



## **British Virgin Islands Financial Services Commission**

### **Corporate Compliance Function Services Guidance**

---

#### **PART I**

#### **Applying to Perform Compliance Function Services**

##### *Criteria*

1. Section 34A of the Financial Services Commission Act, 2001 allows a corporate entity to perform compliance functions services for and on behalf of licensees regulated by the Commission. These corporate entities must:
  - (i) be incorporated as a BVI Business Company under the BVI Business Companies Act, 2004;
  - (ii) have an Active status at the Registry of Corporate Affairs;
  - (iii) be physically resident and carrying on business activities in the Virgin Islands;
  - (iv) employ only persons that are resident in the Virgin Islands to perform compliance functions for or on behalf of licensees; and
  - (v) perform compliance function services compliance function services to licensees that are based and carrying on business in or from within the Virgin Islands, as a primary business.

##### *Performance of Compliance function Services*

2. A corporate entity wishing to perform corporate compliance function services must employ and maintain select staff with sufficient expertise and qualifications to act as compliance officers within licensees. These persons will be responsible for:
  - ensuring the licensee's compliance with the requirements of, and obligations under relevant financial services legislation, the Regulatory Code or any guidance issued by the Commission, and any directives issued by the Commission;
  - reporting to the Commission and the directors of the licensee on the licensee's compliance matters; and
  - acting as the liaison between the licensee and the Commission with respect to the licensee's compliance functions.
3. The corporate entity may not assign or deploy any employee to perform the compliance functions in paragraph 2, for or on behalf of a licensee, unless that employee has been (i) approved by the Commission to act as compliance officer with respect to that specific licensee; and (ii) formally appointed by the licensee, once the Commission's approval has been granted. The requirements

for approval and appointment of employees prior to their deployment or assignment at licensees, solely relates to those employees that will act as licensees' compliance officers and do not extend to employees providing administrative, or other forms of support in the performance of compliance functions.

4. When seeking to perform compliance function services for, or on behalf of a licensee, it is important that the corporate entity, understands the nature, size and complexity of the licensee's business activities. This includes having information on the type(s) of business activity or activities in which the licensee engages, the risks involved in performing such business activities, the size of the licensee's client base, the types of clients to which the licensee provides services and an overview of the licensee's current compliance culture. This understanding should be used to assist the corporate entity in determining whether it has sufficient expertise and resources to perform compliance services for and on behalf of each specific licensee.

#### *Application*

5. Notwithstanding the basic criteria detailed in paragraph 1, a corporate entity wishing to perform compliance function services is subject to the Commission's fit and proper assessment which is initially facilitated through the application process. This encompasses, an assessment of the Applicants' directors, shareholders, beneficial owners, and the persons that will be deployed to perform licensees' compliance functions. Applicants are invited to submit the following to the Commission:
  - (i) a **completed** Application for a Corporate Entity to Perform Compliance Function Services [FORM A/2] (*on the Commission's website*);
  - (ii) the Applicant's Register of Members;
  - (iii) a Register of Members on behalf of each corporate entity within the Applicant's ownership structure holding 10% or more ownership or control interest in the Applicant;
  - (iv) a structure chart depicting the Applicant's ownership (*only required where the structure exceeds one layer of ownership*);
  - (v) a biography of each shareholder and beneficial owner of the Applicant (*only required where these persons are not also directors of the Applicant*);
  - (vi) the Applicant's Register of Directors;
  - (vii) a completed Form A and supporting documentation on behalf of each director of the Applicant, in accordance with the Guidelines for the Approved Persons Regime;
  - (viii) resumes and job descriptions of personnel that will be responsible for performing compliance functions (i.e. acting as compliance officers within licensees);
  - (ix) an overview of the Applicant's business activities, including:
    - a description of the licensees for which the Applicant proposes to provide compliance functions services (*this may include the intended maximum number of licensees, the types of business in which intended licensees engage, the size of licensees, etc.*);

- the name, type, nature and complexity of the business for each licensee the Applicant intends to provide services (*where the Applicant has identified licensees, to which it intends to provide services*);
  - details of the Applicant's staff (including administrative and support staff), along with a copy of the Applicant's organisational chart; and
  - an assessment of the adequacy of the Applicant's resources to perform compliance functions services;
- (x) a copy of the Applicant's draft service agreements; and
- (ix) a non-refundable application fee of **\$500**.
6. An approval fee of **\$2,000** is required, once the Commission has granted an Applicant approval to perform compliance function services.
- 

## **Part II**

### **Utilising a Corporate Entity to Perform Compliance Function Services**

7. A licensee may only utilise a corporate entity for the performance of its compliance function services where the corporate entity is approved by the Commission to perform such functions. In addition, the application process for utilising the services of a corporate entity to perform compliance function services is two-fold; requiring the Commission to conduct fit and proper assessments of two individuals (one from the licensee and one from the approved corporate entity), as detailed below:
- (i) *Appointment of a Senior Officer within a Licensee*  
The utilisation of a corporate entity to perform compliance function services does not absolve a licensee from the responsibility in relation to the performance of a licensee's compliance function. While the corporate entity will be undertaking the compliance function, the licensee has a responsibility to oversee the performance of this function. In this regard, the licensee must submit to the Commission a Form A, along with relevant supporting documentation, in accordance with the Guidelines for the Approved Persons Regime on behalf of the person that will be appointed as the senior officer with the responsibility to oversee the licensee's compliance function.
- (ii) *Appointment of Officer(s) from the Approved Corporate Entity*  
Where a licensee engages an approved corporate body to perform its compliance function, the licensee must appoint an individual within the approved entity with the responsibility of performing the licensee's compliance function and act as its Compliance Officer. The licensee must submit to the Commission a Form A, along with relevant supporting documentation, in accordance with the Guidelines for the Approved Persons Regime on behalf of the person within the entity that will act as the licensee's Compliance Officer.

8. A corporate entity is prohibited from performing a licensee's compliance functions unless both applications have been received and approved by the Commission. Both applications are **each** subject to a non-refundable application fee of **\$250** payable by the licensee. Where the applications are approved by the Commission, an approval fee **\$500** is applicable for each approval.

*1<sup>st</sup> November, 2018*