

VIRGIN ISLANDS

FINANCIAL SERVICES (MISCELLANEOUS EXEMPTIONS) REGULATIONS, 2010

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation and commencement.
2. Exemptions.

Schedule 1
Schedule 2
Schedule 3
Schedule 4
Schedule 5

VIRGIN ISLANDS

STATUTORY INSTRUMENT 2010 NO. 87

**FINANCIAL SERVICES COMMISSION ACT, 2001
(No. 12 of 2001)**

Financial Services (Miscellaneous Exemptions) Regulations, 2010

[Gazetted 20th December, 2010]

The Cabinet, acting on the advice of the Financial Services Commission and in exercise of the powers conferred by sections 40C and 62 of the Financial Services Commission Act, 2001 (No. 12 of 2001), makes these Regulations:

- Citation and commencement.
1. (1) These Regulations may be cited as the Financial Services (Miscellaneous Exemptions) Regulations, 2010.
- (2) These Regulations shall
- (a) be deemed to have come into force, in respect of Schedules 1 and 2, on the 1st day of February, 2010;
- (b) be deemed to have come into force, in respect of Schedule 3, on the 31st day of March, 2010; and
- (c) come into force, in respect of Schedules 4 and 5, on the 31st day of December, 2010.
- Exemptions. Schedules
2. The exemptions specified in the Schedules shall have effect with respect to the enactments outlined in the Schedules.

SCHEDULE 1

[Regulation 2]

Exemptions Applicable to the Financial Services Commission Act, 2001 (No. 12 of 2001)

Compliance officer.
No. 12 of 2001

1. (1) Subject to sub-paragraph (2) and paragraph 3, the following licensees are exempted from appointing, or applying for approval under section 34 (3) of the Financial Services Commission Act, 2001 for the appointment of, a compliance officer:

- (a) captive insurers and credit life insurers;
- (b) private funds;
- (c) professional funds;
- (d) public funds;
- (e) recognised foreign funds;
- (f) Class I, Class II or restricted Class II trust licensee, or investment business licensee, without a physical presence in the Virgin Islands that
 - (i) is regulated in the jurisdiction where its business is conducted; or
 - (ii) is part of a group of companies that is subject to regulatory supervision;
- (g) Class III trust licensee or restricted Class III trust licensee with three or less employees; and
- (h) company management licensee with three or less employees.

(2) The exemption accorded to a licensee referred to in sub-paragraph (1) (f), (g) and (h) does not apply unless the licensee subscribes to the declaration in Form C of the Commission's Guidelines for the Approved Persons Regime indicating that,

- (a) in the case of a licensee under sub-paragraph (1) (f) (i) or (ii), it has no physical presence in the Virgin Islands and it is either regulated in the jurisdiction where its business is conducted or is part of a group of companies that is subject to regulatory supervision; or

(b) in the case of a licensee under sub-paragraph (1) (g) or (h), it has three or less employees.

Further
exemptions.
No. 12 of 2001

2. (1) Subject to sub-paragraphs (2) and (4) and paragraph 3, the following licensees may be granted an exemption by the Commission from the requirement to appoint a compliance officer under section 34 (3) of the Financial Services Commission Act, 2001 or have their compliance officer based in the Virgin Islands:

(a) domestic insurers that are incorporated outside the Virgin Islands;

(b) investment business licensees; and

(c) restricted Class II trust licensees that are not subject to regulation in another jurisdiction and are being administered in the Virgin Islands by a Class I trust licensee that is physically located in the Virgin Islands.

(2) A licensee referred to in sub-paragraph (1) that wishes to be exempted from a requirement outlined in that sub-paragraph shall submit a written application to the Commission stating its reason for the application for an exemption.

(3) In considering an application under sub-paragraph (2), the Commission shall have regard to the following matters:

(a) in the case of sub-paragraph (1) (a) or (c), that the licensee meets the qualification outlined in the sub-paragraph;

(b) the nature and scope of the licensee's business are such that they justify an exemption of the licensee;

(c) whether the licensee is part of a group that has a group compliance officer that supervises the licensee for compliance in accordance with the Financial Services Commission Act, 2001, Regulatory Code, 2009 and any applicable financial services legislation and any guidelines issued by the Commission;

(d) the complexity and structure of the licensee's business does not justify the appointment of a compliance officer or having the licensee's compliance officer based in the Virgin Islands;

(e) whether the licensee has outlined how it would carry out its compliance function to the satisfaction of the Commission; and

(f) requiring the licensee to have a compliance officer or for such compliance officer to be based in the Virgin Islands will or is likely to cause practical problems and may not necessarily advance the purpose

S.I. No. 60
of 2009

of ensuring compliance with the regulatory requirements of the Virgin Islands.

(4) An application under sub-paragraph (2) shall be accompanied by a non-refundable fee of one hundred dollars or such higher amount as may be prescribed under or pursuant to the Financial Services Commission Act, 2001 or a regulatory legislation.

Exemption not
a bar to
compliance.
No. 12 of 2001

3. Nothing contained in paragraph 1 or 2 shall be construed as exempting a licensee from performing its compliance function as may be outlined in the Financial Services Commission Act, 2001, a regulatory legislation or the Regulatory Code, unless otherwise stipulated in such enactment.

Temporary
absence of
compliance
officer.
No. 12 of 2001

4. (1) Where a compliance officer approved by the Commission in respect of a licensee pursuant to section 34 (3) of the Financial Services Commission Act, 2001 is temporarily absent from office, the licensee is not required to seek approval from the Commission for the appointment of another individual as a replacement compliance officer.

(2) For the purposes of sub-paragraph (1), a compliance officer is considered to be temporarily absent from office if the period of absence does not exceed eight weeks (taken consecutively or otherwise) or fifteen per cent of the compliance officer's time in a consecutive twelve month period.

(3) Notwithstanding sub-paragraphs (1) and (2), where a compliance officer is temporarily absent from office for a period longer than five days, the licensee shall appoint a competent individual from within the licensee to perform the duties of the compliance officer.

SCHEDULE 2

[Regulation 2]

Exemptions Applicable to the Insurance Act, 2008 (No.1 of 2008)

Insurance intermediaries.
No. 1 of 2008

1. (1) A Lloyd's registered broker, cover holder, member or syndicate is not required to be approved under section 40 (1) (a) of the Insurance Act, 2008,

(a) if the Lloyd's registered broker, cover holder, member or syndicate places a part or the whole of the insurance business in the Lloyd's market or with a BVI insurer; and

(b) provided that the Lloyd's registered broker, cover holder, member or syndicate can only accept or solicit insurance business from the Virgin Islands through an insurance broker (as defined in section 2 (1) of the Insurance Act, 2008).

Credit life companies.
No. 1 of 2008

2. (1) Subject to sub-paragraphs (2) and (3), a licensee that is licensed to carry on the business of credit life insurance is exempted from complying with section 61 of the Insurance Act, 2008, relating to the requirement to appoint an auditor.

(2) Where the Commission forms the opinion that

(a) having regard to the nature, size and complexity of a credit life insurance company, the company should appoint an auditor,

(b) having regard to the compliance history of a credit life insurance company, prudence dictates the need for the appointment of an auditor,

(c) it is in the best interest of the policy holders of the credit life insurance company that the company should appoint an auditor, or

(d) it is in the public interest that the credit life insurance company should appoint an auditor,

the Commission may in writing direct the credit life insurance company to appoint an auditor approved by the Commission and, in such a case, the exemption provided in sub-paragraph (1) shall not apply.

(3) The Commission may require a credit life insurance company that is not required to appoint an auditor under section 61 of the Insurance Act, 2008 to provide unaudited financial statements in such form, with such detail and within such time frame as the Commission may prescribe in writing.

SCHEDULE 3

[Regulation 2]

Exemptions Applicable to the Financing and Money Services Act, 2009 (No. 9 of 2009)

Money services
business.

No. 9 of 2009

1. (1) Subject to sub-paragraph (2), a BVI business company that is not based in the Virgin Islands or that does not carry on in the Virgin Islands the business of currency exchange services or the issuance, sale or redemption of money orders or traveller's cheques, is exempted from the requirement to be licensed by virtue of section 7 (2) of the Financing and Money Services Act, 2009.

(2) The exemption in sub-paragraph (1) applies only if the BVI business company is based, and carries on the business of currency exchange services or the issuance, sale or redemption of money orders or traveller's cheques, in a recognized jurisdiction.

S.I. No 13 of
2008

(3) For the purposes of sub-paragraph (2), the term "recognized jurisdiction" refers to a jurisdiction listed in Schedule 2 of the Anti-money Laundering and Terrorist Financing Code of Practice, 2008, provided that that jurisdiction regulates the business of currency exchange services or the issuance, sale or redemption of money orders or traveller's cheques.

(4) An exemption under this paragraph is without prejudice to any exemption granted under any regulatory legislation with respect to the carrying on of the business of currency exchange services.

SCHEDULE 4

[Regulation 2]

Exemptions Applicable to the Securities and Investment Business Act, 2010

Engaging in
incidental
business
activity.
No. 2 of 2010

1. (1) Where a licensee under any financial services legislation wishes to engage in an activity which is incidental to the business of its licence and which would qualify as an investment business of the type specified in Part A of Schedule 2 of the Securities and Investment Business Act, 2010 and would therefore be required to obtain a licence under that Act, the Commission may, upon receipt of a written application from the licensee, exempt the licensee from the requirement to obtain a separate licence under that Act.

(2) An application for exemption under sub-paragraph (1) shall provide full details of the nature, scope, size and complexity of the activity that would qualify as an investment business and the Commission may, as part of its consideration of the application, require such further information as it deems fit.

(3) The Commission may refuse to grant an exemption pursuant to sub-paragraph (1) if the licensee fails to provide such further information as the Commission requires or if the Commission is not satisfied that the investment business activity that the licensee wishes to engage in is not incidental or is not sufficiently incidental to the licensee's business.

(4) For the purposes of this paragraph, an activity is considered to be incidental to the business of a licensee if, having regard to the nature, scope, size and complexity of the licensee's business, the activity

(a) forms a minor component of the licensee's business and is a reasonable consequence of that business;

(b) forms a significant component of the licensee's business but is a reasonable consequence of the kind of business that the licensee is licensed to carry out and the licensee has the relevant expertise to engage in that kind of activity; or

(c) is one that the licensee could reasonably be expected to engage in and it would be unreasonable or would cause practical difficulty or unnecessary cost if a separate licence were to be required for the activity and the licensee has the relevant expertise to engage in that kind of activity.

(5) Where any issue arises as to whether an activity satisfies any of the qualifications outlined in sub-paragraph (4) (a), (b) or (c), the issue shall be determined solely by the Commission.

SCHEDULE 5

[Regulation2]

Miscellaneous Exemptions – Regulatory Legislation

Transfer of shares.	1. (1) Where a licensee that is required to seek the approval of the Commission for the transfer of shares by virtue of
No. 9 of 1990	(a) section 14 of the Banks and Trust Companies Act, 1990,
No. 8 of 1990	(b) section 13 of the Company Management Act, 1990,
No. 1 of 2008	(c) sections 21 and 22 of the Insurance Act, 2008,
No. 9 of 2009	(d) section 14 of the Financing and Money Services Act, 2009, or
No. 2 of 2010	(e) section 11 of the Securities and Investment Business Act, 2010,

is a publicly traded company, that licensee is not required to seek an approval from the Commission for the transfer of its shares.

(2) Where a person acquires a significant interest in a licensee that is a publicly traded company, he is not required to seek the approval of the Commission for acquiring his shares.

(3) For the purposes of this paragraph,

“publicly traded company” means a company whose shares are listed on a recognised exchange;

“recognised exchange” has the meaning assigned to it under section 2 (1) of the Regulatory Code, 2009; and

“transfer” includes a sale, acquisition, charge or any disposal.

S.I. No.60
of 2009

Exemptions re financial statements.	2. (1) Where a licensee who is required to prepare and submit audited financial statements for any particular year by virtue of
No. 9 of 1990	(a) sections 17B and 17C of the Banks and Trust Companies Act, 1990,
No. 8 of 1990	(b) sections 17B and 17C of the Company Management Act, 1990,
No. 1 of 2008	(c) sections 56 and 57 of the Insurance Act, 2008,
No. 9 of 2009	(d) sections 22 and 23 of the Financing and Money Services Act, 2009, or

(e) sections 70 and 71 of the Securities and Investment Business Act, 2010,

has not conducted any business activity in respect of its licence for that year, the Commission may, upon receipt of a written application from the licensee within the period when the audited financial statements are due (or if extended, within the period of extension) and upon satisfying itself that the licensee has not conducted any business activity for that year, exempt the licensee from preparing and submitting audited financial statements for that year.

(2) Where a licensee referred to in sub-paragraph (1) has conducted a business activity in respect of its licence for any particular year but forms the view that it has good reason for it not to be required to prepare and submit audited financial statements in respect of that year, the Commission may, upon receipt of a written application from the licensee at least three months before the audited financial statements are due and upon satisfying itself that there is good reason not to require the licensee to prepare and submit audited financial statements, exempt the licensee from preparing and submitting audited financial statements for that year.

S.I. No.18 of
2010

(3) Where a private fund or a professional fund is required to appoint an auditor and prepare financial statements pursuant to regulation 10 of the Mutual Funds Regulations, 2010, the Commission may, upon receipt of a written application submitted by or on behalf of the private fund or professional fund, exempt the private fund or professional fund from appointing an auditor and providing audited financial statements.

(4) In considering an application under sub-paragraph (2), the Commission may have regard to the following matters:

- (a) the nature, scope and size of the business activity carried out for the year concerned;
- (b) the cost associated with carrying out an audit of the financial statements outweighs the benefit to be derived from such an exercise;
- (c) whether it is in the interest of the shareholders and other interested parties that an audit of the financial statements should be carried out;
- (d) whether the creditors of the licensee, if any, had requested an audit of the licensee or an audit of the licensee's financial statements;
- (e) whether the licensee has in the past five years been the subject of any query or legal proceedings relating to dishonesty or the management of its finances;

- (f) the number of times the licensee has sought exemption from preparing and submitting audited financial statements and whether a pattern has developed which the Commission should be concerned about;
- (g) whether the reason advanced by the licensee for the application for exemption is a reasonable one having regard to all the circumstances; and
- (h) whether it is in the public interest that the licensee should prepare and submit audited financial statements.

(5) An application for exemption under sub-paragraph (2) or (3) shall contain the reason for the application.

(6) Where an application for exemption under sub-paragraph (2) or (3) is not granted by the Commission, the person to whom the application relates shall,

- (a) in the case of a private or professional fund, comply with the requirements of regulation 10 of the Mutual Funds Regulations, 2010; and
- (b) in the case of a licensee, comply with the requirement to prepare and submit audited financial statements in accordance with the applicable regulatory legislation and the Regulatory Code, 2009.

S.I. No. 60 of
2009

Made by the Cabinet this 16th day of December, 2010.

(Sgd.) OTTO O'NEAL,
Cabinet Secretary.