

VIRGIN ISLANDS

SEGREGATED PORTFOLIO COMPANIES (INSURANCE) REGULATIONS, 2018

ARRANGEMENT OF REGULATIONS

Regulation

- 1... Citation and commencement.
- 2... Definitions.
- 3... Application for approval to incorporate or register a BVI insurer SPC.
- 4... Approval of application.
- 5... Insurance manager of a BVI insurer SPC.
- 6... Audit of financial statements.
- 7... Solvency margin requirement.
- 8... Creation of segregated portfolios
- 9... Terminating a segregated portfolio.
- 10... Effect of termination of a segregated portfolio.
- 11... Reuse of a reinstated segregated portfolio.
- 12... Notification on reinstatement of a segregated portfolio.
- 13... Control over names.
- 14... Notification of changes in information submitted to the Commission.
- 15... Fees.

VIRGIN ISLANDS
STATUTORY INSTRUMENT 2018 NO. 5
BVI BUSINESS COMPANIES ACT, 2004
(No. 16 of 2004)

Segregated Portfolio Companies (Insurance) Regulations, 2018

[Gazetted 8th February, 2018]

The Cabinet, in exercise of the powers conferred by section 159 of the BVI Business Companies Act, 2004 (No. 16 of 2004) and with the advice of the Financial Services Commission, makes these Regulations:

Citation and commencement

1. (1) These Regulations may be cited as the Segregated Portfolio Companies (Insurance) Regulations, 2018.

(2) These Regulations shall come into force on the day that the BVI Business Companies (Amendment) Act, 2018 is brought into force.

Definitions

2. (1) In these Regulations, unless the context requires otherwise –

“Act” means the Insurance Act;

“BVI insurer” bears the meaning specified in section 2 (1) of the Act but excludes the holder of a Category A licence;

“BVI insurer SPC” means a segregated portfolio company that is a BVI insurer;

“Commission” means the Financial Services Commission established under section 3 (1) of the Financial Services Commission Act;

“Court” means the High Court;

“insurance manager” bears the meaning specified in section 2 (1) of the Insurance Act and includes any other person whom the Commission may, by an Order published in the Gazette or the Internet site, specify; and

“Internet site”, in relation to the Commission, means the principal public access Internet site for the time being maintained by, or on behalf of, the Commission.

(2) A reference in these Regulations to the imposition by the Commission of an administrative penalty refers to the imposition of administrative penalty pursuant to the Financial Services (Administrative Penalties) Regulations.

Application for approval to incorporate or register a BVI insurer SPC

3. (1) Any person who wishes to incorporate or register a company as a segregated portfolio company that is, or that will on its incorporation be, a BVI insurer, shall submit an application to the Commission in the approved form.

(2) An application under subregulation (1) shall include the following information –

- (a) the name, or proposed name, of the segregated portfolio company;
- (b) details of the person who is, or who will be appointed as, the insurance manager of the segregated portfolio company; and
- (c) a list of the initial segregated portfolios that it is intended will be created, including the name, identification or designation of each segregated portfolio.

(3) An application under subregulation (1) to incorporate a company as a segregated portfolio company shall be accompanied by –

- (a) an application under the Act for the licensing by the Commission of the BVI insurer; and
- (b) the documents required by the Act to accompany such an application, including a copy of the memorandum and articles proposed for the segregated portfolio company;

(4) An application under subregulation (1) for approval to register a BVI insurer as a segregated portfolio company shall be accompanied by –

- (a) its memorandum and articles and the changes proposed to be made to the memorandum and articles should its application be approved;
- (b) a statement in the approved form, signed by at least one director of the company on behalf of the board, setting out –

- (i) the assets and liabilities of the company as at a date no more than 6 months prior to the date of the application;
 - (ii) details of any transactions, events or other matters not reflected in the statement of assets and liabilities that the directors consider have materially affected or, prior to its registration as a segregated portfolio company are likely to materially affect, the assets and liabilities of the company;
 - (iii) the assets of the company that it is intended will be segregated portfolio assets, specifying in respect of which portfolio, and the assets that it is intended will be general assets; and
 - (iv) how the liabilities of the company will be satisfied; and
- (c) a declaration in the approved form signed by at least one director of the company on behalf of the board that –
- (i) resolutions of the directors have been passed approving the registration of the company as a segregated portfolio company;
 - (ii) the company is solvent and that the company and each proposed segregated portfolio will, after the assets of the company have been allocated to segregated portfolios, be solvent; and
 - (iii) the company has given notice to policy holders of its intention to apply for registration as a segregated portfolio company.

(5) The insurance manager of the segregated portfolio company whose details are provided pursuant to subregulation (2) (b) shall also serve as the insurance manager of the segregated portfolios of the segregated portfolio company.

Approval of application

4. (1) Where the Commission is satisfied that the requirements for an application under regulation 3 for the incorporation or registration of a segregated portfolio company have been complied with, the Commission shall approve the application.

(2) The requirements for an application under regulation 3 shall not be considered to be complied with, unless the Commission is satisfied that the application is in the approved form and provides all required information and is accompanied by the relevant documents or other information specified in that regulation.

Insurance manager of a BVI insurer SPC

5. (1) A BVI insurer SPC shall at all times have an insurance manager and may have one or more insurance intermediaries or loss adjusters.

- (2) The instrument under which an insurance manager is appointed shall specify –
- (a) the segregated portfolio or portfolios in respect of which the insurance manager is appointed; and
 - (b) his or her responsibilities and duties in respect of each such segregated portfolio.

Audit of financial statements

6. (1) A BVI insurer SPC shall have an auditor who shall be responsible for auditing its financial statements in accordance with the Act.

(2) Subject to subregulation (3), a BVI insurer SPC may audit each of its segregated portfolios separately, or consolidate their audit in the audit of the BVI insurer SPC but in each case identifying the segregated portfolios.

(3) The Commission may, in respect of any segregated portfolio company or class of segregated portfolio company –

- (a) exempt an audit of the financial statements of a segregated portfolio or segregated portfolios of that company; or
- (b) exempt the company from the requirement to prepare and submit financial statements in relation to a segregated portfolio or segregated portfolios of that company.

Capital and solvency margin requirements

7. (1) A BVI insurer SPC shall ensure that each of its segregated portfolios maintains a minimum margin of solvency in accordance with the requirements of Division 1 of Part IV of the Regulatory Code and, for that purpose, Schedule 5 of the Regulatory Code shall apply in determining a segregated portfolio's margin of solvency.

(2) A segregated portfolio created by a BVI insurer SPC is not required to maintain any contributed capital.

Creation of segregated portfolios

8. (1) A BVI insurer SPC shall not create a segregated portfolio without the prior written approval of the Commission.

(2) An application for approval to create a segregated portfolio under subregulation (1) shall be in the approved form.

(3) A BVI insurer SPC is not restricted in the number of segregated portfolios it may create so long as it complies with the requirements of the Act and this regulation with regard to the creation of the segregated portfolios.

Terminating a segregated portfolio

9. (1) A segregated portfolio company may terminate a segregated portfolio by submitting to the Commission in writing a notification that –

- (a) the company intends to terminate the segregated portfolio, indicating when the termination takes effect, not being earlier than 7 days after the Commission receives notification of termination;
- (b) the segregated portfolio does not, or on the date of termination will not, have segregated portfolio assets attributable to the segregated portfolio;
- (c) the segregated portfolio has no, or on the date of termination will not have any, outstanding liability;
- (d) where the segregated portfolio has, or on the date of termination will have, an outstanding liability, the liability will be paid from the general assets of the company; and
- (e) confirming that the segregated portfolio is not being terminated in a manner prejudicial to policy holders, investors and creditors.

(2) Where a segregated portfolio has not engaged in any business since its creation, the segregated portfolio company shall, in addition to or as part of the notification submitted under subregulation (1) –

- (a) confirm that the segregated portfolio has never commenced business;
- (b) provide the reason or reasons why the segregated portfolio never commenced business; and
- (c) confirm that upon the reinstatement of the segregated portfolio the segregated portfolio company shall notify the Commission in accordance with section 138A (4) of the BVI Business Companies Act and regulation 12.

(3) In relation to subregulation (1) (a), the Commission may permit a shorter period for the termination of a segregated portfolio taking effect, including on the date of receipt of the notification of termination.

Effect of termination of a segregated portfolio

10. (1) Subject to subregulation (2), where a segregated portfolio is terminated by a segregated portfolio company under regulation 9, neither the company nor a creditor of the segregated portfolio or any other person may –

- (a) commence legal proceedings, carry on any business or in any way deal with the segregated portfolio assets attributable to the segregated portfolio prior to the termination of the segregated portfolio under regulation 9;
- (b) defend any legal proceedings, make any claim or claim any rights for, or in the name of, the segregated portfolio; or
- (c) act in any way with the affairs of the segregated portfolio.

(2) Where a segregated portfolio is terminated in accordance with regulation 9, the segregated portfolio company, creditor or other person may –

- (a) in the case of the company, reinstate the segregated portfolio; or
- (b) in the case of a creditor or any other person, make application to the Court for an order reinstating the segregated portfolio; and
- (c) continue to carry on legal proceedings that were instituted in relation to the segregated portfolio prior to its termination; or
- (d) pursue a claim on behalf of or in relation to the segregated portfolio.

(3) The reinstatement of a segregated portfolio under this regulation shall terminate as soon as the purpose of the reinstatement comes to an end.

(4) Where a reinstated segregated portfolio terminates pursuant to subregulation (3), the segregated portfolio company, creditor or other person on whose initiative the segregated portfolio was reinstated under subregulation (2) shall, within 7 days of the termination, notify the Commission of the termination.

(5) Subregulation (3) does not affect a segregated portfolio company's power or authority to reinstate a segregated portfolio in accordance with section 138A (4) of the BVI Business Companies Act.

(6) A segregated portfolio company, creditor or other person who fails to comply with the requirement of subregulation (4) is liable to the imposition by the Commission of an administrative penalty.

Reuse of a reinstated segregated portfolio

11. Regulations 6, 7 and 8 shall apply to a segregated portfolio reinstated pursuant to section 138A of the BVI Business Companies Act, if the reinstatement is effectively a reuse of the segregated portfolio and not for the purpose outlined in regulation 10.

Notification on reinstatement of a segregated portfolio

12. (1) Where a segregated portfolio company reinstates a segregated portfolio, the company shall, within 14 days of the date of reinstatement, notify the Commission in writing of the reinstatement of the segregated portfolio and pay the requisite fee.

(2) Where the Court makes an order under regulation 10 (2) (b) reinstating a segregated portfolio, the creditor or other person on whose initiative the order was made shall, within 7 days of the making of the order, provide a copy of the order to the Commission.

(3) A person who fails to comply with subregulation (1) or (2) is liable to the imposition by the Commission of an administrative penalty.

Control over names

13. (1) If the Commission considers that the name, identification or designation of a segregated portfolio is misleading or undesirable, it may by written notice direct the segregated portfolio company to change the name of the segregated portfolio on or before the date specified in the notice, which shall not be less than 21 days after the date of the notice.

(2) A segregated portfolio company that fails to comply with a notice issued under subregulation (1) is liable to the imposition by the Commission of an administrative penalty.

(3) The imposition of an administrative penalty by the Commission under subsection (2) is without prejudice to the Registrar of Corporate Affairs' exercise of his or her power under section 22 of the BVI Business Companies Act to direct a company to change its name.

Notification of changes in information submitted to the Commission

14. (1) Subject to subregulation (2), a segregated portfolio company shall, by notice in the approved form, notify the Commission of any change in information that the company is required to submit to the Commission under these Regulations, within 14 days of the date that the information changed.

(2) Subregulation (1) does not apply to information provided to the Commission under regulation 3 (4) (b) or (c).

(3) A segregated portfolio company that fails to notify the Commission of any change in information as provided in subregulation (1) is liable to the imposition by the Commission of an administrative penalty.

Fees

15. The fees and penalties specified in the Schedule shall be payable to the Commission.

SCHEDULE

FEES PAYABLE BY A SEGREGATED PORTFOLIO COMPANY

PART I

APPLICATION AND APPROVAL FEES

Fee Description	Fee US\$
For application to incorporate or register a company, other than a Category C company, as a BVI insurer SPC:	
(a) In respect of the company	3,000
(b) In respect of each segregated portfolio included in the application	750
For application to incorporate or register a Category C company as a BVI insurer SPC:	
(a) In respect of the company	7,500
(b) In respect of each segregated portfolio included in the application	1,000
For approval of application to incorporate or register a company, including a Category C company, as a BVI insurer	250
For application to register an existing BVI insurer, other than a Category C licence holder, as a segregated portfolio company	3,000
For application to register an existing BVI insurer that holds a Category C licence as a segregated portfolio company	7,500
For approval of application to register an existing BVI insurer, including a Category C licence holder, as a segregated portfolio company	250
For an application for approval to create a segregated portfolio	350
For exempting a segregated portfolio company from auditing or preparing financial statements in respect of a segregated portfolio	500
For notification to the Commission of the reinstatement of a segregated portfolio	350
For the provision of any other service by the Commission for which a fee has not been prescribed	250

PART II

INITIAL FEES

Fee Description	Fee US\$
Where a BVI insurer, other than a holder of a Category C licence, is incorporated or registered on or before 30 June in any year, an initial fee on incorporation or registration:	
(a) In respect of the segregated portfolio company	3,000
(b) In respect of each segregated portfolio approved	750
Where a BVI insurer that is the holder of a Category C licence is incorporated or registered on or before 30 June in any year, an initial fee on incorporation or registration:	
(a) In respect of the segregated portfolio company	7,500
(b) In respect of each segregated portfolio approved	1,000
Where a BVI insurer, other than a holder of a Category C licence, is incorporated or registered on or after 1 July in any year, an initial fee on incorporation or registration:	
(a) In respect of the segregated portfolio company	1,500
(b) In respect each segregated portfolio company	375
Where a BVI insurer that is the holder of a Category C licence is incorporated or registered on or after 1 July in any year, an initial fee on incorporation or registration:	
(a) In respect of the segregated portfolio company	3,750
(b) In respect of each segregated portfolio company	500
On approval being granted to create one or more segregated portfolios, an initial fee in respect of each segregated portfolio approved, other than in relation to a Category C licence holder:	
(a) Where the creation of the segregated portfolio is approved on or before 30 June	750
(b) Where the creation of the segregated portfolio is approved on or after 1 July	375
On approval being granted to create one or more segregated portfolios, an initial fee in respect of each segregated portfolio approved in relation to a Category C licence holder:	
(a) Where the creation of the segregated portfolio is approved on or before 30 June	1,000
(b) Where the creation of the segregated portfolio is approved on or after 1 July	500
The maximum initial fees payable by a BVI insurer SPC, other than a holder of a	

Category C licence, in any year	15,000
The maximum initial fees payable by a BVI insurer SPC, that is a holder of a Category C licence, in any year	20,000

PART III

ANNUAL FEES

Annual Fee Description	Fee US\$
<p>A BVI insurer SPC, other than the holder of a Category C licence, shall pay an annual fee on or before 28th February of each year, commencing in the year following its incorporation or registration:</p> <p>(a) In respect of the segregated portfolio company</p> <p>(b) For each segregated portfolio in existence as at 31 December of the immediately preceding year</p>	<p>According to the total gross written premium as calculated under paragraph (iii) (a) of the Schedule to the Financial Services (Fees) Regulations in relation to section 8 (6) of the Act, sub-paragraph (b)</p> <p style="text-align: center;">350</p>
<p>A BVI insurer SPC that is the holder of a Category C licence shall pay an annual fee on or before 28th February of each year, commencing in the year following its incorporation or registration:</p> <p>(a) In respect of the segregated portfolio company</p> <p>(b) For each segregated portfolio in existence as at 31 December of the immediately preceding year</p>	<p style="text-align: center;">7,500</p> <p style="text-align: center;">1,000</p>
The maximum annual fee payable by a BVI insurer SPC, other than a holder of a Category C licence, in any year	15,000
The maximum initial fees payable by a BVI insurer SPC, that is a holder of a Category C licence, in any year	20,000

PART IV

LATE PAYMENT PENALTY

Description of Contravention	Penalty US\$
For failure to provide notification within the prescribed period	15% of the notification fee for each month or part thereof that the notification remains outstanding
For failure to pay annual fee in full on or before 28 February in any year	\$250 for each month or part thereof after the annual fee has become due and payable

Made by Cabinet this 8th day of February, 2018.

(Sgd.) Sandra Ward,
Cabinet Secretary