquisition or disposal of property of the same kind as the property, or a substantial part of the property, which is (or will be) owned by the Fund, as detailed in the Information Memorandum/Relevant Offering Document*; or

my/our net worth (in the case of a natural person, either individually or jointly with my spouse) exceeds one million dollars in the United States Currency (US \$1,000,000) or its equivalent in any other currency, and I/we consent to being treated as such a Professional Investor for the purposes of investment in the Fund.

**Delete as necessary*

49. Has the fund issued, or intends to issue, an offering document? Yes No

If Yes, please provide a copy of the offering document or the proposed offering document.

If No, please explain why no offering document is to be issued, including, in particular, how relevant information concerning the Fund and any invitation or offer will be provided to investors and potential investors.

.....
.....
.....
.....
.....

SECTION V – Additional Information for the Registration of a Public Fund

50. Please provide the name and address of any promoters of the Fund.

.....
.....
.....
.....
.....

51. Please indicate the place or places where the Fund’s financial and other records will be kept.

.....
.....
.....
.....
.....

Note: Copies of all functionary agreements related to this Fund should be provided with this Application.

PART 5: ADDITIONAL INFORMATION THE APPLICANT WISHES TO PROVIDE
(Please refer to paragraph 6 of the Guidelines)

PART 5A: DIRECTOR’S/TRUSTEE’S CERTIFICATE

Director’s/Trustee’s Certificate

Audited financial statements of _____ for the financial year ending _____

Pursuant to section (tick appropriate regulatory legislation)

- 17C(1)(a) of the Banks and Trust Companies Act;
- 17C(1)(a) of the Company Management Act;
- 57(1)(a) of the Insurance Act;
- 23(1)(a) of the Financing and Money Services Act;
- 71(1)(a) of the Securities and Investment Business Act;

and section 59 of the Regulatory Code.

_____ (Name of Licensee/Public Fund), holder of Licence No. _____ issued by the Financial Services Commission, has prepared and hereby submits the attached financial statements for the financial year ending _____.

In preparing these financial statements, the undersigned, being a duly authorised director/trustee of the licensee/public fund, hereby certifies that:

- the financial statements have been prepared in accordance with _____ accounting standard (*specify accounting standard used*);
- the financial statements have been audited and the auditor’s report is attached herewith¹;
- the financial statements have been duly signed and dated, and approved by the board of directors of the licensee/public fund;
- the auditor’s certificate of compliance is attached herewith²;
- a report concerning the activities of the licensee/public fund, made to the members of the licensee/public fund for the financial year under review, is also attached herewith (*please identify the name of the report, if applicable*) _____; and
- the following prescribed documents are also forwarded herewith³:
 - (a)
 - (b)
 - (c)
 - (d)

Director/Trustee
[Print Name]

[Signature]

Date: _____

¹Where the auditor qualifies his opinion, and reasons therefor are known to the licensee/public fund, adequate disclosure on the reasons for such qualification must be provided by the director when submitting this certificate.

²Applicable to Banks and Trust Companies and Company Management licensees only.

³Applicable only where additional documents have been prescribed by the Commission or pursuant to the relevant regulatory legislation.

PART 6: DECLARATION

I, _____, Applicant/Applicant's agent herein, do hereby declare, on behalf of _____, (name of Applicant) that the information provided in this Application is, to our knowledge and belief, true and accurate and that all documents submitted with this Application with respect to the Applicant have been verified as authentic. I understand that providing false or misleading information in respect of this Application may cause the Commission to deny the Application and may cause enforcement action to be taken against the Applicant.

Signed by:
Name:
Position:
Contact Details:

(Provide physical address, email address, telephone and facsimile numbers)
.....
.....

Date:

Financial Services Commission USE ONLY			
Date Received:		
Application processed by:		
Date considered by LSC:		
Application	Approved	Denied	Deferred
Reason(s) for denial or deferral (if applicable)		
		
		
		
		

SCHEDULE 2

(Regulation 3)

BANKS AND TRUST COMPANIES REGULATIONS

NOTICE OF PRINCIPAL OFFICE AND AUTHORISED AGENTS

Date:

Ref:

Financial Services Commission
Road Town, Tortola.

Dear Sirs,

Re:

We hereby give notice that our principal office in the Virgin Islands and authorised agents are as follows—

- 1. Principal office:
- 2. Authorised agents (2)—
 - a. Name:
 - Address:
 - b. Name:
 - Address:

We enclose herewith from each of the above-named persons a written consent to act as an authorised agent.

Yours faithfully,

For official use

..... Approved

..... Not approved

Authorised agents

(Amended by Act 12 of 2001)

SCHEDULE 3

(Regulation 4)

BANKS AND TRUST COMPANIES REGULATIONS

**APPLICATION FOR APPROVAL OF ISSUE OR
TRANSFER OF SHARES OR OTHER INTERESTS**

Date:

Ref:

Financial Services Commission,
Road Town, Tortola.

Dear Sirs,

Re:

We apply herewith for your approval of the issue/transfer/other disposition* of shares/other interests* in the above-mentioned company/partnership*.

Name and address of allottee or transferee of shares or other interests *

If the interests being issued, transferred or otherwise disposed of are not shares, please give a description thereof*

Number of shares or or percentage of total interests to which application relates*

Yours faithfully,

For official use Approved
..... Not approved

* Complete and/or delete as appropriate.

SCHEDULE 4

(Regulation 5)

BANKS AND TRUST COMPANIES REGULATIONS

**APPLICATION FOR EXEMPTION FROM APPROVAL
OF TRANSFER OF SHARES AND OTHER INTERESTS**

Date:

Ref:

Financial Services Commission
Road Town, Tortola.

Dear Sirs,

Re:

We apply herewith for the following exemption from the provisions of section 14 of the Act requiring written approval of the Commission prior to the issue, transfer or other disposal of shares or other interests.

The reasons for this application are as follows:

Yours faithfully,

For official use

..... Approved

..... Not approved

(Amended by Act 12 of 2001)

SCHEDULE 5A

(Regulation 6)

BANKS AND TRUST COMPANIES REGULATIONS

BRITISH VIRGIN ISLANDS

FINANCIAL SERVICES COMMISSION

GUIDELINES IN RELATION TO THE USE OF RESTRICTED COMPANY NAMES

Approved by the Board of Commissioners	30 August 2011
Issued by the Financial Services Commission	15 September 2011
Published	29 September 2011
Commencement Date	17 October 2011

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SCHEDULE: Sample Form R803

INTRODUCTION

The process of incorporating, registering or licensing a company in the Virgin Islands includes verification that the name of the company or any description thereof is available and appropriate, and that it meets the requirements or does not offend against the restrictions comprised in the applicable regulatory or registry legislation. Section 17 of the BVI Business Companies Act (“the BVI Business Companies Act”) outlines words and phrases that may be used as part of the ending of the name of a company. Those words and phrases are by no means exhaustive and essentially relate to the common endings associated with most companies. Generally the ending of the name of a company gives an idea of the type of entity the company is; it is understood therefore that not all companies will necessarily have the same or any of the endings outlined in section 17. The BVI Business Companies Act introduces the concept of a restricted company name whereby a company that has as part of its name a restricted word or phrase cannot be registered, whether in relation to incorporation, continuation, merger or consolidation, unless it has the written consent of the Commission. It is in that context that the BVI Business Companies Act empowers the Commission to specify words or phrases to be restricted for purposes of incorporation, continuation, etc.

2. A similar scenario obtains in relation to non-profit companies that wish to bear a name with an ending other than any of those prescribed under section 17. It is required that they obtain the authorisation of the Commission before they can be registered with a name that is not specified in section 17; that is by virtue of section 17A of the BVI Business Companies Act.

3. It should be noted also that the various regulatory legislation, namely the Banks and Trust Companies Act, Company Management Act, Insurance Act and Securities and Investment Business Act also make provision with respect to the use of restricted names. The registry legislation (BVI Business Companies Act) generally makes reference to words or phrases. In these Guidelines the term “restricted name” is used to cover restricted names under the regulatory legislation and words, phrases and abbreviations as referenced in the BVI Business Companies Act.

4. Accordingly, these Guidelines are issued by the Financial Services Commission (“the Commission”) to assist firstly, in drawing attention to the restricted names comprised in the various regulatory legislation as well as the restricted names prescribed by the Commission, and secondly, in processing an application for obtaining the consent or approval of the Commission. The Commission will rely on the Guidelines in dealing with all applications seeking consent or approval to use a restricted name and users are therefore advised to make reference and adhere to these Guidelines in order to facilitate the processing of their applications. Failure to so refer and adhere may result in a delay in processing an application as the Registrar will not incorporate or register a company that has a restricted name unless he or she is satisfied that the consent or approval of the Commission has been obtained.

PART I

IN RELATION TO THE REGULATORY LEGISLATION

5. Generally, the regulatory legislation prohibit the use by any person of certain specific names or phrases or their derivatives as part of the name, description or title under which the person carries on business from within the Virgin Islands. The prohibition includes any representation that suggests that the person is licensed to carry on business in the name, description or title which comprises a restricted name, phrase or any derivative thereof. It is therefore essential that any person wishing to incorporate or register a company or to be

licensed to carry on any licenseable business activity must be aware of the applicable restrictions comprised in the relevant regulatory and registry legislation. This will ensure that an application or a filing is processed without undue delay.

6. It is important to note the specific restrictions outlined in the various regulatory legislation. However, readers are urged to make specific reference to the applicable legislation as these Guidelines are not designed to be a substitute of the relevant legislative provisions.

A: BANKS AND TRUST COMPANIES ACT

7. By virtue of section 16(1) of the Banks and Trust Companies Act (BTCA), only a person who is licensed to carry on business under the BTCA may use certain specified terms. These terms include the following words—

- (i) bank;
- (ii) savings;
- (iii) savings and loans;
- (iv) trust;
- (v) trustee;
- (vi) trust company;
- (vii) trust corporation; and
- (viii) fiduciary.

8. The use of the terms specified in subparagraphs (i) – (viii) include any of their derivatives or cognate terms, irrespective of the language they are in, that are comprised in the name, description or title under which a person carries on business from within the Virgin Islands. Thus a person who is not licensed under the BTCA is prohibited (save as outlined in paragraph 11 below) from using any of the terms identified in paragraph 7 above, including any derivative or cognate terms thereof. The prohibition extends to making or continuing to make any form of representation in a tangible manner that gives the impression that the person is carrying on banking or trust business. In addition, such person is prohibited from soliciting or receiving deposits from members of the public.

9. In like manner, a company that is incorporated in the Virgin Islands is, unless it is licensed under the BTCA, prohibited from being registered or having its registration continued if its name contains any of the terms specified in paragraph 7 above or their derivatives or cognate terms (save as outlined in paragraph 11 below). The Registrar of Corporate Affairs (“the Registrar”) is expected to be cognisant of this prohibition at all times and thus act accordingly.

10. It is an offence for any person to act contrary to the prohibitions relating to the use of a restricted name outlined in the BTCA.

11. It should be noted, however, that notwithstanding the prohibition regarding the use of a restricted name, the Commission may give approval for a restricted name or its derivative or cognate term to be used. A person who wishes to use such a name must submit an application to the Commission for its approval. The application must contain all relevant information that would be sufficient to enable the Commission to properly process the application.

12. An approval for use of a restricted name or any derivative or cognate term thereof given by the Commission may be withdrawn by the Commission where it considers it appropriate so to do in the public interest. A withdrawal of approval shall be notified in writing by the Commission.

B: COMPANY MANAGEMENT ACT

13. While the Company Management Act (CMA), unlike the BTCA, does not identify specific terms or phrases whose use is restricted unless otherwise approved by the Commission, it prohibits a person who is not licensed under the Act from using any word “in the description or title under which he or she carries on business in or from within the Virgin Islands” which in the Commission’s view suggests company management business. It does not matter whether the word used is in the English language or any other language. It also prohibits the making of any representation in a document or any other manner which is likely to suggest that the person is carrying on company management business. Thus whilst the prohibition with respect to the use of a word or any representation with respect to company management business is descriptive, it is essential to note that particular attention will be paid to the context in which the word is used or representation made to establish the Commission’s view as to whether it suggests company management business.

14. The CMA provides further restrictive measures with respect to the use of certain names by licensees under the Act. These relate essentially to carrying on company management business under a name that is identical to the name of another person, whether within or outside the Virgin Islands, or so nearly resembles such a name as to be calculated to deceive; or that is calculated to falsely suggest any patronage of or connection with a person within or outside the Virgin Islands; or is calculated to falsely suggest that the person carrying on company management business has some special status with respect to or derived from the Government or has approval, or acts on behalf, of the Government or any of its departments or officials. In any of these circumstances the Commission may require a licensee to change its name.

15. It is an offence for any person to act contrary to the prohibitions outlined with respect to the use of a restricted name or the making of any representation in the contexts identified in the CMA.

16. It should be noted that, unlike in the BTCA, the Commission is not granted any power under the CMA to give approval for the use of a restricted name or the making of any representation that suggests company management business. The prohibitions in the CMA would appear to be strict, although arguably the Commission has power to approve the use of a restricted name by virtue of section 18(1)(d) provided that the restricted word is specified in a notice published in the *Gazette*.

C: INSURANCE ACT

17. Section 75 of the Insurance Act (IA) prohibits a person from using any of the following terms—

- (i) insurance;
- (ii) assurance;
- (iii) underwrite; and
- (iv) any combination or derivative of the terms in (i) – (iii).

18. The prohibition outlined in paragraph 17 above extends to the use of any other word or phrase by a person that suggests insurance business, the business of insurance management or the business of an insurance intermediary. The prohibitions apply irrespective of whether the use relates to the name under which a person is registered or in the description or title under which the business is conducted in or from within the Virgin Islands. Furthermore, any representation made by a person in any manner which is likely to suggest that the person is carrying on or is licensed or otherwise entitled to carry on insurance business or the business of insurance manager, insurance intermediary or loss adjuster is prohibited.

19. Accordingly, the Registrar is required not to register a company or register a change of name of a BVI business company to a name that includes any of the prohibited terms outlined in paragraph 17 above, unless the company is a licensee, has approval of the Commission to use a restricted name or is otherwise authorised to use the name by virtue of another enactment.

20. It should be noted, however, that notwithstanding the above prohibition the Commission may grant approval for use of the restricted names. This is processed through a formal application process. In addition, the prohibitions do not apply to a licensed insurer, insurance manager, insurance intermediary or loss adjuster if its registered name does not in any way suggest that it is carrying on business that is required to be licensed under the IA other than that for which it is authorised by its licence to carry on.

21. It is an offence for any person to act contrary to the prohibitions outlined with respect to the use of a restricted name or the making of any representation in the contexts identified in the IA.

D: SECURITIES AND INVESTMENT BUSINESS ACT

22. The provisions of the Securities and Investment Business Act (SIBA) with respect to the use of restricted names are similar to those provided in the IA. Section 95 of SIBA prohibits a person from using the terms—

- (i) fund;
- (ii) mutual fund; and
- (iii) any combination or derivative of the terms in (i) and (ii).

23. The prohibition outlined in paragraph 22 above also relates to the use of any term that may be specified in the Mutual Fund Regulations as a term that suggests a person is operating as a mutual fund or a term contained in the Investment Business Regulations (whenever enacted) that suggests investment business. The prohibitions apply irrespective of whether the use relates to the name under which a person is registered or in the description or title under which the business is conducted in or from within the Virgin Islands. Furthermore, any representation made by any person in any manner which is likely to suggest that the person is carrying on or is licensed or otherwise entitled to carry on investment business or is operating or registered as a public fund or recognised as a private or professional fund or otherwise entitled to operate as a mutual fund is prohibited.

24. Accordingly, the Registrar is required not to register a company or register a change of name of a BVI business company to a name that includes any of the prohibited terms outlined in paragraph 22 above, unless the company is authorised under SIBA or another enactment or has approval of the Commission to use a restricted name or is otherwise authorized to use the restricted name by virtue of another enactment.

25. It should be noted, however, that notwithstanding the above prohibition the Commission may grant approval for use of the restricted names. This is processed through a formal application process. In addition, the prohibitions do not apply to a person who holds an investment business licence, or a public fund or private or professional fund, if its registered name does not in any way suggest that it is carrying on business that is required to be licensed under SIBA other than that for which it is authorised by its licence to carry on, in the case of a person with an investment business licence, or in the case of a mutual fund that the fund is of a different type than that for which it is registered or recognised.

26. It is an offence for any person to act contrary to the prohibitions outlined with respect to the use of a restricted name or the making of any representation in the contexts identified in SIBA.

PART II

IN RELATION TO REGISTRY LEGISLATION (COMPANIES GENERALLY)

A: Current Requirements in Relation to Company Name Endings

27. The following name endings in relation to company names are recognised under section 17 of the BVI Business Companies Act—

(a) For a **limited company**, any of the following endings may be applied—

- (i) “Limited”, “Corporation” or “Incorporated”;
- (ii) “Societe Anonyme” or “Socieda Anonima”; and
- (iii) “Ltd”, “Corp”, “Inc” or “S.A.”;

(b) For an **unlimited company**, the word “Unlimited” or abbreviation “Unltd” applies;

(c) For a **restricted purposes company**, the phrase “(SPV) Limited” or “(SPV) Ltd” applies;

(d) For a **segregated portfolio company**, the designation “Segregated Portfolio Company” or “SPC” applies; this must, however, be placed immediately before one of the endings specified under paragraph (a)(i), (ii) or (iii) above;

(e) For a **segregated portfolio company that is a restricted purposes company**, the designation “(SPV)” applies and must form part of the designation outlined in paragraph (d) above; the designation may be placed immediately before or immediately after the designation in paragraph (d).

28. Where any of the abbreviations outlined in paragraphs (a) or (b) is used as part of the ending of a company’s name, a full stop may be placed at the end of the abbreviation; this is a matter of choice for the company concerned. In the same vein, a company may choose either the full or the abbreviated form of the name ending of the company.

29. In respect of a limited company, Regulations made under the BVI Business Companies Act may specify any additional words or abbreviations as the name endings of a company. However, as at the date of publication of these Guidelines no such additional words or abbreviations have been specified and therefore only those specified in section 17(1)(a), (b) or (c) continue to apply. Any additional words or abbreviations specified in due course must be construed accordingly.

30. By virtue of section 19 of the BVI Business Companies Act, a company may include as part of its name the expression “BVI Company Number” to be followed by the company number in figures and the appropriate required ending as specified under section 17.
31. The company name endings specified in section 17 are not restricted names and their use therefore does not require the approval or consent of the Commission.

B: Current Restrictions on the Use of Company Names

32. The registration of a company under a name that is not specified under section 17 may be restricted in certain circumstances. The restriction applies irrespective of whether the registration is in relation to an incorporation, a continuation, change of name or merger or consolidation. The circumstances in which the restriction applies are as follows—

- (a) Where the use of the company name would contravene another enactment, principal or subsidiary; this is usually the case where another enactment prohibits the use of certain specified names, as with the regulatory legislation identified under Part I of these Guidelines;
- (b) Where the company name is identical to the name of another company previously registered under the BVI Business Companies Act or the repealed Companies Act or International Business Companies Act;
- (c) Where the company name is so similar to the name of another company registered under the BVI Business Companies Act or the repealed Companies Act or International Business Companies Act that the Registrar forms the view that the company name is likely to confuse;
- (d) Where the company name is identical to a name that has been reserved under section 25 of the BVI Business Companies Act or is so similar to a name that has been so reserved as to be likely to confuse or mislead;
- (e) **Where the company name contains a restricted word or phrase the use of which the Commission has not given its consent;** and
- (f) Where the Registrar forms the opinion that the company name is offensive or objectionable.

33. In relation to paragraph 32(e) above, section 18(2) of the BVI Business Companies Act empowers the Commission to specify words or phrases as restricted words or phrases. The Commission takes the position that any reference to restricted words or phrases in relation to a company name includes abbreviations or derivatives or cognate terms of such words or phrases, or a combination of words or phrases, or a description or title under which the company operates. It should be noted that any word or phrase that is specified pursuant to section 18(2) must be contained in a notice published in the *Gazette*. In addition, the Commission would normally effect such publication on its website at www.bvifsc.vg

C: BVI Business Companies (Restricted Company Names) Notice

34. The Commission, exercising the powers granted to it by section 18(2) of the BVI Business Companies Act, on 15 September, 2011 issued the BVI Business Companies (Restricted Company Names) Notice (“the Notice”). This Notice outlines in the Schedule a list of names and phrases (including abbreviations) which are specified as restricted names and for the use of which the consent or approval of the Commission is imperative before a company of which they form a part can be registered by the Registrar. Any word or phrase

that is a derivative or a cognate term of the specified words or phrases or that is descriptive of a restricted name is, notwithstanding its absence from the Schedule, equally restricted and the consent or approval of the Commission is required in that regard as well. This will include the use of singular and plural words or phrases so long as either is specified in the Schedule. The restriction in registration applies in relation to incorporations, continuations, change of name, mergers and consolidations. The restricted names and phrases outlined in the Schedule of the Notice include those already outlined in the regulatory legislation referred to above (see Part I). Thus the Schedule of the Notice represents a comprehensive list of the restricted names and phrases the use of which the Registrar will require evidence of approval from the Commission.

35. In respect of any abbreviation contained in the Schedule of the Notice which is used as part of the name of a company, the company may (following the consent or approval of the Commission) place a full-stop at the end of the abbreviation or between the letters that form the abbreviation.

36. Once the consent or approval of the Commission is obtained in respect of the use of a restricted word or phrase and the company is duly registered, it may use and be legally designated by either the full or abbreviated form of the restricted name.

37. As the words and phrases specified in the Schedule of the Notice are by no means exhaustive, the Commission expects to review the Schedule from time to time to effect necessary amendments. In addition, the restrictions identified in section 18 of the BVI Business Companies Act will continue to be observed by the Registrar in relation to all applications for registration.

PART III

GUIDE TO APPLYING FOR CONSENT/APPROVAL FOR USE OF A RESTRICTED NAME

Application for Consent or Approval

38. Where it is desired to register a company with a restricted name, it is essential to submit an application to the Commission seeking the Commission's consent or approval to use the name as part of the proposed company's name. This application must be made via VIRRGIN by completing Form R803, which is available on the Commission's website¹, and attaching it to the name reservation application in VIRRGIN.² The details of Form R803 are replicated for reference purposes only in the sample Form to the Schedule³ herewith. Form R803 must be fully completed and contain all the required information, along with all necessary supporting documents. Submitting an incomplete application form may result in a rejection of the application or a delay in processing the required consent or approval by the Commission.

¹ This process is currently being reviewed to enable the complete electronic filing of the application directly through VIRRGIN.

² The same applies for the reservation of a name that is a restricted name – consent or approval must first be sought before the restricted name can be fully reserved.

³ While the regulatory legislation essentially provide that the application for approval of the Commission is to be in a form to be prescribed by the Regulatory Code, the details of the form prescribed in these Guidelines is comprised in VIRRGIN and applicants must use the VIRRGIN Form R803 in seeking consent for approval of a restricted name. The framework for the form to be provided for in the Regulatory Code will be dealt with by the Commission in due course.

When an Application for Consent or Approval may be Submitted

39. An application seeking the consent or approval of the Commission for use of a restricted name must be submitted in advance of the filing of documents for the registration of a company or the application for licensing. Where a company seeking to be licensed under any of the regulatory legislation wishes to use a restricted name or phrase, it is generally essential that the company seeks to be registered first and in that regard it must obtain the required consent or approval before the registration process can be effected. In effect, consent or approval for the use of a restricted name must be sought at the time of the name reservation process. The restrictions outlined above must be noted at all times and the paragraphs below are instructive of the process entailed in seeking consent or approval for the use of a restricted name.

Consent or Approval before Filing for Registration

40. Where a company submits an application, via VIRRGIN to the Commission for use of a restricted name, it must await the outcome of the application before filing any documents with the Registrar⁴ for registration of the company.

41. If the Commission grants its consent or approval to the use of a restricted name, notification of the consent or approval will be made to the Registrar, and the consent or approval will be communicated directly, via VIRRGIN to the applicant company.⁵

42. If, after receipt of the consent or approval the company files its documents for the registration of the company which comprises the restricted name consented to or approved, the Registrar may, on the basis of the consent or approval received from the Commission, proceed to process the registration as she deems fit pursuant to the exercise of her powers and in accordance with the provisions of the BVI Business Companies Act and any Regulations made thereunder, including any applicable regulatory legislation. The company will be appropriately notified once the company is registered with the restricted name.

Refusal of Consent or Approval by the Commission

43. In considering an application for consent or approval to use a restricted name, the Commission shall have due regard to the information provided in the application as comprised in or in relation to Form R803. The Commission is not bound to consider an application that is incomplete and reserves the right to reject the application or return the incomplete application to the applicant company.⁶ However, where the Commission considers an application and refuses to give consent or approval for the use of a restricted name, it shall provide the reason or reasons therefore in writing.

⁴ While the Registry of Corporate Affairs and indeed the Registrar are part of the Commission, for the purposes of these Guidelines their functions are distinct; the Registrar is statutorily mandated to perform specific functions which he or she does in his or her independent capacity. In order to ensure transparency of the application process, the Commission (without any direct participation of the Registrar) deals with all consent and approval of applications.

⁵ This communication will be made through the same registered agent that submitted the application.

⁶ This is normally done through the process of defecting the application.

Requesting Additional Information or Seeking Clarification

44. In specific cases where the Commission considers it necessary to do so, it may seek additional information in respect of an application in order to make an informed decision on whether or not to grant its consent or approval. It may also liaise with the Registrar on any matter it considers relevant to the consideration of an application; this shall not be construed as giving the Registrar any influence in whether or not the Commission grants its consent or approval. Any additional information requested shall be provided in such manner as the Commission requires, but without derogating from the substance of Form R803.

45. Furthermore, the Commission may seek clarification of any issue contained in or pertaining to an application for consent or approval to use a restricted name.

46. Unless otherwise specified by the Commission in writing, any additional information or clarification provided by an applicant shall be in writing.

Change of Circumstance

47. If, after the submission of an application for consent or approval to use a restricted name, any circumstance concerning an applicant changes which may be reasonably considered to affect the Commission's decision to give or rescind its consent or approval, the applicant is required to notify the Commission of the change immediately. This requirement applies both before the Commission gives its consent or approval and after such consent or approval has been given. Thus, for instance, where a company intended to carry on fund administration business at the time of submitting an application for consent or approval to use the restricted name "Fund" but decides, before the requisite consent or approval is given, to engage in company management business instead, it must immediately notify the Commission of this change in circumstance. Similarly, if a company that was allowed to use the restricted name "Trust" subsequently decides to engage in a different type of business wholly separate and apart from trust business, it must immediately notify the Commission of this change in circumstance. These notifications are essential to enable the Commission to make an informed decision as to whether or not to grant consent or approval or to rescind its earlier consent or approval. This is also in the interest of the company concerned as it may then no longer become necessary to keep the company under regulatory supervision (as it would have ceased to be, if it already was, a licensee for regulatory purposes).

Inaccurate or Misleading Information

48. Providing in an application for consent or approval of a restricted name information that is inaccurate or misleading is ground for refusing an application. It is therefore essential that applicants properly review their responses to the required information in Form R803 to verify the accuracy thereof before submitting their applications. Similarly, providing information which may be accurate on the surface but which may have a misleading effect may result in a refusal to give consent or approval in respect of an application. It is therefore important that all responses are sufficiently detailed and clear before an application to which they relate is submitted to the Commission.

Effect of Granting Consent or Approval by the Commission

49. The granting by the Commission of its consent or approval on the basis of an application for the use of a restricted name is authority for the company concerned to use the restricted name as part of its company name. No further consent or approval is required either from the Commission or some other authority, save as may be otherwise provided in any enactment

50. However, it should be noted that the granting of consent or approval by the Commission is without prejudice to the Registrar's exercise of his or her powers under the BVI Business Companies Act. Thus notwithstanding the Commission's consent or approval for a company to use a specified restricted name, the Registrar may still decide not to register the company if any of the disabilities outlined in section 18(1) or other provision of the BVI Business Companies Act applies in the case of that company.

Fee Payable on Application for use of a Restricted Name

51. Every application to the Commission seeking consent or approval to use a restricted name shall be accompanied by a non-refundable fee of \$100 payable to the Commission. However, this fee may be superseded by any other fee that may be prescribed pursuant to powers exercised under the BVI Business Companies Act or any other applicable enactment.

Processing of Applications

52. All applications seeking the Commission's consent or approval for use of a restricted name that are complete would be processed in an expeditious manner. The Commission would normally process all complete applications in accordance with the Commission's Performance Accountability Policy and Supervisory Service Standards. Incomplete applications may take much longer to be processed by the Commission and may be denied on account of being incomplete.

Submitting Applications for Consent or Approval

53. All applications for consent or approval of a restricted name must be filed via VIRRGIN using the appropriate Form R803.

SCHEDULE**FORM R803****APPLICATION FOR CONSENT OR APPROVAL TO USE A RESTRICTED NAME**

This application is for the consent or approval of the Financial Services Commission to use a restricted name

1. *Name of person or company submitting this application*

2. *Name of intended Registered Agent*

3. *Identify the restricted name (or any derivative, cognate term or abbreviation thereof) for which the consent or approval of the Commission is being sought*

4. *What type of business is the company to which this application relates engaged in or intends to engage in?*

5. **Does this application relate to a regulated company or a company to be regulated?*

YES

NO

6. *If you answered NO to 5 above, state the reason(s) for requesting the use of the restricted name identified*

7. **If you answered YES to 5 above, please identify the regulatory legislation to which the company relates*

8. *Is the restricted name descriptive of any type of regulated business other than the one under the regulatory legislation identified under 7 above?*

YES

NO

9. *If you answered YES to 8 above, please describe the other regulated business the restricted name is descriptive of*

10. *Has the applicant ever engaged in the type of business to which the restricted name relates?*

YES NO

11. *If you answered YES to 10 above, please indicate how long the applicant has engaged in the type of business and whether the same restricted name was used—*

(a) *period of business*

(b) *was same restricted name used?* YES NO

12. *Please provide along with this application any document(s) you consider might be useful in the processing of the application or that the Commission might be interested in considering.*

DECLARATION

I, (state name), of (address), do hereby declare that the information provided in this application is true and accurate to my knowledge and that the documents submitted with this application are authentic. I understand that providing inaccurate or misleading information in respect of this application may result in the Commission denying the application and any subsequent application which may be submitted on behalf of the applicant.

Declared this day of, 20

BVI FINANCIAL SERVICES COMMISSION
[For Official Use Only]

Date Application Received: _____

Application Processed by: _____

Date Application Considered: _____

Status of Application:

Approved

Denied

Deferred

Reason(s) for denial or deferral of Application (if applicable):

SCHEDULE 5B*(Regulation 6)***BVI BUSINESS COMPANIES (RESTRICTED COMPANY NAMES) NOTICE**

– SECTION 18(2)

*(S.I. 57/2011)***Commencement***[29 September 2011]***Short title**

1. This Notice may be cited as the BVI Business Companies (Restricted Company Names) Notice.

Restricted words or phrases

2. (1) The words and phrases listed in the Schedule, including any derivative or cognate term of the words or phrases and whether or not the words or phrases are spaced, in brackets or punctuated or are in the singular or plural are specified as restricted words or phrases.

(2) Where an abbreviation contained in the Schedule is used as part of the name of a company, a full-stop may be placed at the end of the abbreviation or between the abbreviated letters.

(3) The Registrar shall not register a company that has a restricted word or phrase in its name unless the Commission has given its prior written consent to the use of the word or phrase.

(4) Where the Commission consents to or approves the use of a restricted name which can be designated in an abbreviated form, the company to which the restricted name relates may use either the full or the abbreviated form of the restricted name as part of the company's name.

SCHEDULE

Ahorra	Captive	Fondos Mutuds	i-gaming	Provident
Annuity	Casualty	Fondos Mutuos	i-insurance	Prudential
Anonima	Chamber of Commerce	Forex	i-investment	Receiver
Anonyme	Change	Foundation	i-money services	Receivership
Arbitrage	Chartered	Fund	i-trust	Registry
Association	Church	Funding	Law	Re-insurance
Assurance	College	Gambling	Lease	Reinsurance
Assurer	Companies Registry	Gaming	Leasing	Reinsurer
Authorised Representative	Company Registry	Geldmittl	Life	Risk

BVI	Cooperative	Government	Limited Partnership	Royal
Banc	Cooperative Society	Governor	Liquidation	Saving
Banco	Council	Guarantee	Liquidator	Savings and Loans
Bancorp	Credit	Guaranteed	LLC	School
Bank	Crown	Hedge	LLP	Sovereign
Banker	Currency	Hedge Fund	Loan	Surety
Bankrupt	E-change	HMS	Lottery	Transmission
Bankruptcy	Exchange	IBC	LP	Trust
Banque	e-bank	Imperial	Majesty	Trust Company
Belegginfonds	e-commerce	Indemnity	Money	Trust Corporation
(Belegginfonds)	e-gaming	Insolvency	Money Services	Trustee
Betting	e-savings	Insolvent	Mutual	Trustee Company
Bingo	Fidelity	Insurance	Mutual Fund	Underwrite
British	Fiduciaire	Insurer	NTL	Underwriter
British Virgin Islands	Fiduciare	Int	Official Liquidator	Underwriting
Broker	Fiduciary	Intl	Official Receiver	University
Brokerage	Financing	Island	Official Trustee	VI
Building Society	Financing Business	i-bank	Partnership	Virgin Islands
Bureau	Fondo	i-financing	Pharmacy	
Caja	Fondos Mutude	i-fund	Protected Cells	

SCHEDULE 6

(Regulation 7)

BANKS AND TRUST COMPANIES REGULATIONS

BRITISH VIRGIN ISLANDS

FINANCIAL SERVICES COMMISSION

GUIDELINES FOR THE APPROVED PERSONS REGIME

Approved by the Board of Commissioners 20 January 2009

Published 18 February 2009

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INTRODUCTION

These Guidelines are designed to assist the Financial Services Commission (hereinafter referred to as “the Commission”) in the consideration and approval of applications for the appointment of senior officers, including applications relating to the approval of actuaries, auditors and other independent officers pursuant to any financial services legislation. These Guidelines outline senior officer duties and responsibilities and incorporate a set of rules governing the process and procedure for the approval of senior officers of a regulated person and actuaries, auditors and other independent officers.

A suitable candidate for a senior officer position must be qualified and have appropriate experience. In order to be appointed as a senior officer, a candidate must demonstrate a high level of competence and integrity. Before granting approval of an application for a senior officer, the Commission must be satisfied that the person to whom the application relates is fit and proper in accordance with the criteria established in Division 2 of Part II of the Regulatory Code. The Commission exercises judgement and discretion in assessing fitness and propriety and takes into account all relevant matters including honesty, integrity, reputation, competence, expertise, experience, capability and financial soundness. These criteria have equal application to the consideration of applications for the approval of actuaries, auditors and other independent officers, whose qualifications and experience are generally covered under their respective applicable financial services legislation.

The Commission holds the regulated person directly responsible for the conduct of its senior officers, including the performance of their duties, and hence the importance of recommending suitably qualified persons to be approved for appointment as senior officers. Therefore a candidate for approval as a senior officer must be familiar with the business activities of the regulated person, relevant legislation governing the conduct of the regulated person, and the structure of internal controls within the regulated person. The candidate must also have the knowledge and professional competence to efficiently conduct the business of the regulated person.

In relation to actuaries, auditors and other independent officers, the respective legislation pursuant to which they are approved by the Commission place obligations on them. They are required to have a good knowledge and understanding of the legislation that govern their duties and responsibilities in order to be able to properly and effectively discharge their assignments. All reporting requirements must also be adhered to.

It is not sufficient that a person recommended for approval as a senior officer is in the estimation of the regulated person competent and therefore qualified for the discharge of a specified duty. It is equally not sufficient that a person recommended for approval as a senior officer has worked with a regulated person for a considerable period and has therefore by that fact alone acquired the relevant skills and experience. Every recommendation for approval must be accompanied by sufficient evidence to back up the recommendation. These Guidelines only set out the minimum required qualifications for the consideration of a recommendation for the approval of a person as a senior officer. It is therefore incumbent on the regulated person submitting a recommendation to submit as much evidence and detailed information as would demonstrate qualification or sufficient support for approval of the recommended person. This would equally apply to actuaries, auditors and other independent officers who are required to seek the approval of the Commission to enable them to act pursuant to any relevant financial services legislation.

Interpretation

1. For the purpose of these Guidelines, unless the context otherwise requires—

“board” means the governing body of a regulated person and includes any equivalent body established by or within a regulated person;

“Commission” means the Financial Services Commission established under the Financial Services Commission Act;

“Compliance Officer” means the person appointed as such in accordance with section 34(3) of the Financial Services Commission Act;

“financial services legislation” means any principal legislation listed in Schedule 2 of the Financial Services Commission Act and any subsidiary legislation made thereunder;

“other independent officer” means any other person (other than a senior officer, Compliance Officer or an auditor or actuary) who by virtue of the Financial Services Commission Act or any financial services legislation is required to be approved, licensed or authorised by the Commission;

“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 is required to seek approval for senior officer appointment; and

“senior officer” has the meaning prescribed in section 4 of the Regulatory Code, unless otherwise specified in the Financial Services Commission Act or a financial services legislation.

PART I

SENIOR OFFICER POSITION

Application of Regulatory Code with respect to position of senior officer

2. A senior officer of a regulated person is expected to be an individual employed by the regulated person to perform either an audit function or a senior management function as prescribed in the Regulatory Code. Therefore an application for the approval of a senior officer must, unless otherwise determined in the Financial Services Commission Act or a financial services legislation, be considered in that context.

[Explanatory Note:

(i) *The Banks and Trust Companies Act, Company Management Act and Insurance Act define a “senior officer” to mean a person who is appointed to perform such supervisory and managerial functions as may be prescribed in the Regulatory Code. The Regulatory Code defines a “senior officer” in section 4 thereof and essentially includes any employee of a regulated person that performs a senior management function, whether in the capacity of chief executive or **equivalent position**. In addition, any employee that holds a position that requires the employee to be answerable to the regulated person’s board, or whose responsibilities are of a nature that include a direct involvement in the management or decision-making process of the regulated person at a senior level, would qualify as a senior officer. It is therefore the duty of a regulated person to determine whether an employee properly fits within the established criteria of a senior officer before submitting an application to the Commission for approval. The Commission reserves the right not to approve an application for a senior officer position where it forms the opinion that, having regard to the duties prescribed for the position, the office does not constitute a senior management function. Section 4(3) of the Regulatory Code outlines what constitutes a “senior management function” and reference must be made thereto as necessary.*

(ii) *The reference to “equivalent position” in paragraph (i) relates to a position within the regulated person that is differently named but whose authority and responsibilities are such that the position can be properly classified to constitute the performance of a management function. While the name the position is actually called is immaterial, consideration will be given to the nature, functions, duties and authority of the position in order to make a determination as to whether or not the position qualifies as an “equivalent position”. The Commission will be the ultimate determiner as to whether or not a position designated for the appointment of a senior officer meets the requisite seniority level for purposes of approval under these Guidelines. It will be guided in this process by job descriptions presented in relation to the position as well as other relevant requisites that may be provided under the Regulatory Code, Financial Services Commission Act, any applicable financial services legislation and these Guidelines.]*

Application for approval of senior officer

3.1 Every application for the approval of a senior officer must be made by a regulated person in Form A and the application must be accompanied by supporting evidence as provided in the Form and these Guidelines including the following—

- (a) certified copies of identification documents;
- (b) certified copies of professional and educational qualifications;

- (c) a resume or curriculum vitae outlining the relevant qualifications and experience of the applicant. This should include the names, addresses and telephone numbers of previous employers;
- (d) a police certificate or a sworn affidavit (where a certificate is not issued) as to the non-criminal record of the applicant for the past 3 years; and
- (e) professional, personal and financial references. The professional reference should be from a person who can speak to the experience and ability of the proposed senior officer. The personal reference should be from a person who can vouch for the proposed senior officer's conduct and character. The financial reference must be submitted by a financial institution, directly to the Commission (clearly referencing the name of the regulated person).

3.2 A non-refundable administration fee of \$100 or such amount as may be prescribed pursuant to the Financial Services Commission Act or any financial services legislation (with the applicable fee in the latter enactments taking precedent where provided) must be submitted with the application for approval of the appointment of a senior officer.

[Explanatory Note

(i) *It should be noted that the application requirements are designed to facilitate necessary approvals required under the Financial Services Commission Act and relevant financial services legislation. Thus where pursuant to any such enactment an exemption applies or is granted to any requirement for application for approval of a senior officer, these Guidelines will not apply and therefore no application for approval will be required.*

(ii) *An application for approval of a senior officer must be submitted to the Commission as set out in Form A. Any additional information that an applicant considers relevant to the processing of an application or in relation to a proposed senior officer which the Commission should know shall be provided in writing and attached to the completed application form.*

(iii) *Declarations are to be signed by—*

- *A director or other authorised individual of the regulated person; and*
- *The prospective senior officer seeking approval.*

(iv) *Copies of documents (for example, passport identification page(s)) must be properly certified, meaning that—*

a. *the person certifying the document indicates that—*

1. *he or she has seen and compared the original document verifying the identity and residential address of the prospective senior officer;*
2. *the copy of the document which he or she certifies is a complete and accurate copy of the original; and*

3. *where the document contains a photograph of the prospective senior officer, the photograph bears a true likeness to the individual to whom the certification relates;*
- b. the certificate—*
1. *bears the date of the certification;*
 2. *bears the signature and seal of the person certifying the document; and*
 3. *provides adequate information to enable the person certifying the document to be contacted in the event of a query or further clarification.*

Failure to adhere to these certification requirements may delay the processing of an application for approval of a senior officer position. Where a regulated person for good reason or reasons is unable to fully comply with the certification requirements, it must so state in writing (with any available evidence) outlining the reason or reasons. The Commission shall be the sole determiner as to whether or not any reason given for not fully complying with certification requirements is good enough and thus process an application accordingly, taking into account the other requirements of these Guidelines.

(v) The Commission can request additional information from the regulated person for the purposes of completeness or verification.]

Consideration and approval of applications

4.1 Upon the receipt and consideration of an application under paragraph 3, the Commission may—

- (a) approve the application without any conditions;*
- (b) approve the application with such conditions as the Commission considers fit;*
- (c) request such additional information pursuant to these Guidelines as the Commission considers fit in order to enable a proper consideration of the application;*
- (d) reject the application; or*
- (e) defer the application to await the attainment of a specific occurrence (such as the attainment of a qualification) if such occurrence is likely within a period of not more than 6 months from the date of the consideration of the application.*

4.2 The Commission shall, within 7 days of taking a decision pursuant to paragraph 4.1, notify the applicant concerned regarding the decision.

4.3 Where the Commission takes a decision under paragraph 4.1 *(b)*, *(d)* or *(e)*, it shall provide the applicant with the Commission's reason or reasons for the decision.

PART II

DUTIES AND RESPONSIBILITIES OF A SENIOR OFFICER

Role of a senior officer

5. A senior officer may be required to assume several roles within a regulated person, including those of a leader, strategist, decision maker, manager and/or adviser to the board and, in the case of a group of companies of which the regulated person is a part, to other decision-making bodies within the group. These responsibilities emphasise the importance of a senior officer to the operation of a regulated person and/or group.

General duties and responsibilities of a senior officer

6. A senior officer of a regulated person is expected to perform a variety of duties and responsibilities which may include the following—

- (a) responsibility for the day-to-day operations of the regulated person;
- (b) advising the board of the regulated person;
- (c) ensuring that staff and the board have sufficient, up-to-date information concerning the operations and affairs of the regulated person;
- (d) acting as an intermediary between the board and employees;
- (e) formulating policies and making recommendations to the board;
- (f) deciding or guiding courses of action in operations by staff;
- (g) analysing and overseeing operations of the regulated person;
- (h) implementing policies and procedures of the regulated person;
- (i) assisting in the identification and evaluation of other senior officers and board members as may be appropriate; and
- (j) making recommendations to support the board in ongoing assessments and evaluations.

[Explanatory Note:

The duties and responsibilities outlined above are not designed to be exhaustive or to apply in respect of every application for approval of a senior officer. They are designed as a guide to provide applicants with an idea as to the tier or level of duties and responsibilities that would be considered commensurate with the duties and responsibilities of a senior officer. An application which shows a proposed senior officer's duties and responsibilities to comprise the duties of filing clerk, transmitting documents, answering telephones, etc. will be considered on the basis of its merit, but is likely to raise questions regarding the level of seniority attached to the position.]

AML/CFT duties and responsibilities

7.1 Where part of the duties and responsibilities of a senior officer is to embody matters pertaining to combating money laundering and terrorist financing, it is expected that such senior officer would, on behalf of the regulated person—

- (a) advise upon such documented policies, consistent with the requirements of the Anti-Money Laundering and Terrorist Financing Code of Practice (hereinafter referred to as “the Code”) and the Anti-Money Laundering Regulations (hereinafter referred to as “the AMLR”) and related enactments, as may be relevant to the prevention of money laundering and terrorist financing;
- (b) ensure that the risk assessment required under the Code is carried out and submitted to the senior management for its consideration, approval and guidance;
- (c) ensure that the established policies to prevent money laundering and terrorist financing and the risk assessments that are carried out are reviewed from time to time at appropriate levels and kept up-to-date as necessary;
- (d) advise upon and guide responsibility for the establishment and maintenance of risk-based anti-money laundering and terrorist financing systems and controls and monitor the effectiveness of such systems and controls;
- (e) ensure that overall the regulated person’s anti-money laundering and terrorist financing systems and controls are kept under regular review and that breaches are dealt with promptly;
- (f) oversee the regulated person’s anti-money laundering and terrorist financing regime and ensure speedy action in effecting corrective measures with respect to any identified deficiencies;
- (g) ensure that regular and timely information relevant to the management of the regulated person’s anti-money laundering and terrorist financing risks is made available to the senior management;
- (h) advise upon the importance and need for providing adequate resources to the Reporting Officer; and
- (i) advise upon the implementation of any anti-money laundering and combating the financing of terrorism obligations, including any related internal controls and procedures, which are imposed on or required of the regulated person.

7.2 The application of paragraph 7.1 is without prejudice to the exercise of any power or the requirement of any function, duty or responsibility provided in the Anti-money Laundering Regulations, Anti-money Laundering and Terrorist Financing Code of Practice or the Regulatory Code.

[Explanatory Note:

It is an absolute necessity that a person recommended for approval as a senior officer who is partly expected to perform AML/CFT functions should have a good knowledge of the BVI laws relating to money laundering and terrorist financing. In addition, the person would be expected to be fully au fait with the regulated person’s AML/CFT internal controls and procedures and also have a good knowledge of the BVI’s international obligations concerning AML/CFT. It should be noted that paragraphs 7.1 and 7.2 are not designed and do not apply to create a regime for approving Money Laundering Reporting Officers who are required to be appointed pursuant to the AMLR.]

PART III

QUALIFICATIONS AND EXPERIENCE OF A SENIOR OFFICER

Minimum required qualifications

8. In an effort to ensure consistency in the Commission's decision-making processes regarding the approval of senior officers of regulated persons, these Guidelines set forth the minimum requirements (unless otherwise specified) that a candidate should meet in order to be approved as a senior officer. Accordingly, the following comprise minimum qualifications for the appointment of senior officers—

- (a) **Fit and Proper:** The Commission exercises judgement and discretion in assessing fitness and propriety and takes into account all relevant matters, in accordance with the fit and proper criteria established under Division 2 of Part II of the Regulatory Code. Specifically, the Commission assesses the proposed senior officer's—
 - (i) honesty, integrity and reputation;
 - (ii) competence and capability; and
 - (iii) likely soundness of judgment in the discharge of duties and responsibilities assigned to him or her.
- (b) **Education:** The level of academic achievement should, at the minimum, be the possession of a diploma in a field considered relevant by the Commission in addition to the other requirements outlined in subparagraphs (c) and (d). However, where the Commission is satisfied that, although the person does not possess the requisite academic achievement, his or her experience in a relevant field (not being less than seven years) affords him or her with the necessary skill and competence to be approved for the position of senior officer. In circumstances where the Commission does not consider a qualification sufficient, it may (if it so considers appropriate in any particular case) require the person to undertake additional training in order to be better prepared to perform the duties of a senior officer. Such a decision, where taken, will be communicated to the relevant regulated person.
- (c) **Experience:** A candidate for approval as a senior officer must, subject to subparagraph (b), have at least 5 years experience working in a relevant field.
- (d) **General Managerial Experience and Skills:** A candidate should have the following general skills—
 - (i) effective verbal and written communication;
 - (ii) strong organisational skills and attention to detail;
 - (iii) familiarity with human resources policies and practices;
 - (iv) ability to adapt to and perform in stressful or emergency situations; and
 - (v) ability to comprehend a variety of informational documents.

PART IV

SUPPORTING EVIDENCE

Copies of academic qualifications

9.1 Every application submitted to the Commission for the approval of a senior officer must, subject to paragraph 9.2, be accompanied by copies of the proposed senior officer's academic and other relevant qualifications, including such other supporting evidence that the regulated person considers essential in the due consideration of the application.

9.2 The Commission reserves the right to request certified copies of a proposed senior officer's academic and other relevant qualifications before processing any application relating to the proposed senior officer, notwithstanding that copies of such academic and other relevant qualifications had previously been submitted.

[Explanatory Note:

(i) Generally, the Commission would accept copies of academic and other relevant qualifications that are not certified. It should be noted, however, best practice dictates that copies of such qualifications are certified. It is therefore strongly recommended that, where possible, academic and other qualifications submitted in support of an application should be accompanied by certified copies of the qualifications. This will aid the timely processing of an application in the event that the Commission finds it necessary to request certified copies of the relevant qualifications.

(ii) Where the Commission requests certified copies of academic and other relevant qualifications in respect of a proposed senior officer, the certification may be carried out by a notary public or by the authority that issued the original document. A document would be considered to be properly certified if, on the face of the certificate, the person certifying the document indicates that: (a) he or she has seen and compared the original document verifying the identity and address of the proposed senior officer; (b) the copy of the certified document is a complete and accurate copy of the original; and (c) where the document contains a photograph of the proposed senior officer, the photograph bears a true likeness to the individual to whom the certification relates. In addition, the certificate must bear the date of the certification, the signature and seal of the person certifying the document and provide adequate information to enable the person certifying the document to be contacted in the event of a query or further clarification. Failure to adhere to these certification requirements may delay the processing of an application for approval of a senior officer position. Where a regulated person for good reason or reasons is unable to fully comply with the certification requirements, it must so state in writing (with any available evidence) outlining the reason or reasons. The Commission shall be the sole determiner as to whether or not any reason given for not fully complying with certification requirements is good enough and thus process an application accordingly, taking into account the other requirements of these Guidelines.]

Providing designation, job description, and organisational chart

10.1 Every application for the approval of a senior officer must be accompanied by—

- (a) a clear and specific written designation or title of the post to which the application relates;
- (b) a job description detailing the duties and responsibilities attached to the position to which the person proposed for approval is to be appointed; and
- (c) an organisational chart of the regulated person which outlines the lines of reporting within the regulated person, including the line of reporting of the post for which approval is sought.

10.2 Every job description and organisational chart provided pursuant to paragraph 10.1(b) and (c) must be signed by a director of the regulated person to which the application relates confirming the accuracy of the job description and organisational chart.

[Explanatory Note:

(i) A job description may take several forms and may be presented in point or prose form. Whatever form is adopted, the duties and responsibilities attached to a position to which a senior officer's approval is sought must be clearly identified and presented. Duties and responsibilities that are otherwise identified and presented can only complicate the processing of the application and may cause delays.

(vi) It is also expected that every application would provide an organisational chart which outlines the various lines of reporting within the regulated person. This must include the line of reporting of the position for which approval is sought. This will assist the Commission to make an objective assessment regarding the level of seniority of the position and whether or not it fully meets the requirements for approval as a senior officer position.

(vii) In addition, it is imperative that every job description and organisational chart is signed by a director of the regulated person. It is not sufficient to affix the regulated person's seal on the job description and organisational chart. The signature of the director will be considered by the Commission as confirmation of the accuracy of the job description and organisational chart.]

Providing a police report

11.1 The onus is on every regulated person that submits an application for the approval of a senior officer to ensure that—

- (a) the necessary background check has been made in respect of the person to whom the application relates for purposes of satisfying the requirements of these Guidelines; and
- (b) there is full and complete disclosure of any criminal record or other record relating to dishonesty, bankruptcy or arrangement with creditors, whether relating to or arising from a civil suit or otherwise.

11.2 With respect to conducting a background check to establish whether or not a person proposed as a senior officer has a criminal record, the regulated person shall obtain a written police report in respect of such record or the absence thereof and transmit it along with the application for approval. The written police report shall be treated as satisfying any background check and disclosure of criminal record required under paragraph 11.1.

11.3 If pursuant to paragraph 11.2 a written police report could not be obtained after a formal request and the taking of other necessary steps, the regulated person shall—

- (a) where it has not been able to identify the existence of a criminal record, notify that fact in the application; or
- (b) to the extent possible and where it is aware of the existence (whether currently or in the past) of a criminal record, provide the nature, description or proceedings, date, circumstances and related matters pertaining to the criminal record.

[Explanatory Note:

(i) *While the Commission may conduct due diligence enquiries in relation to a person to whom an application for approval relates, it is the primary duty of the regulated person to conduct background checks on its candidate for senior officer approval. The full and truthful disclosure of a person's criminal or other record is in itself not a bar to approval. However, failure to make a full and complete disclosure will be considered a failure of fitness and propriety under Part III of these Guidelines. The Commission would consider as acceptable a police report submitted in respect of a proposed person's criminal record or the absence thereof and this will thus satisfy the background check and disclosure requirements. What this means therefore is that every application must, to the extent possible, be accompanied by a police report attesting to a proposed senior officer's criminal record (where such exists) or clean record (where no crime is attributed).*

(ii) *Where it is believed that a person in respect of whom an application for approval relates has or has had a criminal or other record as stipulated in paragraph 11.1 above but no official police report could be obtained, the regulated person submitting the application must indicate in writing the steps it has taken to secure the relevant police report. It is a matter of judgment in respect of each case as to what steps are considered reasonably necessary in securing a police report. The Commission will apply its own mind as to whether the steps taken are sufficient in all the circumstances of the case.*

(iii) *It should be noted that there is no requirement to provide any information with respect to the "criminal record" of any person who had been granted a pardon. However, the provision of sufficient evidence to support the granting of the pardon is required. The evidence may be in the nature of an order, a certificate, a directive or a similar instrument which on the face of it sufficiently and genuinely demonstrates the granting of a pardon. As an alternative in such a case, the Commission will accept a police report attesting to the non-existence of a criminal record in respect of the person.*

(iv) *A police report in respect of a proposed senior officer is expected to be not more than 6 months old from the date of its issue to the date of its receipt at the Commission. The Commission will not accept any police report that falls outside of this period. In addition, a police report must be obtained from every jurisdiction to which a proposed senior officer's criminal record relates.*

(v) *Where a police report of a known criminal record cannot be obtained but a written judgment exists in respect thereof and can be obtained, the written judgment must be provided.]*

Providing report on dishonesty, bankruptcy, etc. of proposed senior officer

12.1 Every regulated person that wishes to submit an application pursuant to these Guidelines must, prior to submitting the application, conduct diligent enquiry as to whether or not a proposed senior officer has any record relating to dishonesty, bankruptcy or arrangement with creditors, whether relating to or arising from a civil suit or otherwise.

12.2 Where a diligent enquiry elicits any record referred to in paragraph 12.1, the regulated person shall provide written information on the subject and transmit it along with the application for the approval of a senior officer. The written information must outline the nature of the record and the date, description or proceedings, circumstances and related matters pertaining to the record.

12.3 Where a diligent enquiry pursuant to paragraph 12.1 does not reveal any record of dishonesty, bankruptcy or arrangement with creditors in respect of a proposed senior officer, the regulated person shall indicate that fact in its application to the Commission for the approval of the proposed senior officer.

Requiring additional information

13.1 Where the Commission receives an application for the approval of a senior officer and forms the opinion that the application and/or its supporting evidence is insufficient or not legible to enable it to make an appropriate decision, it may in writing require the regulated person submitting the application to provide such additional evidence or other information and/or legible copies of the supporting evidence as the Commission considers fit.

13.2 The Commission may require any additional supporting evidence or other information required under paragraph 13.1 to be provided within such period as the Commission may provide in its written communication to the regulated person.

[Explanatory Note:

The requirements of this paragraph represent standard practice. In order to avoid any unnecessary delay in the processing of an application for the approval of a senior officer, the regulated person is expected to ensure that all relevant supporting documentation that would aid the consideration of the application is submitted along with the application. The Commission reserves the right to require additional information where it considers that that would assist with the full and proper processing of an application. Where it provides a deadline for the provision of the additional information, failure to comply with the deadline entitles the Commission to take a decision on an application in the absence of the required additional information. Once the Commission takes a decision in that context, it will not entertain any reconsideration of the application except on the basis of a fresh application with all the required information in support of the application.]

Use of affidavits

14.1 The Commission will accept an affidavit that is properly sworn to which seeks to attest to any particular facts or circumstances which are considered essential to the proper consideration of an application for the approval of a senior officer. It is therefore open to a regulated person to provide affidavit evidence to support an application for the approval of a senior officer.

- 14.2 An affidavit evidence will be considered to be properly sworn to if—
- (a) it is deposed to by the deponent indicating his or her full name and address;
 - (b) it is sworn before a notary public or a commissioner for oaths or other person of equivalent rank;
 - (c) it properly and accurately describes the particular facts and/or circumstances to which it relates; and
 - (d) it is dated and properly executed by the person before whom it is sworn.

[Explanatory Note:

It is to be noted that an affidavit of the existence of a document may not be accepted if the actual document or a certified copy thereof could be obtained with some diligence. It is expected that generally affidavit evidence would relate to an attestation of facts and/or circumstances which are in the knowledge of the deponent. Where the existence of a supporting document is confirmed but it has proven difficult to obtain the document, the affidavit must clearly indicate that fact, in addition to outlining the steps that have been taken to secure the document or a copy thereof. This will assist the Commission in its own enquiries and verifications.]

PART V

GENERAL PROVISIONS RELATING TO SENIOR OFFICERS

Duty to report material change

15.1 Where, following the approval of a senior officer, there arises any new material fact or circumstance which would affect the senior officer if the application for his or her approval were being considered at the time of occurrence of the new material fact or circumstance, the regulated person appointing the senior officer shall, within 7 days of becoming aware of the new material fact or circumstance, notify the Commission in writing of such new fact or circumstance.

15.2 A new fact or circumstance arising in relation to a senior officer is considered material if the nature of it is such that had it occurred or been known at the time of the approval of a senior officer it would have been considered essential to the approval process. The materiality may relate, though not restricted, to any of the following—

- (a) conviction of the senior officer for a criminal offence other than a traffic offence in which he or she is sentenced to a fine;
- (b) where the senior officer is the subject of a criminal investigation or an extradition request;
- (c) liability of the senior officer in a civil suit which elicits unlawful or dishonest conduct;
- (d) bankruptcy of the senior officer;
- (e) where the senior officer has made an arrangement with his or her creditors;
- (f) where any documentary or other evidence presented in support of an application for approval of the senior officer is discovered to be false, not entirely accurate or to have been unlawfully obtained;

- (g) where the senior officer has resigned from or been relieved of his or her duty with the regulated person, irrespective of whether or not the senior officer has taken up employment with another person;
- (h) where disciplinary action has been taken against the senior officer by the regulated person or, where the senior officer is a member of a professional organisation, by that organisation; and
- (i) where the role of the senior officer has changed significantly as to diminish or impair his or her position within the regulated person.

[Explanatory Note:

(i) *The need to report material changes in respect of a senior officer after he or she has been approved as such does not necessarily mean that the Commission will rescind the approval or exercise any power of revocation that may be granted to the Commission under the Financial Services Commission Act or any financial services legislation. However, it is essential for the Commission to be made aware of the new facts and circumstances to enable it to make an informed decision as part of its regulatory functions. Where the Commission rescinds or withdraws an approval, the rescission or withdrawal will take effect from the date stated with respect thereto.*

(ii) *Apart from the matters outlined in paragraph 15.2 above (which are not designed to be exhaustive, but rather to be illustrative of material changes), it is a matter of exercising sound judgment on the part of the regulated person as to whether or not any particular fact or circumstance relative to an approved senior officer is sufficiently significant to be considered a material change. Where, on the basis of available information, the regulated person is uncertain as to whether or not the information is sufficient to constitute a material change in respect of a senior officer, then the regulated person **must** report the matter to the Commission. All reports must be in writing and must clearly outline the new facts and/or circumstances.*

(iii) *In relation to paragraph 15.2(i), it is a question of fact (which ought to be known to a regulated person) as to whether a role assigned to a senior officer as represented in an application for approval has changed significantly. While it is not unexpected that a senior officer may be required to assume additional responsibilities on top of those already identified with respect to the post at the time of the application for approval from the Commission, it would normally be considered to be a departure from what was represented if the role of the senior officer is amended in such a way that he or she performs significant duties than those identified in the initial application or he or she no longer performs or minimally performs the duties initially assigned to the post. Such an amendment may constitute a significant impairment or diminution of the role of the senior officer and may therefore be viewed as a material change. Where it is intended to significantly alter the role of a senior officer, whether in terms of the duties assigned or otherwise, a new application must be submitted to the Commission for approval, complying with all the requirements of these Guidelines. This would enable the Commission to make an objective assessment of the duties vis-à-vis the qualifications of the person proposed to perform those duties and indeed whether the nature of the material change properly falls within the ambit of the duties of a senior officer.*

(iv) *Nothing prevents the Commission in an inspection or otherwise from making its own inquiry and arriving at its own judgment regarding whether or not a particular*

occurrence or state of affairs in respect of a senior officer constitutes a material change which ought to have been reported.]

Right to rescind an approval

16.1 The Commission may at any time after granting approval of a senior officer rescind the approval if, in its opinion, the person approved as a senior officer no longer qualifies as such, whether pursuant to any material change in his or her case referred to in paragraph 15 or for any other good reason.

16.2 Where the Commission rescinds an approval in relation to a senior officer, it shall, within 7 days of the rescission, notify in writing the regulated person concerned.

[Explanatory Note:

While the reasons that may prompt a rescission of an approval by the Commission may be multiple and varied in nature, the ultimate responsibility is that of the Commission to make a determination as to whether or not it has a reason or has reasons that in its judgment it considers good enough to warrant the rescission. Where the Commission rescinds an approval, it will be expected to provide its reason or reasons for taking such a decision. It should be noted that the rescission by the Commission of any approval is without prejudice to the exercise of its power of revocation that may be provided in the Financial Services Commission Act or any financial services legislation.]

Ceasing to be a senior officer

17.1 A person ceases to be an approved senior officer in accordance with these Guidelines if he or she is no longer in the employment of the regulated person in respect of whom he or she was approved as a senior officer.

17.2 Where a person ceases to be an approved senior officer pursuant to paragraph 17.1, the regulated person in respect of whom the person was approved as senior officer shall, within 7 days (or such other period as may be specified in the Financial Services Commission Act or an applicable financial services legislation) of the person ceasing to be a senior officer, notify the Commission in writing of that fact, outlining—

- (a) the reason or reasons for the person ceasing to be in the employment of the regulated person;
- (b) the circumstance or circumstances surrounding the cessation of employment by the approved senior officer;
- (c) whether there are any specific issues with respect to the person which may relate to his or her fitness and propriety as a senior officer; and
- (d) any other matter that may be required under the Financial Services Commission Act or an applicable financial services legislation.

Non-transferability of approval

18. The approval of a person as a senior officer is in respect of the regulated person that submits the application on his or her behalf and such approval is not transferable to any other employment that the approved person subsequently secures.

[Explanatory Note:

(i) *When an application is made by a regulated person seeking the Commission's approval of a specified person as a senior officer, the approval granted by the Commission is valid only so long as the senior officer remains with the regulated person. If the approved person changes employment, the approval granted in his or her case does not transfer with him or her to his or her new employment. This paragraph, in effect, buttresses paragraph 17 above.*

(ii) *Where the new employer wishes to employ the same person as a senior officer, the new employer must submit a separate application in respect of the same person by ensuring full compliance with the requirements of these Guidelines. It should be noted that the previous approval of a person as a senior officer with a regulated person is in itself not a guarantee that the Commission will grant subsequent approval of the person as a senior officer in respect of a different regulated person. Every application will be determined on its own merits and in accordance with the provisions of these Guidelines.]*

PART VI**PROVISIONS RELATING TO ACTUARIES, AUDITORS, ETC.****Application of this Part**

19. This Part applies to persons who are required under any financial services legislation to be approved by the Commission as actuaries, auditors or other independent officers in relation to regulated persons.

[Explanatory Note

The reference to "other independent officers" is designed to take into account any current or future legislative measures which may require persons (other than senior officers, compliance officers, auditors and actuaries) who wish to be appointed to senior independent positions or require some form of licensing to obtain approval from the Commission. Such persons may also be considered for approval pursuant to the provisions of these Guidelines without the need for a separate guideline framework or amendment of these Guidelines (unless considered absolutely necessary or otherwise specified in a particular financial services legislation).]

Application of other provisions to this Part

20.1 Paragraphs 4, 9, 11, 12, 13, 14, 15 (save paragraph 15.2(i)) and 16 will apply to an actuary, auditor or other independent officer and the reference in those paragraphs to a "senior officer" shall be construed as if it were a reference to an actuary, auditor or other independent officer as the context requires.

20.2 The accompanying Explanatory Notes to paragraphs 9, 11, 13, 14, 15 and 16 are to be given their appropriate construction as may be relevant in relation to an actuary, auditor or other independent officer.

Application for approval of actuary, auditor or other independent officer

21.1 Subject to this paragraph, every application for the approval of an actuary, auditor or other independent officer must be made by a regulated person in Form B-1 and the application must be accompanied by supporting evidence as provided in the Form and these Guidelines.

21.2 An application for an independent officer other than an actuary or auditor may be made by that officer, unless the Commission directs otherwise in writing.

21.3 Subject to paragraph 21.4, in relation to an authorised representative, the application for approval shall, unless otherwise required by the Commission, be made in accordance with Form D. Where the applicant is a corporate entity, items 1 to 4, and item 6 must be completed by each director of the corporate entity.

21.4 Where, in respect of an authorised representative, the application relates to—

- (a) an individual, that individual must be resident in the Virgin Islands; and
- (b) a corporate entity, at least one director of the corporate entity must be resident in the Virgin Islands.

21.5 The Commission may require an independent officer (other than an actuary or auditor) to submit an application for approval in accordance with Form A, but no such officer shall be required to submit an application in both Forms A and B-1.

21.6 A non-refundable administration fee of \$100 or such amount as may be prescribed pursuant to the Financial Services Commission Act or any financial services legislation (with the applicable fee in the latter enactments taking precedent where provided) must be submitted with the application for approval of the appointment of an auditor, actuary or other independent officer.

Approval for change of auditor and notification

22. Where—

- (a) a regulated person wishes to change an auditor, it must, if the person it wishes to appoint as its new auditor—
 - (i) has not been previously approved by the Commission, submit an application as prescribed in Form B-1; or
 - (ii) has previously been approved by the Commission and his or her approval has not been rescinded or revoked, submit an application as prescribed in Form B-2; and
- (b) an actuary resigns or an actuary or auditor terminates his or her appointment or has his or her appointment terminated, he or she must notify the Commission of that fact as provided in Form B-3.

Roles and duties of auditor, actuary or other independent officer

23. The roles and duties to be performed by an actuary, auditor or other independent officer shall be as prescribed in the Regulatory Code and relevant financial services legislation relating to him or her. The Commission will take into account such requirements when dealing with applications under this Part.

Qualification and experience of actuary, auditor or other independent officer

24. The qualifications and experience required for the appointment of an actuary, auditor or other independent officer will be those prescribed in the relevant financial services legislation in relation to such actuary, auditor or other independent officer. This will, however, be in addition to taking into account the fitness and propriety of the actuary, auditor or other independent officer, in particular, with respect to his or her—

- (a) honesty, integrity and reputation;
- (b) competence and capability; and
- (c) likely soundness of judgment in the discharge of duties and responsibilities assigned to him or her.

Continuation of approval

25.1 Save where there is a material change in the facts or circumstances of an actuary, auditor or other independent officer to dictate the need for a re-evaluation by the Commission of its approval and subject to anything to the contrary contained in any financial services legislation, an approval granted in respect of that actuary, auditor or other independent officer continues in force until rescinded or revoked by the Commission or as otherwise provided in a relevant financial services legislation. Subject to paragraph 25.2, this is notwithstanding that the actuary, auditor or other independent officer performs assignments or accepts employment with different regulated persons.

25.2 Where an actuary, auditor or other independent officer who is already approved by the Commission wishes to perform an assignment or accept employment with another regulated person, he or she may do so only if he or she has the qualification and competence to perform that assignment or function in the employment. Account will be taken by the Commission of the actuary's, auditor's or other independent officer's knowledge and understanding of any obligations imposed on him or her by any financial services or other Virgin Islands legislation.

[Explanatory Note

(i) *The Commission will generally not require an actuary, auditor or other independent officer who has already been approved by the Commission in relation to employment with one regulated person to seek further approval if the employment with the first regulated person terminates. However, the non-requirement does not apply if there is a material change in the facts or circumstances relative to the approval granted by the Commission or if the Commission rescinds or revokes the approval. Thus if at any point in time there occurs a material change of facts or circumstances in relation to an approved actuary, auditor or other independent officer, the appropriate notification must be issued in order to enable the Commission to make a determination regarding the continuation of its approval.*

(ii) *Where an actuary, auditor or other independent officer is approved, he or she may, on the basis of that approval unless otherwise required, perform services for different regulated persons. This is, however, allowed only on the basis that the actuary, auditor or other independent officer has the knowledge and competence to perform such services. Such knowledge and competence is to be gauged, among other things, by considering whether there is an awareness and understanding of the obligations that apply with respect to the performance of the services to be undertaken. Such obligations may relate to reporting or other requirements, whether to the*

Commission or the relevant board of the regulated person or both. It is therefore imperative that the continuation of an approval is not taken for granted as the Commission would expect to review such approval from time to time and as necessary.

(iii) It should be noted that the continued subsistence of an approval does not absolve a regulated person, where required to do so under any financial services legislation, from seeking approval to effect an appointment or to inform or notify the Commission of the resignation or termination of employment/engagement.]

PART VIA

APPLICATION PROCESS FOR COMPLIANCE OFFICER

Submitting application for approval of a Compliance Officer

25A.1 An application for approval of a Compliance Officer shall be made by the regulated person as set out in Form A, even in cases where the prospective regulated person is awaiting approval for licensing. The following documentation must be submitted in support of the application—

- (a) certified copies of identification documents;*
- (b) certified copies of professional and educational qualifications;*
- (c) a resume or curriculum vitae outlining the relevant qualifications and experience of the applicant. This should include the names, addresses and telephone numbers of previous employers;*
- (d) a police certificate or a sworn affidavit (where a certificate is not issued) as to the non-criminal record of the applicant for the past 3 years; and*
- (e) professional, personal and financial references. The professional reference should be from a person who can speak to the experience and ability of the proposed Compliance Officer. The personal reference should be from a person who can vouch for the proposed Compliance Officer's conduct and character. The financial reference must be submitted by a financial institution, directly to the Commission (clearly referencing the name of the regulated person).*

25A.2 A non-refundable administration fee of \$100 or such amount as may be prescribed pursuant to the Financial Services Commission Act or any financial services legislation (with the applicable fee in the latter enactments taking precedent where provided) must be submitted with the Application for approval of the appointment of a Compliance Officer.

[Explanatory Note:

(i) Applications for approval of a Compliance Officer are made pursuant to section 34(3) of the Financial Services Commission Act. However, in submitting an application for approval of the appointment of a Compliance Officer, attention must be paid to the requirements outlined in Division 4 of Part II of the Regulatory Code, including the guidelines outlined in the Explanatory Notes thereto.

(ii) If an application for approval of a Compliance Officer is submitted and approved, a separate Senior Officer application need not be submitted as, upon approval, the Compliance Officer shall be deemed to be a senior officer pursuant to section 34(4A) of the Financial Services Commission Act. Such approval does not restrict a person from submitting a Senior Officer application if the application is in relation to a position other than that of Compliance Officer. However, where an application for approval of appointment of a Compliance Officer is submitted along with an application for approval of senior officer in respect of the same person and the Commission approves that of the Compliance Officer, it will not consider the application of the same person for approval as a senior officer (as that would have been subsumed in the approval for appointment of Compliance Officer). Similarly, where the Commission does not give its approval for the appointment of a Compliance Officer, it will nevertheless consider the application for approval as a senior officer in respect of the same person.

(iii) An application for approval of a Compliance Officer must be submitted to the Commission as set out in Form A. Any additional information that an applicant considers relevant to the processing of an application or in relation to a proposed Compliance Officer which the Commission should know shall be provided in writing and attached to the completed application form.

(iv) A single application with a single fee may be submitted for a group of companies provided that those companies are subsidiaries of a common parent or share common ownership (sections 1, 2, 5 and 12 of the application form must be completed by each regulated person in the group).

(v) The regulated person must indicate whether the Compliance Officer will also serve as the Reporting Officer under the Anti-money Laundering Regulations and the Anti-money Laundering and Terrorist Financing Code of Practice (section F(3) of the application form).

(vi) Without prejudice to paragraph (ii) above, sections 1, 2, 5 and 12 of the application form should be completed by the regulated person submitting the application; sections 3, 6, 7 and 8 must be completed by or on behalf of the proposed Compliance Officer seeking approval.

(vii) Declarations (sections 11 and 12 of the application form) are to be signed by—

- A director or other individual of the regulated person communicating a board resolution to that effect; and
- The prospective Compliance Officer seeking approval.

(viii) Copies of documents (for example, passport identification page(s)) must be properly certified, meaning that—

(a) the person certifying the document indicates that—

1. he or she has seen and compared the original document verifying the identity and residential address of the prospective Compliance Officer;
2. the copy of the document which he or she certifies is a complete and accurate copy of the original; and

3. *where the document contains a photograph of the prospective Compliance Officer, the photograph bears a true likeness to the individual to whom the certification relates; and*

(b) *the certificate—*

4. *bears the date of the certification;*
5. *bears the signature and seal of the person certifying the document; and*
6. *provides adequate information to enable the person certifying the document to be contacted in the event of a query or further clarification.*

Failure to adhere to these certification requirements may delay the processing of an application for approval of appointment of a Compliance Officer. Where a regulated person for good reason or reasons is unable to fully comply with the certification requirements, it must so state in writing (with any available evidence) outlining the reason or reasons. The Commission shall be the sole determiner as to whether or not any reason(s) given for not fully complying with certification requirements is good enough and thus process an application accordingly, taking into account the other requirements of these Guidelines.

(ix) *The Commission can request additional information from the regulated person for the purposes of completeness or verification.]*

Declaration form for exemption from appointing, or applying for approval of appointment of, a Compliance Officer

25B. Where a regulated person exempted from appointing or applying to the Commission for approval of a Compliance Officer by virtue of paragraph 1(1) of Schedule 1 of the Financial Services (Miscellaneous Exemptions) Regulations is required under subparagraph (2) thereof to subscribe to a declaration, the regulated person shall subscribe to the declaration outlined in Form C of these Guidelines.

[Explanatory Note:

The Financial Services (Miscellaneous Exemptions) Regulations provide exemptions with respect to specified regulated persons from complying with certain provisions of the Financial Services Commission Act or financial services legislation. By virtue of Schedule 1 of the Regulations Class I, Class II or restricted Class II licensees (regulated persons) that do not have a physical presence in the Virgin Islands, Class III licensees, or restricted Class III trust licensees or company management licensees with 3 or less employees, are exempted from appointing, or applying for the Commission's approval the appointment of, a Compliance Officer. However, in order to verify their qualification for exemption, they are obligated to subscribe to and submit a declaration to the Commission in accordance with the requirements of these Guidelines. Accordingly, Form C is designed to facilitate that verification process and must be properly subscribed to before the exemption applied for can be granted by the Commission.]

Meeting the Commission's fit and proper test

25C. Before granting approval of an application for a Compliance Officer, the Commission must be satisfied that the candidate is fit and proper in accordance with the criteria established in Division 2 of Part II of the Regulatory Code.

[Explanatory Note:

(i) *The criteria used to determine fitness and propriety established under the Regulatory Code will apply in relation to a Compliance Officer. The Commission relies on the prescribed fitness and propriety criteria for its assessment of an application for the approval of a Compliance Officer.*

(ii) *It is the responsibility of the applicant to demonstrate that the proposed Compliance Officer has the relevant skills and experience to perform his or her duties. The character and integrity of a proposed Compliance Officer are also key determining factors in the processing of an application for approval.*

(iii) *The Commission expects that fully completed applications for the approval of a Compliance Officer will be processed within 21 business days. If, however, the application is not fully completed the Commission can request further information from the regulated person. This will cause a delay in the approval process and thus extend the normal processing time of the Compliance Officer application. Furthermore, where the Commission has to obtain third party confirmation in performing due diligence, this may cause a delay in the approval process.*

(iv) *Where an application is submitted by a prospective regulated person not yet approved, the Commission may consider the approval of the Compliance Officer simultaneously with the granting of approval to the regulated person. However, no such consideration will be made in the absence of the actual consideration and approval of the regulated person. Further, it is essential that the consent of the proposed Compliance Officer, and the entity or regulated person in respect of the Compliance Officer who is to be employed (if this is an entity other than the regulated person) must also be obtained and presented to the Commission.*

(v) *A regulated person can withdraw an application for the approval of a Compliance Officer at any time before the Commission has reached a decision, provided that notification is given to the Commission. A full reason must be given for the withdrawal and, if the withdrawal is due to the Compliance Officer's resignation or dismissal from the employment with the regulated person (or other entity, if this is the case), an explanation of the reason for the dismissal or resignation must be provided.*

(vi) *Where the Commission refuses an application, it will provide the applicant with the reason for its decision. A regulated person may appeal to the Financial Services Appeal Board against a decision made by the Commission, in accordance with the Financial Services Commission Act.]*

Compliance Officer ceasing to be fit and proper

25D. Under section 37(1)(d)(i) of the Financial Services Commission Act, the Commission may take enforcement action against the regulated person if the Compliance Officer is at any time not a fit and proper person to carry out his or her duties and obligations.

[Explanatory Notes:

(i) *The onus is on the regulated person to ensure that the Compliance Officer is fit and proper at the application stage and on an ongoing basis. If at any point in time, in the opinion of the regulated person, the Compliance Officer ceases to be fit and proper, the regulated person is obligated to notify the Commission in writing of that fact immediately, and seek to apply for approval of the appointment of a fit and proper Compliance Officer.*

(ii) *In circumstances where the Commission exercises its power under section 40D of the Financial Services Commission Act, the licensee is responsible to identify another suitable individual for appointment and to submit an application for approval to the Commission.]*

An approval not conclusive of a future approval

25E. The Commission evaluates applications for the appointment of a Compliance Officer on an individual basis. The Commission, in approving applications for the appointment of a Compliance Officer, bears in mind that the approval of an individual as Compliance Officer for the regulated person does not indicate that the individual is or will be approved to act as Compliance Officer for another regulated person.

Matters relevant to compliance function

25F. The matters outlined in Appendices A, B and C are considered fundamental to the due performance of a compliance function and every regulated person and Compliance Officer must be guided by them accordingly.

PART VII**MISCELLANEOUS****Consistency in the processing of applications**

26. The Commission will, as far as possible, aim to ensure a consistency of approach in the consideration of applications and the decision making process with respect to approvals under these Guidelines. The Commission therefore reserves the right to revisit any decision that it takes with a view to reviewing any specific application to ensure consistency and compliance with the requirements of these Guidelines. Such a review will not necessarily result in an amendment of the decision already taken, save and in accordance with the requirements of these Guidelines.

Submission of applications

27. All applications seeking the approval of the Commission must be addressed and either hand delivered or mailed to—

The Deputy Managing Director (Regulation)
Financial Services Commission
Pasea Estate
P. O. Box 418
Road Town,
Tortola, VG 1110
British Virgin Islands.

Savings and transitional

28. Where prior to the coming into force of these Guidelines—
- (a) a person was approved by the Commission as a senior officer of a regulated person in whose employment he or she continues, that person will continue to be an approved senior officer as if he or she were approved in accordance with these Guidelines;
 - (b) a person was approved by the Commission as an actuary, auditor or other independent officer, that appointment continues to have effect until and unless rescinded or revoked by the Commission; and
 - (c) an application by a regulated person for the approval of a senior officer or by an actuary, auditor or other independent officer has been submitted and pending before the Commission, such application will be dealt with as if it were submitted in accordance with the requirements of these Guidelines.

Commencement of the Guidelines

29. These Guidelines come into effect on the 2nd day of March, 2009.

FORM A

(Paragraphs 3 and 25A.1)

GOVERNMENT OF THE BRITISH VIRGIN ISLANDS
BANKS AND TRUST COMPANIES ACT

**APPLICATION FOR APPROVAL OF DIRECTORS,
COMPLIANCE OFFICERS AND SENIOR OFFICERS**

This application is for the approval by the Commission of:

Director

Compliance Officer

Senior Officer

(Please specify): _____

1. Details of Regulated Person submitting application

Name of regulated person: _____

Address: _____

Certificate/Licence No. of regulated person: _____

2. Contact Person(s)

Please provide details of the individual who should be contacted in relation to this application:

Name: _____

Position: _____

Telephone: _____

Fax: _____

E-mail: _____

3. Applicant Details

Title: _____ Surname: _____ First Name: _____

Middle Name(s): _____

Date of Birth: _____ Place of Birth: _____ Nationality: _____

Passport No.: _____ Social Security No.: _____

Other Identification No. (Please specify): _____

Previous Name(s) (if any): _____ Date of Name Change: _____

Reason for change: _____

Current address: _____

Length of time resident at current address: _____

Date first resided: _____

Previous address(es): _____

(within last 10 yrs) _____

Resided from _____ until _____

4. Details of Position Being Sought

Title for which approval is sought: _____

Proposed date effecting employment/appointment: _____

In the case of an application for Compliance Officer, will the Applicant also serve as the regulated person’s Money Laundering Reporting Officer? Yes No

5. Relationship Between Applicant and Regulated Person

What is the nature of the arrangement between the regulated person and the person proposed for appointment as director/compliance officer/senior officer:

Employee: FT/PT Group Employee:

Name of Group: _____

Contract for services: Partner/Sole Trader:

Other:

If you checked “Other”, or if the Applicant will be employed on a part-time basis, please provide details of terms of employment:

Does the Applicant hold any shares, or have any interest, legal or equitable, direct or indirect, in the regulated person? Yes No

If “Yes”, provide details of shareholding or other interest:

Is the Applicant able, directly, to exercise more than 10% of the voting power of the firm?

Yes No

If “Yes”, please provide details:

6. Education

Name of Institution(s) Attended	Degree/Diploma/Other Qualification received	Date of Completion
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. Memberships in Professional Bodies

Organisation/Association	Membership Status (e.g. Student, Associate, Fellow, etc.)	Member Since	Membership Number (if applicable)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

8. Experience (Employment History for past 7 years including current position if currently employed) (If there is relevant employment history spanning beyond 7 years, that may be included)

(a) Position held: _____ Period: _____

Name of Employer: _____ Nature of Business: _____

Supervisor/Contact Person: _____ Name of Regulator(s) (if any): _____

Address: _____ Outline responsibilities held: _____

Tel: _____ Fax: _____ E-mail: _____

Reason for leaving: Resignation Expiration of Contract Redundancy
Retirement Termination/Dismissal Other

If "Other", please specify:

If "Termination/Dismissal", please state the reason(s) for the termination or dismissal:

(b) Position held: _____ Period: _____

Name of Employer: _____ Nature of Business: _____

Supervisor/Contact Person: _____ Name of Regulator(s) (if any): _____

Address: _____ Outline responsibilities held: _____

Tel: _____ Fax: _____ E-mail: _____

Reason for leaving: Resignation Expiration of Contract Redundancy
Retirement Termination/Dismissal Other

If "Other", please specify:

If "Termination/Dismissal", please state the reason(s) for the termination or dismissal:

(c) Position held: _____ Period: _____

Name of Employer: _____ Nature of Business: _____

Supervisor/Contact Person: _____ Name of Regulator(s) (if any): _____

Address: _____ Outline responsibilities held: _____

Tel: _____ Fax: _____ E-mail: _____

Reason for leaving: Resignation Expiration of Contract Redundancy
 Retirement Termination/Dismissal Other

If "Other", please specify:

If "Termination/Dismissal", please state the reason(s) for the termination or dismissal:

9. Fitness and Propriety (To be completed by the person proposed for appointment as Director/Compliance Officer/Senior Officer)

If you answer YES to any of the questions below you must supply full details by way of a written attachment to the application:

	Yes	No
Has an application for your regulatory approval ever been refused?	<input type="checkbox"/>	<input type="checkbox"/>
Have you ever been asked to resign, or been dismissed from any fiduciary position of trust?	<input type="checkbox"/>	<input type="checkbox"/>
Have you been refused, restricted in, or had suspended, the right to carry on a trade, business or profession for which a specific licence, authorisation, registration, membership or other permission is required?	<input type="checkbox"/>	<input type="checkbox"/>
Have you at any time been convicted of any criminal offence by any court in the Virgin Islands or elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>
Are you currently the subject of a criminal investigation or an extradition request?	<input type="checkbox"/>	<input type="checkbox"/>

Have you been found guilty of conducting any unauthorised regulated activity or been investigated for possible conduct of unauthorised regulated activity?

Have you, in the last 10 years, been censured or disciplined by any professional body to which you belong or belonged, or been dismissed from office or employment or refused entry to any profession or occupation in the Virgin Islands or elsewhere?

Have you, in the last 10 years, filed for bankruptcy or been adjudicated bankrupt by a court in the Virgin Islands or elsewhere?

Have you at any time failed to satisfy any debt due and payable to you as a judgment-debtor under an order of a court in the Virgin Islands or elsewhere?

Have you, in the last 10 years, been found liable in a civil suit which elicited dishonest or unlawful conduct on your part?

Have you, in connection with the formation, control or management of any corporate, partnership or unincorporated institution, within the last 10 years, been adjudged by a court in any jurisdiction civilly liable for any fraud, malfeasance or other misconduct by you towards such a body or company, or towards any members thereof?

Has any body corporate, partnership or unincorporated institution with which you were associated as a director, shareholder or controller, anywhere, been compulsorily wound up or made any compromise or arrangement with its creditors where they did not receive or have not yet received full settlement of their claims, either while you were associated with it or within one year after you ceased to be associated with it?

Has any body corporate, partnership or unincorporated institution with which you were associated as a director, shareholder or controller, anywhere, been fined or censured by any securities commission, banking commission or any similar regulatory commission or body?

10. Personal Statement (must be completed by the person proposed for appointment as Director, Compliance Officer or Senior Officer)

Explain briefly why you consider yourself qualified to carry out the functions of this position. Please indicate any directorships or other positions previously or currently held and the jurisdictions in which they were/are held.

11. Declaration by the Proposed Director/Compliance Officer/Senior Officer

I, _____, do hereby declare that the personal information provided in this application is, true and accurate, and that all documents submitted with this

application in respect thereof are authentic. I understand that providing false or misleading information in respect of this application may cause the Commission to deny the application and any subsequent applications which may be submitted on my behalf.

Signed by: _____

Name (Print): _____

Date: _____

12. Declaration by the Regulated Entity

I, _____ do hereby declare, on behalf of _____ (name of regulated person) that the information provided in this application is, to our knowledge and belief, true and accurate and that all documents submitted with this application with respect to the Applicant have been verified as authentic. I understand that providing false or misleading information in respect of this application may cause the Commission to deny the application and any subsequent applications which may be submitted on behalf of this Applicant, and may cause enforcement action to be taken against us.

Signed by: _____

Name (Print): _____

On behalf of: _____

Date: _____

BVI Financial Services Commission Use Only

Date Received: _____

Application Processed By: _____

Date Considered By Commission: _____

Application Status: **Approved** **Denied** **Deferred**

Reason(s) for denial or deferral (if applicable):

DOCUMENT CHECKLIST

The following documents must be submitted together with this application for the Application to be considered complete.

1. Certified copies of academic and other qualifications
2. Resume or curriculum vitae—
 - (i) outlining the relevant qualifications and experience of the Applicant; and
 - (ii) including the names, addresses and telephone numbers of previous employers
3. Current job description for position for which approval is being sought
4. Current organisational chart for regulated entity completing application
5. Notarised copies of identification documents (e.g. passport identification pages)
6. Professional reference from a person who can speak to the experience and ability of the Applicant
7. Financial reference from a financial institution in respect of the Applicant
8. Personal reference from an individual who has known the Applicant for at least 5 years
9. Certification of absence of criminal record
10. Certification of absence of dishonesty, bankruptcy or any arrangement with creditors.

NOTES

1. This form should be completed by all regulated persons submitting applications for approval.
2. An application for approval should be made by the regulated person, not the prospective Director/Compliance Officer or Other Senior Officer, even in cases where the prospective regulated person is awaiting approval for licensing or authorisation.
3. A non-refundable administration fee of \$100 must be submitted with this application form.
4. In the case of an application for Compliance Officer, a single application form with a single fee may be submitted for a group of companies, provided that those companies are subsidiaries of a common parent or share common ownership. Sections 1, 2, 5 and 12 of this form must be completed by each regulated person in the group. Please print additional pages of these sections as necessary.
5. A police report must be submitted in respect of every person proposed for approval as a director, Compliance Officer or senior officer. Where a police report cannot be obtained in a case where a criminal record exists, evidence of the nature of the criminal record, including description of proceedings, dates, circumstances and other related matters pertaining to the criminal record must be submitted with the Application. If a written judgment exists and can be obtained, this must be submitted.

6. Where it is found that the Applicant does possess a history of such, written information outlining the nature of the record, dates, description of proceedings, circumstances and other related matters pertaining to the record must be submitted with the Application.
 7. Please note that the Commission may request additional information from the Applicant for the purposes of completeness or verification.
 8. An approval fee is required to be paid upon approval by the Commission of this Application. This fee is payable in accordance with such instrument made pursuant to the Financial Services Commission Act or any regulatory legislation, or such directive as may be provided by the Commission.
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FORM B-1

(Paragraph 21)

GOVERNMENT OF THE BRITISH VIRGIN ISLANDS

BANKS AND TRUST COMPANIES ACT

**APPLICATION FOR APPROVAL OF ACTUARIES/ AUDITORS/
OTHER INDEPENDENT OFFICERS**

This application is for the approval by the Commission of:

Auditor Actuary Other (Please specify): _____**1. Details of Regulated Person Submitting Application**

Name of regulated person: _____

Company Licence No.: _____

2. Regulated person's address: _____

3(a) Where the Actuary, Auditor or other Independent Officer is a Company or Firm:

Name of Company or Firm: _____

Company Licence No.: _____

Address of Company or Firm: _____

Name of Person Responsible: _____

3(b) Where the Actuary, Auditor or other Independent Officer is an Individual:

Title: Dr.____ Mr.____ Mrs.____ Ms.____ Miss _____

Surname: _____

First Name: _____

Middle Name(s): _____

Address: _____

4. Qualifications

Degree/Diploma/Other Qualification Attained	Name of Institution(s) Attended	Date of Completion
_____	_____	_____
_____	_____	_____
_____	_____	_____

5. Experience (where the person to whom the Application relates is a company or firm, please state the qualifications of the individuals intended to undertake the actuarial, audit or other work)

Number of years of experience: _____

Provide details of experience: (This should relate to experience in the relevant field of actuarial, auditing or other expertise)

6. Type of Regulated Person to be Audited

Banking Insurance Investment Business Fiduciary Services

Other (please specify):

If regulated person holds any specific class or category of licence, please specify:

7. Indemnity Coverage

(a) Please indicate whether the actuary, auditor or other independent officer, or the company or firm for which he/she acts, holds Professional Indemnity insurance:

Yes No

(b) If your answer to (a) is YES, please indicate the amount of indemnity coverage held by the actuary, auditor or other independent officer, or the company or firm for which he/she acts: _____

8. Consent

Has the Auditor/Actuary/Other Independent Officer consented to act in this capacity:

Yes No

9. Fitness and Propriety (To be completed by the auditor/actuary or other independent officer)

If you answer YES to any of the questions below you must supply full details by way of a written attachment to the Application:

	Yes	No
Have you ever been asked to resign, or been dismissed from any fiduciary position of trust?	<input type="checkbox"/>	<input type="checkbox"/>
Have you been refused, restricted in, or had suspended, the right to carry on a trade, business or profession for which a specific licence, authorisation, registration, membership or other permission is required?	<input type="checkbox"/>	<input type="checkbox"/>
Have you at any time been convicted of any criminal offence by any court in the Virgin Islands or elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>
Are you currently the subject of a criminal investigation or an extradition request?	<input type="checkbox"/>	<input type="checkbox"/>
Have you, in the last 10 years, been censured or disciplined by any professional body to which you belong or belonged, or been dismissed from office or employment or refused entry to any profession or occupation in the Virgin Islands or elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>
Have you, in the last 10 years, filed for bankruptcy or been adjudicated bankrupt by a court in the Virgin Islands or elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>
Have you at any time failed to satisfy any debt due and payable to you as a judgment-debtor under an order of a court in the Virgin Islands or elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>
Have you, in the last 10 years, been found liable in a civil suit which elicited dishonest or unlawful conduct on your part?	<input type="checkbox"/>	<input type="checkbox"/>
Have you, in connection with the formation, control or management of any corporate, partnership or unincorporated institution, within the last 10 years, been adjudged by a court in any jurisdiction civilly liable for any fraud, malfeasance or other misconduct by you towards such a body or company, or towards any members thereof?	<input type="checkbox"/>	<input type="checkbox"/>

Has any body corporate, partnership or unincorporated institution with which you were associated as a director, shareholder or controller, anywhere, been compulsorily wound up or made any compromise or arrangement with its creditors where they did not receive or have not yet received full settlement of their claims, either while you were associated with it or within one year after you ceased to be associated with it?

Has any body corporate, partnership or unincorporated institution with which you were associated as a director, shareholder or controller, anywhere, been fined or censured by any securities commission, banking commission or any similar regulatory commission or body?

10. Declaration by Actuary/ Auditor/ Other Independent Officer

(a) I, _____, do hereby declare, that I have read the legislation in relation to which this application for approval is being made, and in which the duties and responsibilities of an actuary/auditor/other independent officer* are detailed and understand the provisions set out therein.

Signed by: _____

Name (Print): _____

On behalf of: _____
(Where applicable)

Date: _____

(b) Please list the relevant legislation that relate to the duties and responsibilities for which this application for approval is being made:

11. Declaration by Regulated Person

I, _____, do hereby declare, on behalf of _____, that the information provided in this application is, to our knowledge, true and accurate, and that all documents submitted with this application are authentic. I understand that providing false or misleading information in respect of this application may cause the Commission to deny this and any subsequent applications which may be submitted, and may cause enforcement action to be taken against us.

Signed by: _____

Name (Print): _____

On behalf of: _____

Date: _____

BVI Financial Services Commission Use Only

Date Received: _____

Application Processed By: _____

Date Considered: _____

Application Status: **Approved** **Denied** **Deferred**

Reason(s) for denial or deferral (if applicable)

DOCUMENT CHECKLIST

The following documents must be submitted together with this application for the Application to be considered complete.

- Three references (Banking, Professional and Personal)

In the case of an application for Auditor of Public Mutual Funds, the following information should also be provided in support of the Application:

1. Company profile, including an outline of the firm's business and services (a corporate brochure will be accepted)
 2. Latest accounts of the firm
 3. Details of the firm's senior managers/audit managers who will be involved in or oversee the audits performed by the office
 4. Statement of the accounting principles to which the firm will perform audits (this will not apply where the accounting principles outlined in the Regulatory Code apply)
 5. List of the firm's mutual fund clients
 6. List of the BVI mutual funds to which services will be provided
 7. In the case of a non-BVI auditor, a copy of the letter of approval from the home country regulatory authority to audit domestic mutual funds, or if no such letter is issued, other evidence of approval to audit mutual funds
-

FORM B-2

*(Paragraph 22(a)(ii))*GOVERNMENT OF THE BRITISH VIRGIN ISLANDS
BANKS AND TRUST COMPANIES ACT**APPLICATION FOR APPROVAL OF CHANGE OF AUDITORS**

This application applies ONLY to a change in auditor where the auditor to be appointed is already an auditor approved by the Commission. If the auditor to be appointed has not been approved by the Commission Form B-1 should be completed

1. Details of Regulated Person Submitting Application

Name of regulated person: _____

Company Licence No.: _____

2. Regulated Person's Address :

3. Type of Regulated Person to be AuditedBanking Insurance Investment Business Fiduciary Services

Other (please specify): _____

If the regulated person holds any specific class or category of licence, please specify:

4. Details of Change

Name of Former Auditor: _____

Address: _____

Name of Auditor
to be appointed: _____

Address: _____

5. Reason(s) for Change:

6. Verification

Signed by: _____

Name (Print): _____

On behalf of: _____

Date: _____

BVI Financial Services Commission Use Only

Date Received: _____

Application Processed By: _____

Date Considered: _____

Application Status: **Approved** **Denied** **Deferred**

Reason(s) for denial or deferral (if applicable)

FORM B-3

*(Paragraph 22(b))*GOVERNMENT OF THE BRITISH VIRGIN ISLANDS
BANKS AND TRUST COMPANIES ACT

**NOTIFICATION OF RESIGNATION/TERMINATION
OF ACTUARY/ AUDITOR/ OTHER INDEPENDENT OFFICER**

I/We, _____ being the duly appointed actuary/auditor/other independent officer* (please specify) _____ for _____ (regulated person) do hereby notify the Commission that I/we have ceased to act as actuary/auditor/independent officer* _____ for the said _____ with effect from _____ due to resignation/termination* of my/our services, and declare that the reasons and/or circumstances set out below are a true reflection of the events which gave rise to such resignation/termination*.

** Please delete as appropriate*

Verification

Signed by: _____

Name (Print): _____

On behalf of: _____

Date: _____

NOTE: A copy of your resignation or termination letter should be submitted with this form

FORM C

GOVERNMENT OF THE BRITISH VIRGIN ISLANDS
BANKS AND TRUST COMPANIES ACT

DECLARATION FORM FOR AN EXEMPTION FROM
APPOINTING A COMPLIANCE OFFICER

TO: Managing Director/CEO
Financial Services Commission
Pasea Estate
Road Town
Tortola
BRITISH VIRGIN ISLANDS

I, (name of person making the declaration) being a
director/senior officer of (name of regulated person),
whose registered address is at..... hereby makes this
declaration for and on behalf of the said (name of regulated
person) as follows:

I declare that in support of the application by (name
of regulated person) for an exemption from appointing a Compliance Officer, the said
..... (name of regulated person) is

(a) a Class I/Class II/Restricted Class II* licensee without a physical presence in the
Virgin Islands and it is regulated in
(name of the jurisdiction where its business is conducted)/it is a part of a group of
companies known as (state name)
that is subject to regulatory supervision by
(name of supervisory body) of..... (name of jurisdiction)*;
or

(b) a Class III/Restricted Class III trust* licensee with (state number) employees.

I further declare that the information provided in this declaration is true and correct
according to my knowledge and belief.

This declaration is made this day of , 20 .

.....
(Name of declarant)

.....
(Signature of declarant)

.....
.....
.....
.....

(Address of declarant)

*Delete as necessary

FORM D

*(Paragraph 21)*GOVERNMENT OF THE BRITISH VIRGIN ISLANDS
BANKS AND TRUST COMPANIES ACT**APPLICATION FOR APPROVAL OF AN AUTHORISED REPRESENTATIVE****1. Details of Applicant**

(If Applicant is a corporate entity items 1 to 4, and item 6 must be completed by each director. Additionally, one or more directors of the corporate entity must be ordinarily or habitually resident in the Virgin Islands).

Name: _____

Incorporation number (if corporate entity): _____

Date of Birth: _____ Place of Birth: _____ Nationality: _____

Passport No.: _____ Social Security No.: _____

Other Identification No. (Please specify): _____

Previous Name(s) (if any): _____ Date of Name Change: _____

Reason for change: _____

Address: _____

Length of time resident at current address: _____

Date first resided: _____

Previous address(es): _____

(within last 10 yrs) _____

Resided from _____ until _____

Telephone: _____

Fax: _____

E-mail: _____

2. Education

Name of Institution(s) Attended	Degree/Diploma/Other Qualification Received	Date of Completion
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. Memberships in Professional Bodies

Organisation/Association	Membership Status (e.g. Student, Associate, Fellow, etc.)	Member Since	Membership Number (if applicable)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. Experience (Employment History for past 7 years including current position if currently employed) (If there is relevant employment history spanning beyond 7 years, that may be included)

(a) Position held: _____ Period: _____

Name of Employer: _____ Nature of Business: _____

Supervisor/Contact Person: _____ Name of Regulator(s) (if any): _____

Address: _____ Outline responsibilities held: _____

Tel: _____ Fax: _____ E-mail: _____

Reason for leaving: Resignation Expiration of Contract Redundancy
Retirement Termination/Dismissal Other

If "Other", please specify:

If "Termination/Dismissal", please state the reason(s) for the termination or dismissal:

(b) Position held: _____ Period: _____

Name of Employer: _____ Nature of Business: _____

Supervisor/Contact Person: _____ Name of Regulator(s) (if any): _____

Address: _____ Outline responsibilities held: _____

Tel: _____ Fax: _____ E-mail: _____

Reason for leaving: Resignation Expiration of Contract Redundancy
Retirement Termination/Dismissal Other

If "Other", please specify:

If "Termination/Dismissal", please state the reason(s) for the termination or dismissal:

(c) Position held: _____ Period: _____

Name of Employer: _____ Nature of Business: _____

Supervisor/Contact Person: _____ Name of Regulator(s) (if any): _____

Address: _____ Outline responsibilities held: _____

Tel: _____ Fax: _____ E-mail: _____

Reason for leaving: Resignation Expiration of Contract Redundancy
Retirement Termination/Dismissal Other

If "Other", please specify:

If "Termination/Dismissal", please state the reason(s) for the termination or dismissal:

5. Ownership Structure

Shareholders and Controllers

Please provide information relating to the legal owner of the Applicant by listing all shareholders and controllers of the Applicant.

Shareholder's/Controller's Name	No. of Shares	Type of Shares	Nominal or Par value of Shares	% of the voting rights exercisable directly or indirectly (where applicable)	For Official Financial Services Commission Use Only
					Approved (Y/N)

(Note: Continue on a separate sheet if required)

6. Fitness and Propriety

If you answer YES to any of the questions below you must supply full details by way of a written attachment to the Application:

	Yes	No
Has an application for your regulatory approval ever been refused?	<input type="checkbox"/>	<input type="checkbox"/>
Have you ever been asked to resign, or been dismissed from any fiduciary position of trust?	<input type="checkbox"/>	<input type="checkbox"/>
Have you been refused, restricted in, or had suspended, the right to carry on a trade, business or profession for which a specific licence, authorisation, registration, membership or other permission is required?	<input type="checkbox"/>	<input type="checkbox"/>
Have you at any time been convicted of any criminal offence by any court in the Virgin Islands or elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>

Are you currently the subject of a criminal investigation or an extradition request?

Have you been found guilty of conducting any unauthorised regulated activity or been investigated for possible conduct of unauthorised regulated activity?

Have you, in the last 10 years, been censured or disciplined by any professional body to which you belong or belonged, or been dismissed from office or employment or refused entry to any profession or occupation in the Virgin Islands or elsewhere?

Have you, in the last 10 years, filed for bankruptcy or been adjudicated bankrupt by a court in the Virgin Islands or elsewhere?

Have you at any time failed to satisfy any debt due and payable to you as a judgment-debtor under an order of a court in the Virgin Islands or elsewhere?

Have you, in the last 10 years, been found liable in a civil suit which elicited dishonest or unlawful conduct on your part?

Have you, in connection with the formation, control or management of any corporate, partnership or unincorporated institution, within the last 10 years, been adjudged by a court in any jurisdiction civilly liable for any fraud, malfeasance or other misconduct by you towards such a body or company, or towards any members thereof?

Has any body corporate, partnership or unincorporated institution with which you were associated as a director, shareholder or controller, anywhere, been compulsorily wound up or made any compromise or arrangement with its creditors where they did not receive or have not yet received full settlement of their claims, either while you were associated with it or within one year after you ceased to be associated with it?

Has any body corporate, partnership or unincorporated institution with which you were associated as a director, shareholder or controller, anywhere, been fined or censured by any securities commission, banking commission or any similar regulatory commission or body?

7. Experience in relevant business

Does the Applicant or some other person in an employment relationship with the Applicant possess practical experience in any form of business which would require authorisation or approval under the Securities and Investment Business Act. If Yes, please provide as an attachment and properly marked, a detailed explanation of the practical experience.

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

8. Declaration by the Proposed Authorised Representative

I, _____, do hereby declare that the information provided in this application is, true and accurate, and that all documents submitted with this application in respect thereof are authentic. I understand that providing false or misleading information in respect of this application may cause the Commission to deny the application and any subsequent applications which may be submitted.

Signed by: _____

Name (Print): _____

Date: _____

BVI Financial Services Commission Use Only

Date Received: _____

Application Processed By: _____

Date Considered By Commission: _____

Application Status: **Approved** **Denied** **Deferred**

Reason(s) for denial or deferral (if applicable):

DOCUMENT CHECKLIST

The following documents must be submitted together with this application for the Application to be considered complete. Where the Applicant is a corporate entity, this information must be submitted in relation to each director of the corporate entity.

1. A copy of the Memorandum and Articles of Association or other constitutional documents certified by the Registry of Corporate Affairs
2. Certified copies of academic and other qualifications
3. Resume or curriculum vitae—
 - (i) outlining the relevant qualifications and experience of the Applicant; and
 - (ii) including the names, addresses and telephone numbers of previous employers
4. Current job description for position for which approval is being sought
5. Current organisational chart for regulated entity completing application (where applicable)
6. Notarised copies of identification documents (e.g. passport identification pages)
7. Professional reference from a person who can speak to the experience and ability of the Applicant
8. Financial reference from a financial institution in respect of the Applicant
9. Personal reference from an individual who has known the Applicant for at least 5 years
10. Certification of absence of criminal record
11. Certification of absence of dishonesty, bankruptcy or any arrangement with creditors.

NOTES

1. This form should be completed by the Applicant for approval. Where the Applicant is a corporate entity, items 1 to 4 and item 6 should be completed by each director.
2. A non-refundable administration fee of \$1,000 must be submitted with this application form.
3. A police report must be submitted in respect of every Applicant. Where the Applicant is a corporate entity, a report must be submitted on behalf of every director. Where a police report cannot be obtained in a case where a criminal record exists, evidence of the nature of the criminal record, including description of proceedings, dates, circumstances and other related matters pertaining to the criminal record must be submitted with the Application. If a written judgment exists and can be obtained, this must be submitted.
4. Where it is found that the Applicant does possess a history of such, written information outlining the nature of the record, dates, description of proceedings, circumstances and other related matters pertaining to the record must be submitted with the Application.
5. Please note that the Commission may request additional information from the Applicant for the purposes of completeness or verification.
6. An approval fee is required to be paid upon approval by the Commission of this application. This fee is payable in accordance with such instrument made pursuant

to the Financial Services Commission Act or any regulatory legislation, or such directive as may be provided by the Commission.

APPENDIX A

*(Paragraph 25F)***GUIDANCE ON CONTENT AND STRUCTURE OF
THE MANUAL OF COMPLIANCE PROCEDURES**

1. Under Section 34 of the Financial Services Commission Act, every regulated person shall establish and maintain a manual of compliance procedures, the implementation of which shall be overseen by the Compliance Officer.

[Explanatory Note:

(i) This Guidance on the Structure of the Manual of Compliance Procedures serves as a guide with respect to the structure and content of a manual of compliance procedures and is not definitive or exhaustive. The contents of the manual of compliance procedures will depend on the nature, size and complexity of the business activity undertaken by the regulated person. It is therefore the duty of every regulated person to ensure that it has in place an appropriate manual of compliance procedures that is properly and effectively suited to its business and for the Compliance Officer to have it implemented.

(ii) The manual of compliance procedures should be reviewed periodically and any recommendations for any updates or revisions should be submitted to the board of directors of the regulated person for consideration and approval.]

2. In preparing a manual of compliance procedures a regulated person shall have regard to the provisions of Division 4 of Part II of the Regulatory Code.

[Explanatory Note:

The manual of compliance procedures should provide sufficient information concerning the legal and practical framework to enable staff to apply general principles to specific situations that may be outside the precise scope of the manual.]

3. Although the manual of compliance procedures will cover specific tasks in detail, it should not be considered as simply a “tick box” checklist of procedures. A manual of compliance procedures should, apart from the general areas outlined in section 46 of the Regulatory Code at a minimum address the following:

(a) Record Keeping and Disclosure

- (i) the records to be kept (for example, identification, transaction and accounting records);
- (ii) how records should be kept and whether it would be useful to provide pro forma records;
- (iii) how long records should be kept (those covered by the Anti-money Laundering Regulations and Anti-money Laundering and Terrorist Financing Code of Practice must be kept for a minimum period of 5 years);

- (iv) the risks (including legislative and regulatory) associated with keeping incorrect or insufficient records;
- (v) how records are to be stored (for example, hard or electronic records, in a safe, or secured filing cabinet); and
- (vi) how and when compliance is monitored (whether by the Compliance Officer or external auditor).

(b) Know Your Customer (KYC), Client Acceptance and Due Diligence Procedures

- (i) the KYC, client acceptance and due diligence procedures, if not detailed in writing elsewhere (significant guidance is provided in the Anti-money Laundering and Terrorist Financing Code of Practice);
- (ii) the risks associated with a failure to apply KYC, client acceptance and due diligence procedures (in respect of customers, intermediaries and external service providers); and
- (iii) the procedures for the ongoing monitoring of clients and service providers.

(c) Training and Recruitment

- (i) a training manual indicating what type of programmes will be conducted;
- (ii) a staff training plan covering type and frequency of training and a succession plan (in respect of key personnel and new staff);
- (iii) who will provide staff training;
- (iv) staff training records;
- (v) the risks (legislative and regulatory) of inadequate staff training; and
- (vi) how the effectiveness of staff training will be assessed.

(d) Compliance with Statutory Filing, Reporting and Other Regulatory Obligations

This should cover all statutory and regulatory obligations, including the procedures for reporting suspicious transactions to the Financial Investigation Agency. The manual should also identify persons responsible for compliance in respect of each obligation referred to above and indicate the procedures for recording and monitoring compliance.

(e) Significant Complaints Handling

- (i) the person responsible for handling complaints;
- (ii) procedures for dealing with complaints (for example, the time period for an initial decision on complaints and which complaints should be referred to the Compliance Officer or other senior management);
- (iii) how complaints will be investigated;
- (iv) what action should be taken where complaints are found to be justified;

- (v) records to be kept of complaints;
- (vi) communication with complainant; and
- (vii) monitoring of complaints handling.

(f) **Reporting Breaches of Compliance**

The manual should include detailed procedures for reporting breaches of compliance, including reporting lines and penalties.

[Explanatory Note:

The specific contents of a manual of compliance procedures will vary depending on the size and complexity of the regulated person's business activities. For example, a trust company will have specific trust and company management functions, and fund managers, banks and insurance companies will all have their own specific functions. It is for each regulated person to identify the scope of the material that should be embodied in its manual of compliance procedures.]

APPENDIX B

(Paragraph 25F)

REPORTING REQUIREMENTS

1. Section 34(7)(d) of the Financial Services Commission Act makes provisions for the Commission to require a Compliance Officer to prepare and submit to the Commission a report detailing the level of the regulated person's compliance with—

- (a) the provisions of the Financial Services Commission Act and other relevant financial services legislation;
- (b) the Regulatory Code, or any Guidance issued by the Commission, that applies to the regulated person; and
- (c) any directives or practice directions issued by the Commission that apply to the regulated person.

[Explanatory Note:

These reporting requirements provide guidance to the Compliance Officer as to the structure and contents of such a report. The report will vary depending on the type of business that the regulated person undertakes.]

2. The report submitted by the Compliance Officer shall at a minimum contain the matters outlined in section 48 of the Regulatory Code.

(Explanatory Note:

The Commission may specify further details as to the manner and frequency of reporting by a Compliance Officer.)

APPENDIX C

(Paragraph 25F)

GUIDANCE NOTES ON COMPLAINT MANAGEMENT

INTRODUCTION

These Guidance Notes essentially outline the requirement for regulated persons to establish and maintain a complaints procedure for the monitoring and handling of complaints.

Regulated persons must maintain a complaint register documenting complaints received and actions taken to address each complaint. It is to be noted that the provisions of these Guidance Notes are expected to be complied with fully.

1. (1) A regulated person must establish and maintain a complaints procedure for the monitoring and handling of complaints received by it in relation to the conduct of its business, activities and employees.

(2) A regulated person must take reasonable steps to ensure that all of its employees are aware of the complaints procedure and of the duty to comply with it.

2. The complaints procedure established and maintained by the regulated person should, at a minimum, address the following—

- (a) the person responsible for handling complaints—
- (b) procedures for dealing with complaints (for example, the time period for an initial decision on complaints and which complaints should be referred to the Compliance Officer or other senior management);
- (c) how complaints are to be investigated;
- (d) what action should be taken where complaints are found to be justified;
- (e) records to be kept of complaints;
- (f) communication with complainant; and
- (g) monitoring of complaints handling.

3. A complaint must be considered by an officer or employee of suitable seniority who was not concerned in the matter or, where this is not possible, by another person of appropriate standing who is not an officer or employee of the regulated person, and a substantive response must be sent to the complainant within a reasonable period after the receipt of the complaint. While the response period may vary depending on the nature, complexity and investigation to be conducted into the complaint, it is expected that a substantive response should be sent within 4 weeks after the date of receipt of the complaint.

4. After being received, a complaint shall be investigated and, if necessary, relevant action shall be taken to rectify the complaint.

5. All complaints and follow-up actions shall be duly recorded in the complaints register, as shown in paragraph 11.

6. The complaints register shall include the following information—
- (a) complainant's name and address;
 - (b) date when complaint was made;
 - (c) date when complaint was reported to the person with authority to deal with complaints;
 - (d) details of the nature of the complaint;
 - (e) how and when the complaint was investigated; and
 - (f) what action was taken regarding the complaint.
7. The complaints register shall be used by all regulated persons. This register shall document complaints received by regulated persons and provide a record of the manner in which regulated persons respond to rectify complaints.
8. The complaints register may be in summary form provided that a full record is kept elsewhere. A full record of each complaint and of the action taken in response to it shall be kept by the regulated person for at least 5 years after the date of the last response.
9. The details of each complaint made to the regulated person, including investigations into the complaint and action(s) taken to rectify the subject matter of the complaint, shall be reviewed by senior management. Senior management shall sign off on the complaint form after it has been completed and reviewed.
10. If a customer registers a complaint with the regulated person and it is not dealt with satisfactorily in the first instance, the customer may issue the complaint to any member of senior management.
11. The complaints register shall include the following information:

COMPLAINT REGISTER	
Complainant's Name	
Complainant's Address	
Date Complaint Made	
Date Complaint Reported to Person with Authority to deal with Complaints	
Details of the Nature of Complaint	
Details of Investigation into Complaint	

Action Taken	
--------------	--

Senior Management

Date

SCHEDULE 7

(Regulation 8)

BANKS AND TRUST COMPANIES REGULATIONS

**APPLICATION FOR EXEMPTION FROM
APPROVAL OF DIRECTORS AND SENIOR OFFICERS**

Date:

Ref:

Financial Services Commission
Road Town, Tortola.

Dear Sirs,

Re:

We apply herewith for exemption from the provisions of section 19(2) of the Act requiring written approval of the Commission prior to the appointment of a director or other senior officer.

The reasons for this application are as follows—

Yours faithfully,

For official use

.....Approved

.....Not approved

(Amended by Act 12 of 2001)
