

VIRGIN ISLANDS
REGULATORY (AMENDMENT) CODE, 2021

ARRANGEMENT OF SECTIONS

Section

1. Citation and commencement.
2. Section 59 amended.
3. Section 142A inserted.

VIRGIN ISLANDS

STATUTORY INSTRUMENT 2021 NO. 30

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

Regulatory (Amendment) Code, 2021

[Gazetted 8th April, 2021]

The Financial Services Commission, in exercise of the powers conferred by section 41 of the Financial Services Commission Act (No. 12 of 2001) and after consultation with the Minister of Finance and with the approval of the Board, issues this Regulatory Code:

Citation and commencement.

1. (1) This Code may be cited as the Regulatory (Amendment) Code, 2021.

(2) This Code shall come into force on the 6th day of July, 2021.

Section 59 amended.
S.I. No. 60 of 2009

2. Section 59 (2) of the Regulatory Code (hereinafter referred to as “the principal Code”) is amended, by revoking paragraph (a) and substituting the following new paragraph—

“(a) audit the licensee’s financial statements and report to the licensee in accordance with—

- (i) US Generally Accepted Auditing Standards;
- (ii) International Standards on Auditing (UK);
- (iii) International Standards on Auditing;
- (iv) Hong Kong Standards on Auditing;
- (v) Canadian Auditing Standards; or

- (vi) such other recognised international auditing standards as may be approved by the Commission on a case by case basis;”.

3. The principal Code is amended by inserting after section 142, the following new section:

Section 142A
inserted.

“Claims Handling Records

Records
relating
to claims
handling.

142A. (1) A licensed insurer shall maintain records that evidence the inception, handling and conclusion of each claim, in a manner that is sufficient to create a chronology of the entire claims handling process.

(2) Where a licensed insurer engages a loss adjuster to investigate and negotiate the settlement of claims on its behalf, the licensed insurer shall obtain and maintain records from the loss adjuster that are sufficient to allow the licensed insurer to create a chronology of events and evidence the actions undertaken by the loss adjuster in investigating and negotiating the settlement of each claim.

(3) Where a claim is filed with a licensed insurer through a licensed intermediary or a licensed insurer’s contract was sold through a licensed insurance intermediary, the licensed insurer shall provide that licensed insurance intermediary with sufficient information and documentation to enable the licensed insurance intermediary to fully understand all actions undertaken by the licensed insurer and, where applicable, any appointed loss adjuster, during the handling and conclusion of the claim.

(4) A licensed insurance intermediary shall maintain, in addition to records provided by the licensed insurer under subsection (3), all other records that evidence its activities in the receipt, handling and conclusion of a claim.”

EXPLANATORY NOTES

The following Explanatory Notes are inserted immediately after section 142A

- (i) *As part of its internal audit function, a licensed insurer must ensure that it maintains sufficient records and documentation to ensure that claims processing are undertaken in accordance with the licensed insurer’s policies and procedures on claims handling. This responsibility also*

applies to licensed insurance intermediaries and their roles in the claims handling process.

(ii) *In addition, the licensed insurer must maintain sufficient records and documentation that can demonstrate to its clients and the Commission, the factors that were considered in handling the claim, including assessing loss or damage, determining the settlement amount being offered, and the calculations of such amounts, or a reasonable explanation for the rejection of a claim. Records should include supporting documents and reasonable explanation for each amount compiled to determine the settlement amount.*

(iii) *It is also imperative that a licensed insurer provides licensed insurance intermediaries with records and documentation to demonstrate the factors considered in handling and concluding the claims, where the insurance intermediaries have direct interactions with the licensed insurer's clients. It is equally important that a licensed insurance intermediary also maintains records and documentation of its role in the claims handling process, and maintains all records provided by the licensed insurer, in demonstrating to its clients and the Commission, the claims handling process.*

(iv) *The following are the types of records that evidence the processing of claims, and should be maintained by a licensed insurer:*

Claim forms, proof of loss or other form of claim submission, claim investigation documentation, claim handling logs, third party valuations, correspondence to and from insureds and claimants or their representatives, breakdown of proposed claim payment, any written communication, any documented or recorded telephone communication related to the handling of a claim (including the investigation), payment or denial of the claim, copies of claim checks or drafts, or cheque numbers and amounts, wire transfer receipts (as applicable), releases, all applicable notices and correspondence used for determining and concluding claim payments or denials, and any other documentation created and maintained in a paper or electronic format, necessary to support claim handling activity.

(v) *The following documentation are additional types of records that evidence the processing of claims, based on different Classes of Insurance and should be maintained by licensed insurers:*

Motor Insurance, Marine and Aviation Insurance, Liability Insurance and General Insurance

- (a) *Notification of loss or damage, photographs of damaged property, settlement demands, accident reports, police reports, inspection reports, supporting bills, estimates and valuation worksheets, medical records, items and costs of loss or damage with relevant documentation, e.g. purchase receipts, warranties or instruction booklet indicating the brand and model of the damaged product, copy of police report, claim note of the other party (if any) and copy of the insured's claim for damages against a third party (if any), contracts, declaration pages, work papers, any written communication subrogation and salvage documentation..*

Property

- (b) *Notification of loss or damage, settlement demands, inspection reports, supporting bills, estimates and valuation worksheets, appraisals, replacement cost reports, photographs of damaged property, quantity surveyor and construction reports and quotations, subrogation and salvage documentation, a detailed breakdown of the settlement, underinsurance and Value-at-Risk calculations, evidence that the claimant was given and agreed to these calculations.*

Life insurance and life insurance (investment related)

- (c) *Notification of death, medical records, medical/death certificate (stating date of death, cause of death, place of death), evidence of investment document/statement, policy information, identity (ID) proof of the beneficiary.*

Accident and Health Insurance and Permanent Health Insurance

- (d) *Medical records, submitted bills, proofs of loss, accident reports, police reports, , health facility pre-admission certification or utilisation review documentation, copies of explanation of benefit statements, all applicable notices, and correspondence used for determining and concluding claim payments or denials.*

Goods in transit

- (e) *Bills of lading or airway bill/shipping label, packing lists or lists of damaged items, invoices, consignment forms and notes, quantum invoices, receipts or quotations, copies of identification documents and full description of event including port embarkation and disembarkation notes.*

- (vi) *In instances where a loss adjuster is engaged on behalf of the licensed insurer, the licensed insurer or licensed insurance intermediary should obtain similar types of documentary evidence from the loss adjuster, with respect to the claims that have been investigated and settlements negotiated, on behalf of the licensed insurer. This documentation serves to confirm that the investigation and settlement of claims, including negotiations were handled by the loss adjuster in a manner that is consistent with the policies and procedures (including internal controls) of the licensed insurer and/or licensed insurance intermediary.*
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Issued by the Financial Services Commission this 7th day of April, 2021.

(Sgd.) Kenneth Baker
Managing Director/CEO
Financial Services Commission