

British Virgin Islands Financial Services Commission

GUIDELINES FOR AUTHORISED REPRESENTATIVES UNDER THE SECURITIES AND INVESTMENT BUSINESS ACT



**BRITISH VIRGIN ISLANDS
FINANCIAL SERVICES COMMISSION**



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SECURITIES AND INVESTMENT BUSINESS ACT**

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INTRODUCTION

The Securities and Investment Business Act, 2010 (“SIBA”) requires every licensee and public, private, professional or recognized foreign fund to appoint an Authorised Representative in accordance with section 66 (1) of the Act. In essence, the role of the Authorised Representative is to act as the main intermediary between the licensee or mutual fund he represents, and the BVI Financial Services Commission (“the Commission”).

2. An Authorised Representative plays an important role in the Commission’s monitoring and supervision of licensees that do not have a significant management presence in the Virgin Islands. In fact, it is only where a licensee has a significant management presence in the Virgin Islands, as provided for in section 65 (3) of SIBA, that it is not required to appoint an Authorised Representative. As such, the appointment of an Authorised Representative is key as the Authorised Representative acts as the main point of contact for the licensee or mutual fund within the Virgin Islands, as well as the keeper of all records and other documents required to be kept by the licensee or mutual fund under the Regulatory Code and the Mutual Funds Regulations. The Authorised Representative is also responsible for the payment of all fees due to the Commission by a licensee or mutual fund.

3. A person who is certified to act as an Authorised Representative must have a good understanding of the nature of the business of the licensee or mutual fund he represents in order to be able to efficiently and effectively serve in that capacity. To this end, an Authorised Representative must be able to prove that he has existing knowledge of the business of the entity for which he is applying to act as Authorised Representative, and sufficient relevant experience to carry out the day to day functions of an Authorised Representative.

4. As such, these Guidelines seek to provide a framework for the structured governance of the current Authorised Representative regime by outlining the key elements required by the Commission to successfully carry out the duties of an Authorised Representative. These elements include, inter alia, requirements in relation to resources, proper reporting mechanisms, and independence of the Authorised Representative. It is essential therefore for persons to adhere as closely as possible to the guidelines set out herein as the Commission will rely on them to properly regulate persons certified to act as an Authorised Representative.

GUIDELINES FOR AUTHORISED REPRESENTATIVES

1. Qualifying to Act as an Authorised Representative

- 1.1 In order to qualify to act as an Authorised Representative an applicant must be either a BVI business company, a partnership formed under the laws of the Virgin Islands, or an individual who is ordinarily or habitually resident in the Virgin Islands.
- 1.2 An application to act as an Authorised Representative must be made by completing and submitting to the Commission, **Form D** of the *Guidelines for the Approved Persons Regime* along with all relevant supporting documents.
- 1.3 All applicants must also satisfy the Commission's fit and proper criteria.¹ In the case of a partnership fit and proper criteria must be met by all partners. In the case of a BVI Business Company the criteria for fitness and propriety must be met by its directors, senior officers and any persons having a significant interest in the applicant. The Commission would, therefore, also expect in the case of a corporate applicant, for its directors and senior officers or, in the case of a partnership, each partner, to meet the standard set out for Senior Officers as prescribed in Part III of the *Guidelines for Approved Persons Regime*.
- 1.4 Before an Authorised Representative can appoint a director or senior officer, it must seek prior written approval from the Commission. In the case of the appointment of directors, the Authorised Representative must appoint, and maintain at all times, a minimum of two directors, one of whom must be resident in the Virgin Islands.
- 1.5 Finally, before the Commission can approve an applicant to act as an Authorised Representative it must satisfy itself that such certification will not be contrary to the public interest.

2. Ownership Structure of an Authorised Representative

- 2.1 In order for a certified Authorised Representative to be properly supervised it is important for the Commission to, at all times, be aware of and understand the underlying beneficial ownership structure of the Authorised Representative. A person certified to act as an Authorised Representative may take the form of:
 - an individual who is ordinarily or habitually resident in the Virgin Islands;
 - a partnership formed under the laws of the Virgin Islands; or
 - a BVI Business Company.

¹ The Commission's fit and proper criteria are established in Schedule 1A of the Regulatory Code

- 2.2 Where the Authorised Representative is a body corporate the Commission must be informed of the ownership structure as part of the application process for certification.
- 2.3 Approval as an Authorised Representative is specific to the entity applying for certification. Once certified any significant change to the ownership structure approved during the application for certification, or subsequently thereafter, must be communicated to, and approved by the Commission in order to confirm that such change will not alter the structure in such a way as to invalidate the approval.
- 2.4 A significant change in ownership structure is construed as being any change that will result in any one shareholder acquiring or disposing of a ten or more percent interest in the Authorised Representative. As such, any person who may own or hold a significant interest in an Authorised Representative must seek prior written approval from the Commission to sell, transfer, charge or otherwise dispose of his interest in the Authorised Representative.
- 2.5 Prior written approval from the Commission must also be sought by any person wishing to acquire, whether directly or indirectly, a significant interest in an Authorised Representative. A request for any such approval, whether to acquire, sell, transfer, charge or otherwise dispose of any significant interest, should be made to the Commission through the submission of a letter detailing the intended action and outlining the parties involved.

3. *Independence of the Authorised Representative*

- 3.1 A person acting as a certified Authorised Representative must be able to carry out its functions in an independent manner. As such, an Authorised Representative that is a body corporate or a partnership may not carry out any other services except for those associated with the provision of services as an Authorised Representative. This segregation of services is important to avoid any conflicts that might arise from an Authorised Representative being allowed to act in multiple capacities where such action could cause cross contamination should a problem arise in one service area that has the potential to reach across service areas.
- 3.2 Where an Authorised Representative is a natural person, he must ensure that adequate steps are taken to manage and mitigate any potential conflicts of interest that may arise and that sufficient resources are available to effectively perform his duties as an Authorised Representative.
- 3.3 For the avoidance of doubt, the Commission will not consider any application from an existing regulated person to act as an Authorised Representative. Where an existing licensee wishes to carry out the functions of an Authorised Representative it must establish a separate subsidiary.

4. *Location of the Authorised Representative*

- 4.1 As noted in 1.1 above, a person certified to act as an Authorised Representative may take the form of:
- an individual who is ordinarily or habitually resident in the Virgin Islands;
 - a partnership formed under the laws of the Virgin Islands; or
 - a BVI Business Company.
- 4.2 Regardless of form, due to the nature of the roles and responsibilities of the Authorised Representative, a person, be they an individual, partnership or corporate entity that is certified to act as an Authorised Representative must be based in the Virgin Islands. As such, the day-to-day functions of the Authorised Representative must be carried out by individuals resident in the Territory, as to do contrary would violate the basis on which certification has been granted.
- 4.3 Any person certified to act as an Authorised Representative who subsequently re-domiciles outside of the Virgin Islands will no longer qualify to act as such. In such cases, where an individual intends to re-domicile that individual must notify the Commission of his or her intended change in domicile no less than fourteen days prior to such change taking effect.

5. *Functions of an Authorised Representative*

- 5.1 The functions of an Authorised Representative as outlined in section 66(1) of SIBA are:
- (a) to act as the main intermediary between the licensee or mutual fund that he represents, and the Commission;
 - (b) to accept service of notices and other documents on behalf of the licensee or mutual fund that he represents;
 - (c) to keep in the authorised representative's office in the Virgin Islands such records, or copies of such records, as may be prescribed
 - (i) where he acts as authorised representative for a licensee, in the Regulatory Code; or
 - (ii) where he acts as authorised representative of a mutual fund, in the Mutual Fund Regulations.
- 5.2 In addition to the functions outlined above, all documents required to be submitted to the Commission by a licensee or a mutual fund must be submitted by the

Authorised Representative certified to act on the licensee's or mutual fund's behalf.

- 5.3 Further, the Authorised Representative is responsible for submitting to the Commission, on behalf of a licensee or mutual fund for which it acts, any fees required to be paid by said licensee or mutual fund.

6. *Resource Requirements*

- 6.1 Every Authorised Representative should ensure that it retains adequate human resources at all times to enable it to carry out its functions effectively and efficiently, and the human resources engaged by the Authorised Representative should be sufficiently qualified to carry out the required functions outlined in paragraph 5 above.
- 6.2 It is necessary for the Commission to be aware of the operations of the Authorised Representative and as such, the Authorised Representative is required to provide the Commission with details of the persons responsible for carrying out its day-to-day functions. Such details should be provided at the time of application for certification, and no later than 7 days after any future change in such responsibilities.

7. *Reporting Requirements*

7.1 General Reporting

- 7.1.1 Each Authorised Representative is required to submit to the Commission, on a quarterly basis, the names of all funds and licensed entities for which it provides Authorised Representative services.
- 7.1.2 The information specified in paragraph 7.1.1 above must be submitted to the Commission no later than fourteen (14) days after the end of the quarter to which the information relates. Failure to submit the information may result in enforcement action being taken against the Authorised Representative.

7.2 Financial Statements

- 7.2.1 As part of its oversight function, the Commission is required to monitor the financial soundness of all the entities it supervises. It is essential, therefore, for an Authorised Representative to maintain proper financial records and make these records available to the Commission upon request.
- 7.2.2 Where an Authorised Representative is a subsidiary of a licensee, or is part of a group of companies that is subject to regulation and supervision, the required financial information may be included in consolidated financial statements.

8. *Cancellation of Certification*

- 8.1 Should an Authorised Representative wish to cease acting as such, he must submit to the Commission, in writing, a request for his certification as an Authorised Representative to be cancelled.
- 8.2 In addition to the request for cancellation, where the Authorised Representative is a body corporate it must submit to the Commission, in writing, confirmation from its Board of Directors that it is in good regulatory standing. Where the Authorised Representative is an individual, such confirmation must be made, in writing, by the individual. In the case of a partnership, confirmation must be provided by one of the partners.
- 8.3 Such confirmation should include:
- the date on which the Authorised Representative has ceased or intends to cease carrying on business,
 - an attestation that once the certification is cancelled, no further Authorised Representative related business will be carried out unless it receives certification from the Commission to do so, and
 - a written explanation as to why the Authorised Representative has ceased or is ceasing its business.
- 8.4 Notwithstanding the information required in 8.1 to 8.3 above, each Authorised Representative wishing to cancel its certification must also adhere to the provisions specified in Part I of the *Guidance Notes on Revocation or Cancellation of Licences or Certificates of Regulated Persons, Including the Approval of Solvent Liquidation Procedures*.
- 8.5 Once the Commission is satisfied that all the relevant information has been submitted, the Authorised Representative's certificate will be cancelled and the Authorised Representative will no longer be authorised to carry on business in or from within the Virgin Islands.

Issued by the Financial Services Commission this 10th day of September, 2013

(Sgd:) Robert Mathavious
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BVI Financial Services Commission