

**BRITISH VIRGIN ISLANDS
FINANCIAL SERVICES COMMISSION**

GUIDELINES FOR THE APPROVED PERSONS REGIME

[Amended March, 2010]

Approved by the Board of Commissioners *20th January, 2009*
Published *18th February, 2009*
Coming into Force *2nd March, 2009*

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INTRODUCTION

These Guidelines are designed to assist the Financial Services Commission (hereinafter referred to as “the Commission”) in the consideration and approval of applications for the appointment of senior officers, including applications relating to the approval of actuaries, auditors and other independent officers pursuant to any financial services legislation. These Guidelines outline senior officer duties and responsibilities and incorporate a set of rules governing the process and procedure for the approval of senior officers of a regulated person and actuaries, auditors and other independent officers.

A suitable candidate for a senior officer position must be qualified and have appropriate experience. In order to be appointed as a senior officer, a candidate must demonstrate a high level of competence and integrity. Before granting approval of an application for a senior officer, the Commission must be satisfied that the person to whom the application relates is fit and proper in accordance with the criteria established in Division 2 of Part II of the Regulatory Code, 2009. The Commission exercises judgement and discretion in assessing fitness and propriety and takes into account all relevant matters including honesty, integrity, reputation, competence, expertise, experience, capability and financial soundness. These criteria have equal application to the consideration of applications for the approval of actuaries, auditors and other independent officers, whose qualifications and experience are generally covered under their respective applicable financial services legislation.

The Commission holds the regulated person directly responsible for the conduct of its senior officers, including the performance of their duties, and hence the importance of recommending suitably qualified persons to be approved for appointment as senior officers. Therefore a candidate for approval as a senior officer must be familiar with the business activities of the regulated person, relevant legislation governing the conduct of the regulated person, and the structure of internal controls within the regulated person. The candidate must also have the knowledge and professional competence to efficiently conduct the business of the regulated person.

In relation to actuaries, auditors and other independent officers, the respective legislation pursuant to which they are approved by the Commission place obligations on them. They are required to have a good knowledge and understanding of the legislation that govern their duties and responsibilities in order to be able to properly and effectively discharge their assignments. All reporting requirements must also be adhered to.

It is not sufficient that a person recommended for approval as a senior officer is in the estimation of the regulated person competent and therefore qualified for the discharge of a specified duty. It is equally not sufficient that a person recommended for approval as a senior officer has worked with a regulated person for a considerable period and has therefore by that fact alone acquired the relevant skills and experience. Every recommendation for approval must be accompanied by sufficient evidence to back up the recommendation. These Guidelines only set out the minimum required qualifications for the consideration of a recommendation for the approval of a person as a senior officer. It is therefore incumbent on the regulated person submitting a recommendation to submit as much evidence and detailed information as would demonstrate qualification or sufficient support for approval of the recommended

person. This would equally apply to actuaries, auditors and other independent officers who are required to seek the approval of the Commission to enable them to act pursuant to any relevant financial services legislation.

Interpretation

1. For the purpose of these Guidelines, unless the context otherwise requires,

“board” means the governing body of a regulated person and includes any equivalent body established by or within a regulated person;

“Commission” means the Financial Services Commission established under the Financial Services Commission Act, 2001;

“Compliance Officer” means the person appointed as such in accordance with section 34 (3) of the Financial Services Commission Act, 2001;

“financial services legislation” means any principal legislation listed in Schedule 2 of the Financial Services Commission Act, 2001 and any subsidiary legislation made thereunder;

“other independent officer” means any other person (other than a senior officer, Compliance Officer or an auditor or actuary) who by virtue of the Financial Services Commission Act, 2001 or any financial services legislation is required to be approved, licensed or authorised by the Commission;

“regulated person” means a person authorised, licensed, registered or recognised or required to be so authorised, licensed, registered or recognised under a financial services legislation and is required to seek approval for senior officer appointment; and

“senior officer” has the meaning prescribed in section 4 of the Regulatory Code, 2009, unless otherwise specified in the Financial Services Commission Act, 2001 or a financial services legislation.

PART 1

SENIOR OFFICER POSITION

Application of Regulatory Code with respect to position of senior officer

2. A senior officer of a regulated person is expected to be an individual employed by the regulated person to perform either an audit function or a senior management function as prescribed in the Regulatory Code, 2009. Therefore an application for the approval of a senior officer must, unless otherwise determined in the Financial Services Commission Act, 2001 or a financial services legislation, be considered in that context.

[Explanatory Note:

(i) *The Banks and Trust Companies Act, 1990, Company Management Act, 1990 and Insurance Act, 2008 define a “senior officer” to mean a person who is appointed to perform such supervisory and managerial functions as may be prescribed in the Regulatory Code. The Regulatory Code, 2009 defines a “senior officer” in section 4 thereof and essentially includes any employee of a regulated person that performs a senior management function, whether in the capacity of chief executive or equivalent position. In addition, any employee that holds a position that requires the employee to be answerable to the regulated person’s board, or whose responsibilities are of a nature that include a direct involvement in the management or decision-making process of the regulated person at a senior level, would qualify as a senior officer. It is therefore the duty of a regulated person to determine whether an employee properly fits within the established criteria of a senior officer before submitting an application to the Commission for approval. The Commission reserves the right not to approve an application for a senior officer position where it forms the opinion that, having regard to the duties prescribed for the position, the office does not constitute a senior management function. Section 4 (3) of the Regulatory Code, 2009 outlines what constitutes a “senior management function” and reference must be made thereto as necessary.*

(ii) *The reference to “equivalent position” in paragraph (i) relates to a position within the regulated person that is differently named but whose authority and responsibilities are such that the position can be properly classified to constitute the performance of a management function. While the name the position is actually called is immaterial, consideration will be given to the nature, functions, duties and authority of the position in order to make a determination as to whether or not the position qualifies as an “equivalent position”. The Commission will be the ultimate determiner as to whether or not a position designated for the appointment of a senior officer meets the requisite seniority level for purposes of approval under these Guidelines. It will be guided in this process by job descriptions presented in relation to the position as well as other relevant requisites that may be provided under the Regulatory Code, 2009, Financial Services Commission Act, 2001, any applicable financial services legislation and these Guidelines.]*

Application for approval of senior officer

3.1 Every application for the approval of a senior officer must be made by a regulated person in Form A and the application must be accompanied by supporting evidence as provided in the Form and these Guidelines including the following:

- (a) certified copies of identification documents;
- (b) certified copies of professional and educational qualifications;
- (c) a resume or curriculum vitae outlining the relevant qualifications and experience of the applicant. This should include the names, addresses and telephone numbers of previous employers;
- (d) a police certificate or a sworn affidavit (where a certificate is not issued) as to the non-criminal record of the applicant for the past three years; and
- (e) professional, personal and financial references. The professional reference should be from a person who can speak to the experience and ability of the proposed senior officer. The personal reference should be from a person who can vouch for the proposed senior officer's conduct and character. The financial reference must be submitted by a financial institution, directly to the Commission (clearly referencing the name of the regulated person).

3.2 A non-refundable administration fee of one hundred dollars or such amount as may be prescribed pursuant to the Financial Services Commission Act, 2001 or any financial services legislation (with the applicable fee in the latter enactments taking precedent where provided) must be submitted with the application for approval of the appointment of a senior officer.

[Explanatory Note

(i) It should be noted that the application requirements are designed to facilitate necessary approvals required under the Financial Services Commission Act and relevant financial services legislation. Thus where pursuant to any such enactment an exemption applies or is granted to any requirement for application for approval of a senior officer, these Guidelines will not apply and therefore no application for approval will be required.

(ii) An application for approval of a senior officer must be submitted to the Commission as set out in Form A. Any additional information that an applicant considers relevant to the processing of an application or in relation to a proposed senior officer which the Commission should know shall be provided in writing and attached to the completed application form.

(iii) Declarations are to be signed by

- *A director or other authorised individual of the regulated person; and*
 - *The prospective senior officer seeking approval.*
- (iv) *Copies of documents (for example, passport identification page(s)) must be properly certified, meaning that*
- a. *the person certifying the document indicates that*
 - 1. *he has seen and compared the original document verifying the identity and residential address of the prospective senior officer;*
 - 2. *the copy of the document which he certifies is a complete and accurate copy of the original; and*
 - 3. *where the document contains a photograph of the prospective senior officer, the photograph bears a true likeness to the individual to whom the certification relates;*
 - b. *the certificate*
 - 1. *bears the date of the certification;*
 - 2. *bears the signature and seal of the person certifying the document; and*
 - 3. *provides adequate information to enable the person certifying the document to be contacted in the event of a query or further clarification.*

Failure to adhere to these certification requirements may delay the processing of an application for approval of a senior officer position. Where a regulated person for good reason or reasons is unable to fully comply with the certification requirements, it must so state in writing (with any available evidence) outlining the reason or reasons. The Commission shall be the sole determiner as to whether or not any reason given for not fully complying with certification requirements is good enough and thus process an application accordingly, taking into account the other requirements of these Guidelines.

- (v) *The Commission can request additional information from the regulated person for the purposes of completeness or verification.]*
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Consideration and approval of applications

4.1 Upon the receipt and consideration of an application under paragraph 3, the Commission may

- (a) approve the application without any conditions;
- (b) approve the application with such conditions as the Commission considers fit;
- (c) request such additional information pursuant to these Guidelines as the Commission considers fit in order to enable a proper consideration of the application;
- (d) reject the application; or
- (e) defer the application to await the attainment of a specific occurrence (such as the attainment of a qualification) if such occurrence is likely within a period of not more than six months from the date of the consideration of the application.

4.2 The Commission shall, within seven days of taking a decision pursuant to paragraph 4.1, notify the applicant concerned regarding the decision.

4.3 Where the Commission takes a decision under paragraph 4.1 (b), (d) or (e), it shall provide the applicant with the Commission's reason or reasons for the decision.

PART II

DUTIES AND RESPONSIBILITIES OF A SENIOR OFFICER

Role of a senior officer

5. A senior officer may be required to assume several roles within a regulated person, including those of a leader, strategist, decision maker, manager and/or adviser to the board and, in the case of a group of companies of which the regulated person is a part, to other decision-making bodies within the group. These responsibilities emphasise the importance of a senior officer to the operation of a regulated person and/or group.

General duties and responsibilities of a senior officer

6. A senior officer of a regulated person is expected to perform a variety of duties and responsibilities which may include the following:

- (a) responsibility for the day-to-day operations of the regulated person;
- (b) advising the board of the regulated person;
- (c) ensuring that staff and the board have sufficient, up-to-date information concerning the operations and affairs of the regulated person;
- (d) acting as an intermediary between the board and employees;
- (e) formulating policies and making recommendations to the board;

- (f) deciding or guiding courses of action in operations by staff;
- (g) analysing and overseeing operations of the regulated person;
- (h) implementing policies and procedures of the regulated person;
- (i) assisting in the identification and evaluation of other senior officers and board members as may be appropriate; and
- (j) making recommendations to support the board in ongoing assessments and evaluations.

[Explanatory Note:

The duties and responsibilities outlined above are not designed to be exhaustive or to apply in respect of every application for approval of a senior officer. They are designed as a guide to provide applicants with an idea as to the tier or level of duties and responsibilities that would be considered commensurate with the duties and responsibilities of a senior officer. An application which shows a proposed senior officer's duties and responsibilities to comprise the duties of filing clerk, transmitting documents, answering telephones, etc. will be considered on the basis of its merit, but is likely to raise questions regarding the level of seniority attached to the position.]

AML/CFT duties and responsibilities

7.1 Where part of the duties and responsibilities of a senior officer is to embody matters pertaining to combating money laundering and terrorist financing, it is expected that such senior officer would, on behalf of the regulated person,

- (a) advise upon such documented policies, consistent with the requirements of the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008 (hereinafter referred to as “the Code”) and the Anti-Money Laundering Regulations, 2008 (hereinafter referred to as “the AMLR”) and related enactments, as may be relevant to the prevention of money laundering and terrorist financing;
- (b) ensure that the risk assessment required under the Code is carried out and submitted to the senior management for its consideration, approval and guidance;
- (c) ensure that the established policies to prevent money laundering and terrorist financing and the risk assessments that are carried out are reviewed from time to time at appropriate levels and kept up-to-date as necessary;
- (d) advise upon and guide responsibility for the establishment and maintenance of risk-based anti-money laundering and terrorist

financing systems and controls and monitor the effectiveness of such systems and controls;

- (e) ensure that overall the regulated person's anti-money laundering and terrorist financing systems and controls are kept under regular review and that breaches are dealt with promptly;
- (f) oversee the regulated person's anti-money laundering and terrorist financing regime and ensure speedy action in effecting corrective measures with respect to any identified deficiencies;
- (g) ensure that regular and timely information relevant to the management of the regulated person's anti-money laundering and terrorist financing risks is made available to the senior management;
- (h) advise upon the importance and need for providing adequate resources to the Reporting Officer; and
- (i) advise upon the implementation of any anti-money laundering and combating the financing of terrorism obligations, including any related internal controls and procedures, which are imposed on or required of the regulated person.

7.2 The application of paragraph 7.1 is without prejudice to the exercise of any power or the requirement of any function, duty or responsibility provided in the Anti-money Laundering Regulations, 2008, Anti-money Laundering and Terrorist Financing Code of Practice, 2008 or the Regulatory Code, 2009.

[Explanatory Note:

It is an absolute necessity that a person recommended for approval as a senior officer who is partly expected to perform AML/CFT functions should have a good knowledge of the BVI laws relating to money laundering and terrorist financing. In addition, the person would be expected to be fully au fait with the regulated person's AML/CFT internal controls and procedures and also have a good knowledge of the BVI's international obligations concerning AML/CFT. It should be noted that paragraphs 7.1 and 7.2 are not designed and do not apply to create a regime for approving Money Laundering Reporting Officers who are required to be appointed pursuant to the AMLR.]

PART III

QUALIFICATIONS AND EXPERIENCE OF A SENIOR OFFICER

Minimum required qualifications

8. In an effort to ensure consistency in the Commission's decision-making processes regarding the approval of senior officers of regulated persons, these Guidelines set forth the minimum requirements (unless otherwise specified) that a candidate should meet in order to be approved as a senior officer. Accordingly, the following comprise minimum qualifications for the appointment of senior officers:

- (a) **Fit and Proper:** The Commission exercises judgement and discretion in assessing fitness and propriety and takes into account all relevant matters, in accordance with the fit and proper criteria established under Division 2 of Part II of the Regulatory Code, 2009. Specifically, the Commission assesses the proposed senior officer's
 - (i) honesty, integrity and reputation;
 - (ii) competence and capability; and
 - (iii) likely soundness of judgment in the discharge of duties and responsibilities assigned to him or her.
- (b) **Education:** The level of academic achievement should, at the minimum, be the possession of a diploma in a field considered relevant by the Commission in addition to the other requirements outlined in sub-paragraphs (c) and (d). However, where the Commission is satisfied that, although the person does not possess the requisite academic achievement, his or her experience in a relevant field (not being less than seven years) affords him or her with the necessary skill and competence to be approved for the position of senior officer. In circumstances where the Commission does not consider a qualification sufficient, it may (if it so considers appropriate in any particular case) require the person to undertake additional training in order to be better prepared to perform the duties of a senior officer. Such a decision, where taken, will be communicated to the relevant regulated person.
- (c) **Experience:** A candidate for approval as a senior officer must, subject to sub-paragraph (b), have at least five years experience working in a relevant field.
- (d) **General Managerial Experience and Skills:** A candidate should have the following general skills:
 - (i) effective verbal and written communication;
 - (ii) strong organizational skills and attention to detail;
 - (iii) familiarity with human resources policies and practices;

- (iv) ability to adapt to and perform in stressful or emergency situations; and
- (v) ability to comprehend a variety of informational documents.

PART IV

SUPPORTING EVIDENCE

Copies of academic qualifications

9.1 Every application submitted to the Commission for the approval of a senior officer must, subject to paragraph 9.2, be accompanied by copies of the proposed senior officer's academic and other relevant qualifications, including such other supporting evidence that the regulated person considers essential in the due consideration of the application.

9.2 The Commission reserves the right to request certified copies of a proposed senior officer's academic and other relevant qualifications before processing any application relating to the proposed senior officer, notwithstanding that copies of such academic and other relevant qualifications had previously been submitted.

[Explanatory Note:

(i) *Generally, the Commission would accept copies of academic and other relevant qualifications that are not certified. It should be noted, however, best practice dictates that copies of such qualifications are certified. It is therefore strongly recommended that, where possible, academic and other qualifications submitted in support of an application should be accompanied by certified copies of the qualifications. This will aid the timely processing of an application in the event that the Commission finds it necessary to request certified copies of the relevant qualifications.*

(ii) *Where the Commission requests certified copies of academic and other relevant qualifications in respect of a proposed senior officer, the certification may be carried out by a notary public or by the authority that issued the original document. A document would be considered to be properly certified if, on the face of the certificate, the person certifying the document indicates that: (a) he or she has seen and compared the original document verifying the identity and address of the proposed senior officer; (b) the copy of the certified document is a complete and accurate copy of the original; and (c) where the document contains a photograph of the proposed senior officer, the photograph bears a true likeness to the individual to whom the certification relates. In addition, the certificate must bear the date of the certification, the signature and seal of the person certifying the document and provide adequate information to enable the person certifying the document to be contacted in the event of a query or further clarification. Failure to adhere to these certification requirements may delay the processing of an application for approval of a senior officer position. Where a regulated person for good*

reason or reasons is unable to fully comply with the certification requirements, it must so state in writing (with any available evidence) outlining the reason or reasons. The Commission shall be the sole determiner as to whether or not any reason given for not fully complying with certification requirements is good enough and thus process an application accordingly, taking into account the other requirements of these Guidelines.]

Providing designation, job description, and organisational chart

- 10.1 Every application for the approval of a senior officer must be accompanied by
- (a) a clear and specific written designation or title of the post to which the application relates;
 - (b) a job description detailing the duties and responsibilities attached to the position to which the person proposed for approval is to be appointed; and
 - (c) an organisational chart of the regulated person which outlines the lines of reporting within the regulated person, including the line of reporting of the post for which approval is sought.
- 10.2 Every job description and organisational chart provided pursuant to paragraph 10.1 (b) and (c) must be signed by a director of the regulated person to which the application relates confirming the accuracy of the job description and organisational chart.

[Explanatory Note:

(i) A job description may take several forms and may be presented in point or prose form. Whatever form is adopted, the duties and responsibilities attached to a position to which a senior officer approval is sought must be clearly identified and presented. Duties and responsibilities that are otherwise identified and presented can only complicate the processing of the application and may cause delays.

(ii) It is also expected that every application would provide an organisational chart which outlines the various lines of reporting within the regulated person. This must include the line of reporting of the position for which approval is sought. This will assist the Commission to make an objective assessment regarding the level of seniority of the position and whether or not it fully meets the requirements for approval as a senior officer position.

(iii) In addition, it is imperative that every job description and organisational chart is signed by a director of the regulated person. It is not sufficient to affix the regulated person's seal on the job description and organisational chart. The signature of the director will be considered by the Commission as confirmation of the accuracy of the job description and organisational chart.]

Providing a police report

11.1 The onus is on every regulated person that submits an application for the approval of a senior officer to ensure that

- (a) the necessary background check has been made in respect of the person to whom the application relates for purposes of satisfying the requirements of these Guidelines; and
- (b) there is full and complete disclosure of any criminal record or other record relating to dishonesty, bankruptcy or arrangement with creditors, whether relating to or arising from a civil suit or otherwise.

11.2 With respect to conducting a background check to establish whether or not a person proposed as a senior officer has a criminal record, the regulated person shall obtain a written police report in respect of such record or the absence thereof and transmit it along with the application for approval. The written police report shall be treated as satisfying any background check and disclosure of criminal record required under paragraph 11.1.

11.3 If pursuant to paragraph 11.2 a written police report could not be obtained after a formal request and the taking of other necessary steps, the regulated person shall,

- (a) where it has not been able to identify the existence of a criminal record, notify that fact in the application; or
- (b) to the extent possible and where it is aware of the existence (whether currently or in the past) of a criminal record, provide the nature, description or proceedings, date, circumstances and related matters pertaining to the criminal record.

[Explanatory Note:

(i) *While the Commission may conduct due diligence inquiries in relation to a person to whom an application for approval relates, it is the primary duty of the regulated person to conduct background checks on its candidate for senior officer approval. The full and truthful disclosure of a person's criminal or other record is in itself not a bar to approval. However, failure to make a full and complete disclosure will be considered a failure of fitness and propriety under Part III of these Guidelines. The Commission would consider as acceptable a police report submitted in respect of a proposed person's criminal record or the absence thereof and this will thus satisfy the background check and disclosure requirements. What this means therefore is that every application must, to the extent possible, be accompanied by a police report attesting to a proposed senior officer's criminal record (where such exists) or clean record (where no crime is attributed).*

(ii) *Where it is believed that a person in respect of whom an application for approval relates has or has had a criminal or other record as stipulated in paragraph 11.1 above but no official police report could be obtained, the*

regulated person submitting the application must indicate in writing the steps it has taken to secure the relevant police report. It is a matter of judgment in respect of each case as to what steps are considered reasonably necessary in securing a police report. The Commission will apply its own mind as to whether the steps taken are sufficient in all the circumstances of the case.

(iii) It should be noted that there is no requirement to provide any information with respect to the “criminal record” of any person who had been granted a pardon. However, the provision of sufficient evidence to support the granting of the pardon is required. The evidence may be in the nature of an order, a certificate, a directive or a similar instrument which on the face of it sufficiently and genuinely demonstrates the granting of a pardon. As an alternative in such a case, the Commission will accept a police report attesting to the non-existence of a criminal record in respect of the person.

(iv) A police report in respect of a proposed senior officer is expected to be not more than six months old from the date of its issue to the date of its receipt at the Commission. The Commission will not accept any police report that falls outside of this period. In addition, a police report must be obtained from every jurisdiction to which a proposed senior officer’s criminal record relates.

(v) Where a police report of a known criminal record cannot be obtained but a written judgment exists in respect thereof and can be obtained, the written judgment must be provided.]

Providing report on dishonesty, bankruptcy, etc. of proposed senior officer

12.1 Every regulated person that wishes to submit an application pursuant to these Guidelines must, prior to submitting the application, conduct diligent inquiry as to whether or not a proposed senior officer has any record relating to dishonesty, bankruptcy or arrangement with creditors, whether relating to or arising from a civil suit or otherwise.

12.2 Where a diligent inquiry elicits any record referred to in paragraph 12.1, the regulated person shall provide written information on the subject and transmit it along with the application for the approval of a senior officer. The written information must outline the nature of the record and the date, description or proceedings, circumstances and related matters pertaining to the record.

12.3 Where a diligent inquiry pursuant to paragraph 12.1 does not reveal any record of dishonesty, bankruptcy or arrangement with creditors in respect of a proposed senior officer, the regulated person shall indicate that fact in its application to the Commission for the approval of the proposed senior officer.

Requiring additional information

13.1 Where the Commission receives an application for the approval of a senior officer and forms the opinion that the application and/or its supporting evidence is insufficient or not legible to enable it to make an appropriate decision, it may in writing require the regulated person submitting the application to provide such

additional evidence or other information and/or legible copies of the supporting evidence as the Commission considers fit.

13.2 The Commission may require any additional supporting evidence or other information required under paragraph 13.1 to be provided within such period as the Commission may provide in its written communication to the regulated person.

[Explanatory Note:

The requirements of this paragraph represent standard practice. In order to avoid any unnecessary delay in the processing of an application for the approval of a senior officer, the regulated person is expected to ensure that all relevant supporting documentation that would aid the consideration of the application is submitted along with the application. The Commission reserves the right to require additional information where it considers that that would assist with the full and proper processing of an application. Where it provides a deadline for the provision of the additional information, failure to comply with the deadline entitles the Commission to take a decision on an application in the absence of the required additional information. Once the Commission takes a decision in that context, it will not entertain any reconsideration of the application except on the basis of a fresh application with all the required information in support of the application.]

Use of affidavits

14.1 The Commission will accept an affidavit that is properly sworn to which seeks to attest to any particular facts or circumstances which are considered essential to the proper consideration of an application for the approval of a senior officer. It is therefore open to a regulated person to provide affidavit evidence to support an application for the approval of a senior officer.

14.2 An affidavit evidence will be considered to be properly sworn to if

- (a) it is deposed to by the deponent indicating his or her full name and address;
- (b) it is sworn before a notary public or a commissioner for oaths or other person of equivalent rank;
- (c) it properly and accurately describes the particular facts and/or circumstances to which it relates; and
- (d) it is dated and properly executed by the person before whom it is sworn.

[Explanatory Note:

It is to be noted that an affidavit of the existence of a document may not be accepted if the actual document or a certified copy thereof could be obtained with some diligence. It is expected that generally affidavit evidence would

relate to an attestation of facts and/or circumstances which are in the knowledge of the deponent. Where the existence of a supporting document is confirmed but it has proven difficult to obtain the document, the affidavit must clearly indicate that fact, in addition to outlining the steps that have been taken to secure the document or a copy thereof. This will assist the Commission in its own inquiries and verifications.]

PART V

GENERAL PROVISIONS RELATING TO SENIOR OFFICERS

Duty to report material change

15.1 Where, following the approval of a senior officer, there arises any new material fact or circumstance which would affect the senior officer if the application for his or her approval were being considered at the time of occurrence of the new material fact or circumstance, the regulated person appointing the senior officer shall, within seven days of becoming aware of the new material fact or circumstance, notify the Commission in writing of such new fact or circumstance.

15.2 A new fact or circumstance arising in relation to a senior officer is considered material if the nature of it is such that had it occurred or been known at the time of the approval of a senior officer it would have been considered essential to the approval process. The materiality may relate, though not restricted, to any of the following:

- (a) conviction of the senior officer for a criminal offence other than a traffic offence in which he or she is sentenced to a fine;
- (b) where the senior officer is the subject of a criminal investigation or an extradition request;
- (c) liability of the senior officer in a civil suit which elicits unlawful or dishonest conduct;
- (d) bankruptcy of the senior officer;
- (e) where the senior officer has made an arrangement with his or her creditors;
- (f) where any documentary or other evidence presented in support of an application for approval of the senior officer is discovered to be false, not entirely accurate or to have been unlawfully obtained;
- (g) where the senior officer has resigned from or been relieved of his or her duty with the regulated person, irrespective of whether or not the senior officer has taken up employment with another person;
- (h) where disciplinary action has been taken against the senior officer by the regulated person or, where the senior officer is a member of a professional organisation, by that organisation; and

- (i) where the role of the senior officer has changed significantly as to diminish or impair his or her position within the regulated person.

[Explanatory Note:

(i) *The need to report material changes in respect of a senior officer after he or she has been approved as such does not necessarily mean that the Commission will rescind the approval or exercise any power of revocation that may be granted to the Commission under the FSC Act or any financial services legislation. However, it is essential for the Commission to be made aware of the new facts and circumstances to enable it to make an informed decision as part of its regulatory functions. Where the Commission rescinds or withdraws an approval, the rescission or withdrawal will take effect from the date stated with respect thereto.*

(ii) *Apart from the matters outlined in paragraph 15.2 above (which are not designed to be exhaustive, but rather to be illustrative of material changes), it is a matter of exercising sound judgment on the part of the regulated person as to whether or not any particular fact or circumstance relative to an approved senior officer is sufficiently significant to be considered a material change. Where, on the basis of available information, the regulated person is uncertain as to whether or not the information is sufficient to constitute a material change in respect of a senior officer, then the regulated person must report the matter to the Commission. All reports must be in writing and must clearly outline the new facts and/or circumstances.*

(iii) *In relation to paragraph 15.2 (i), it is a question of fact (which ought to be known to a regulated person) as to whether a role assigned to a senior officer as represented in an application for approval has changed significantly. While it is not unexpected that a senior officer may be required to assume additional responsibilities on top of those already identified with respect to the post at the time of the application for approval from the Commission, it would normally be considered to be a departure from what was represented if the role of the senior officer is amended in such a way that he or she performs significant duties than those identified in the initial application or he or she no longer performs or minimally performs the duties initially assigned to the post. Such an amendment may constitute a significant impairment or diminution of the role of the senior officer and may therefore be viewed as a material change. Where it is intended to significantly alter the role of a senior officer, whether in terms of the duties assigned or otherwise, a new application must be submitted to the Commission for approval, complying with all the requirements of these Guidelines. This would enable the Commission to make an objective assessment of the duties vis-à-vis the qualifications of the person proposed to perform those duties and indeed whether the nature of the material change properly falls within the ambit of the duties of a senior officer.*

(iv) *Nothing prevents the Commission in an inspection or otherwise from making its own inquiry and arriving at its own judgment regarding whether or*

not a particular occurrence or state of affairs in respect of a senior officer constitutes a material change which ought to have been reported.

Right to rescind an approval

16.1 The Commission may at any time after granting approval of a senior officer rescind the approval if, in its opinion, the person approved as a senior officer no longer qualifies as such, whether pursuant to any material change in his or her case referred to in paragraph 15 or for any other good reason.

16.2 Where the Commission rescinds an approval in relation to a senior officer, it shall, within seven days of the rescission, notify in writing the regulated person concerned.

[Explanatory Note:

While the reasons that may prompt a rescission of an approval by the Commission may be multiple and varied in nature, the ultimate responsibility is that of the Commission to make a determination as to whether or not it has a reason or has reasons that in its judgment it considers good enough to warrant the rescission. Where the Commission rescinds an approval, it will be expected to provide its reason or reasons for taking such a decision. It should be noted that the rescission by the Commission of any approval is without prejudice to the exercise of its power of revocation that may be provided in the Financial Services Commission Act, 2001 or any financial services legislation.]

Ceasing to be a senior officer

17.1 A person ceases to be an approved senior officer in accordance with these Guidelines if he or she is no longer in the employment of the regulated person in respect of whom he or she was approved as a senior officer.

17.2 Where a person ceases to be an approved senior officer pursuant to paragraph 17.1, the regulated person in respect of whom the person was approved as senior officer shall, within seven days (or such other period as may be specified in the Financial Services Commission Act, 2001 or an applicable financial services legislation) of the person ceasing to be a senior officer, notify the Commission in writing of that fact, outlining

- (a) the reason or reasons for the person ceasing to be in the employment of the regulated person;
- (b) the circumstance or circumstances surrounding the cessation of employment by the approved senior officer;
- (c) whether there are any specific issues with respect to the person which may relate to his or her fitness and propriety as a senior officer; and

- (d) any other matter that may be required under the Financial Services Commission Act, 2001 or an applicable financial services legislation.

Non-transferability of approval

18. The approval of a person as a senior officer is in respect of the regulated person that submits the application on his or her behalf and such approval is not transferable to any other employment that the approved person subsequently secures.

[Explanatory Note:

(i) *When an application is made by a regulated person seeking the Commission's approval of a specified person as a senior officer, the approval granted by the Commission is valid only so long as the senior officer remains with the regulated person. If the approved person changes employment, the approval granted in his or her case does not transfer with him or her to his or her new employment. This paragraph, in effect, buttresses paragraph 17 above.*

(ii) *Where the new employer wishes to employ the same person as a senior officer, the new employer must submit a separate application in respect of the same person by ensuring full compliance with the requirements of these Guidelines. It should be noted that the previous approval of a person as a senior officer with a regulated person is in itself not a guarantee that the Commission will grant subsequent approval of the person as a senior officer in respect of a different regulated person. Every application will be determined on its own merits and in accordance with the provisions of these Guidelines.]*

PART VI

PROVISIONS RELATING TO ACTUARIES, AUDITORS, ETC.

Application of this Part

19. This Part applies to persons who are required under any financial services legislation to be approved by the Commission as actuaries, auditors or other independent officers in relation to regulated persons.

[Explanatory Note

The reference to "other independent officers" is designed to take into account any current or future legislative measures which may require persons (other than senior officers, compliance officers, auditors and actuaries) who wish to be appointed to senior independent positions or require some form of licensing to obtain approval from the Commission. Such persons may also be considered for approval pursuant to the provisions of these Guidelines without the need for a separate guideline framework or amendment of these Guidelines (unless considered absolutely necessary or otherwise specified in a particular financial services legislation).]

Application of other provisions to this Part

20.1 Paragraphs 4, 9, 11, 12, 13, 14, 15 (save paragraph 15.2 (i)) and 16 will apply to an actuary, auditor or other independent officer and the reference in those paragraphs to a “senior officer” shall be construed as if it were a reference to an actuary, auditor or other independent officer as the context requires.

20.2 The accompanying Explanatory Notes to paragraphs 9, 11, 13, 14, 15 and 16 are to be given their appropriate construction as may be relevant in relation to an actuary, auditor or other independent officer.

Application for approval of actuary, auditor or other independent officer

21.1 Subject to this paragraph, every application for the approval of an actuary, auditor or other independent officer must be made by a regulated person in Form B-1 and the application must be accompanied by supporting evidence as provided in the Form and these Guidelines.

21.2 An application for an independent officer other than an actuary or auditor may be made by that officer, unless the Commission directs otherwise in writing.

21.3 In relation to an authorised representative, the application for approval shall, unless otherwise required by the Commission, be made in accordance with Form A.

21.4 The Commission may require an independent officer (other than an actuary or auditor) to submit an application for approval in accordance with Form A, but no such officer shall be required to submit an application in both Forms A and B-1.

Approval for change of auditor, and notification

22. Where

- (a) a regulated person wishes to change an auditor, it must, if the person it wishes to appoint as its new auditor
 - (i) has not been previously approved by the Commission, submit an application as prescribed in Form B-1; or
 - (ii) has previously been approved by the Commission and his or her approval has not been rescinded or revoked, submit an application as prescribed in Form B-2; and
- (b) an actuary resigns or an actuary or auditor terminates his or her appointment or has his or her appointment terminated, he or she must notify the Commission of that fact as provided in Form B-3.

Roles and duties of auditor, actuary or other independent officer

23. The roles and duties to be performed by an actuary, auditor or other independent officer shall be as prescribed in the Regulatory Code, 2009 and relevant financial services legislation relating to him or her. The Commission will take into account such requirements when dealing with applications under this Part.

Qualification and experience of actuary, auditor or other independent officer

24. The qualifications and experience required for the appointment of an actuary, auditor or other independent officer will be those prescribed in the relevant financial services legislation in relation to such actuary, auditor or other independent officer. This will, however, be in addition to taking into account the fitness and propriety of the actuary, auditor or other independent officer, in particular, with respect to his or her

- (a) honesty, integrity and reputation;
- (b) competence and capability; and
- (c) likely soundness of judgment in the discharge of duties and responsibilities assigned to him or her.

Continuation of approval

25.1 Save where there is a material change in the facts or circumstances of an actuary, auditor or other independent officer to dictate the need for a re-evaluation by the Commission of its approval and subject to anything to the contrary contained in any financial services legislation, an approval granted in respect of that actuary, auditor or other independent officer continues in force until rescinded or revoked by the Commission or as otherwise provided in a relevant financial services legislation. Subject to paragraph 25.2, this is notwithstanding that the actuary, auditor or other independent officer performs assignments or accepts employment with different regulated persons.

25.2 Where an actuary, auditor or other independent officer who is already approved by the Commission wishes to perform an assignment or accept employment with another regulated person, he or she may do so only if he or she has the qualification and competence to perform that assignment or function in the employment. Account will be taken by the Commission of the actuary's, auditor's or other independent officer's knowledge and understanding of any obligations imposed on him by any financial services or other Virgin Islands legislation.

[Explanatory Note

- (i) *The Commission will generally not require an actuary, auditor or other independent officer who has already been approved by the Commission in relation to employment with one regulated person to seek further approval if the employment with the first regulated person terminates. However, the non-requirement does not apply if there is a material change in the facts or circumstances relative to the approval granted by the Commission or if the*

Commission rescinds or revokes the approval. Thus if at any point in time there occurs a material change of facts or circumstances in relation to an approved actuary, auditor or other independent officer, the appropriate notification must be issued in order to enable the Commission to make a determination regarding the continuation of its approval.

(ii) Where an actuary, auditor or other independent officer is approved, he or she may, on the basis of that approval unless otherwise required, perform services for different regulated persons. This is, however, allowed only on the basis that the actuary, auditor or other independent officer has the knowledge and competence to perform such services. Such knowledge and competence is to be gauged, among other things, by considering whether there is an awareness and understanding of the obligations that apply with respect to the performance of the services to be undertaken. Such obligations may relate to reporting or other requirements, whether to the Commission or the relevant board of the regulated person or both. It is therefore imperative that the continuation of an approval is not taken for granted as the Commission would expect to review such approval from time to time and as necessary.

(iii) It should be noted that the continued subsistence of an approval does not absolve a regulated person, where required to do so under any financial services legislation, from seeking approval to effect an appointment or to inform or notify the Commission of the resignation or termination of employment/engagement.]

PART VIA

APPLICATION PROCESS FOR COMPLIANCE OFFICER

Submitting application for approval of a Compliance Officer

25A.1 An application for approval of a Compliance Officer shall be made by the regulated person as set out in Form A, even in cases where the prospective regulated person is awaiting approval for licensing. The following documentation must be submitted in support of the application:

- (a) certified copies of identification documents;
- (b) certified copies of professional and educational qualifications;
- (c) a resume or curriculum vitae outlining the relevant qualifications and experience of the applicant. This should include the names, addresses and telephone numbers of previous employers;
- (d) a police certificate or a sworn affidavit (where a certificate is not issued) as to the non-criminal record of the applicant for the past three years; and

- (e) professional, personal and financial references. The professional reference should be from a person who can speak to the experience and ability of the proposed Compliance Officer. The personal reference should be from a person who can vouch for the proposed Compliance Officer's conduct and character. The financial reference must be submitted by a financial institution, directly to the Commission (clearly referencing the name of the regulated person).

25A.2 A non-refundable administration fee of one hundred dollars or such amount as may be prescribed pursuant to the Financial Services Commission Act, 2001 or any financial services legislation (with the applicable fee in the latter enactments taking precedent where provided) must be submitted with the Application for approval of the appointment of a Compliance Officer.

[Explanatory Note:

(i) Applications for approval of a Compliance Officer are made pursuant to section 34(3) of the Financial Services Commission Act, 2001. However, in submitting an application for approval of the appointment of a Compliance Officer, attention must be paid to the requirements outlined in Division 4 of Part II of the Regulatory Code, 2009, including the guidelines outlined in the Explanatory Notes thereto.

(ii) If an application for approval of a Compliance Officer is submitted and approved, a separate Senior Officer application need not be submitted as, upon approval, the Compliance Officer shall be deemed to be a senior officer pursuant to section 34(4A) of the FSCA. Such approval does not restrict a person from submitting a Senior Officer application if the application is in relation to a position other than that of Compliance Officer. However, where an application for approval of appointment of a Compliance Officer is submitted along with an application for approval of senior officer in respect of the same person and the Commission approves that of the Compliance Officer, it will not consider the application of the same person for approval as a senior officer (as that would have been subsumed in the approval for appointment of Compliance Officer). Similarly, where the Commission does not give its approval for the appointment of a Compliance Officer, it will nevertheless consider the application for approval as a senior officer in respect of the same person.

(iii) An application for approval of a Compliance Officer must be submitted to the Commission as set out in Form A. Any additional information that an applicant considers relevant to the processing of an application or in relation to a proposed Compliance Officer which the Commission should know shall be provided in writing and attached to the completed application form.

(iv) A single application with a single fee may be submitted for a group of companies provided that those companies are subsidiaries of a common

parent or share common ownership (sections 1, 2, 5 and 12 of the application form must be completed by each regulated person in the group).

(v) The regulated person must indicate whether the Compliance Officer will also serve as the Reporting Officer under the Anti-money Laundering Regulations, 2008 and the Anti-money Laundering and Terrorist Financing Code of Practice, 2008 (section F(3) of the application form).

(vi) Without prejudice to paragraph (ii) above, sections 1, 2, 5, and 12 of the application form should be completed by the regulated person submitting the application; sections 3, 6, 7 and 8 must be completed by or on behalf of the proposed Compliance Officer seeking approval.

(vii) Declarations (sections 11 and 12 of the application form) are to be signed by

- A director or other individual of the regulated person communicating a board resolution to that effect; and*
- The prospective Compliance Officer seeking approval.*

(viii) Copies of documents (for example, passport identification page(s)) must be properly certified, meaning that

(a) the person certifying the document indicates that

- 1. he has seen and compared the original document verifying the identity and residential address of the prospective Compliance Officer;*
- 2. the copy of the document which he certifies is a complete and accurate copy of the original; and*
- 3. where the document contains a photograph of the prospective Compliance Officer, the photograph bears a true likeness to the individual to whom the certification relates; and*

(b) the certificate

- 4. bears the date of the certification;*
- 5. bears the signature and seal of the person certifying the document; and*
- 6. provides adequate information to enable the person certifying the document to be contacted in the event of a query or further clarification.*

Failure to adhere to these certification requirements may delay the processing of an application for approval of appointment of a Compliance Officer. Where a regulated person for good reason or reasons is unable to fully comply with the certification requirements, it must so state in writing (with any available evidence) outlining the reason or reasons. The Commission shall be the sole determiner as to whether or not any reason(s) given for not fully complying with certification requirements is good enough and thus process an application accordingly, taking into account the other requirements of these Guidelines.

- (ix) *The Commission can request additional information from the regulated person for the purposes of completeness or verification.]*

Declaration form for exemption from appointing, or applying for approval of appointment of, a Compliance Officer

25B. Where a regulated person exempted from appointing or applying to the Commission for approval of a Compliance Officer by virtue of paragraph 1 (1) of Schedule 1 of the Financial Services (Miscellaneous Exemptions) Regulations, 2010 is required under sub-paragraph (2) thereof to subscribe to a declaration, the regulated person shall subscribe to the declaration outlined in Form C of these Guidelines.

[Explanatory Note:

The Financial Services (Miscellaneous Exemptions) Regulations, 2010 provide exemptions with respect to specified regulated persons from complying with certain provisions of the FSC Act or financial services legislation. By virtue of Schedule 1 of the Regulations Class I, Class II or restricted Class II licensees (regulated persons) that do not have a physical presence in the Virgin Islands, Class III licensees, or restricted Class III trust licensees or company management licensees with three or less employees, are exempted from appointing, or applying for the Commission's approval the appointment of, a Compliance Officer. However, in order to verify their qualification for exemption, they are obligated to subscribe to and submit a declaration to the Commission in accordance with the requirements of these Guidelines. Accordingly, Form C is designed to facilitate that verification process and must be properly subscribed to before the exemption applied for can be granted by the Commission.]

Meeting the Commission's fit and proper test

25C. Before granting approval of an application for a Compliance Officer, the Commission must be satisfied that the candidate is fit and proper in accordance with the criteria established in Division 2 of Part II of the Regulatory Code, 2009.

[Explanation:

- (i) *The criteria used to determine fitness and propriety established under the Regulatory Code, 2009 will apply in relation to a Compliance*

Officer. The Commission relies on the prescribed fitness and propriety criteria for its assessment of an application for the approval of a Compliance Officer.

- (ii) It is the responsibility of the applicant to demonstrate that the proposed Compliance Officer has the relevant skills and experience to perform his or her duties. The character and integrity of a proposed Compliance Officer are also key determining factors in the processing of an application for approval.*
- (iii) The Commission expects that fully completed applications for the approval of a Compliance Officer will be processed within 21 business days. If, however, the application is not fully completed the Commission can request further information from the regulated person. This will cause a delay in the approval process and thus extend the normal processing time of the Compliance Officer application. Furthermore, where the Commission has to obtain third party confirmation in performing due diligence, this may cause a delay in the approval process.*
- (iv) Where an application is submitted by a prospective regulated person not yet approved, the Commission may consider the approval of the Compliance Officer simultaneously with the granting of approval to the regulated person. However, no such consideration will be made in the absence of the actual consideration and approval of the regulated person. Further, it is essential that the consent of the proposed Compliance Officer, and the entity or regulated person in respect of the Compliance Officer who is to be employed (if this is an entity other than the regulated person) must also be obtained and presented to the Commission.*
- (v) A regulated person can withdraw an application for the approval of a Compliance Officer at any time before the Commission has reached a decision, provided that notification is given to the Commission. A full reason must be given for the withdrawal and, if the withdrawal is due to the Compliance Officer's resignation or dismissal from the employment with the regulated person (or other entity, if this is the case), an explanation of the reason for the dismissal or resignation must be provided.*
- (vi) Where the Commission refuses an application, it will provide the applicant with the reason for its decision. A regulated person may appeal to the Financial Services Appeal Board against a decision made by the Commission, in accordance with the FSC Act.]*

Compliance Officer ceasing to be fit and proper

25D. Under section 37(1)(d)(i) of the Financial Services Commission Act, 2001, the Commission may take enforcement action against the regulated person if the

Compliance Officer is at any time not a fit and proper person to carry out his or her duties and obligations.

[Explanatory Notes:

(i) The onus is on the regulated person to ensure that the Compliance Officer is fit and proper at the application stage and on an ongoing basis. If at any point in time, in the opinion of the regulated person, the Compliance Officer ceases to be fit and proper, the regulated person is obligated to notify the Commission in writing of that fact immediately, and seek to apply for approval of the appointment of a fit and proper Compliance Officer.

(ii) In circumstances where the Commission exercises its power under section 40D of the FSC Act, the licensee is responsible to identify another suitable individual for appointment and to submit an application for approval to the Commission.]

An approval not conclusive of a future approval

25E. The Commission evaluates applications for the appointment of a compliance Officer on an individual basis. The Commission, in approving applications for the appointment of a Compliance Officer, bears in mind that the approval of an individual as Compliance Officer for the regulated person does not indicate that the individual is or will be approved to act as Compliance Officer for another regulated person.

Matters relevant to compliance function

25F. The matters outlined in Appendices A, B and C are considered fundamental to the due performance of a compliance function and every regulated person and Compliance Officer must be guided by them accordingly.

PART VII

MISCELLANEOUS

Consistency in the processing of applications

26. The Commission will, as far as possible, aim to ensure a consistency of approach in the consideration of applications and the decision making process with respect to approvals under these Guidelines. The Commission therefore reserves the right to revisit any decision that it takes with a view to reviewing any specific application to ensure consistency and compliance with the requirements of these Guidelines. Such a review will not necessarily result in an amendment of the decision already taken, save and in accordance with the requirements of these Guidelines.

Submission of applications

27. All applications seeking the approval of the Commission must be addressed and either hand delivered or mailed to

The Deputy Managing Director (Regulation)
Financial Services Commission
Pasea Estate
P. O. Box 418
Road Town,
Tortola, VG 1110
British Virgin Islands.

Savings and transitional

28. Where prior to the coming into force of these Guidelines,

- (a) a person was approved by the Commission as a senior officer of a regulated person in whose employment he or she continues, that person will continue to be an approved senior officer as if he or she were approved in accordance with these Guidelines;
- (b) a person was approved by the Commission as an actuary, auditor or other independent officer, that appointment continues to have effect until and unless rescinded or revoked by the Commission; and
- (c) an application by a regulated person for the approval of a senior officer or by an actuary, auditor or other independent officer has been submitted and pending before the Commission, such application will be dealt with as if it were submitted in accordance with the requirements of these Guidelines.

Commencement of the Guidelines

29. These Guidelines come into effect on the 2nd day of March, 2009.

FORM A

[Paragraphs 3 and 25A.1]

**APPLICATION FOR APPROVAL OF DIRECTORS, COMPLIANCE OFFICERS
AND SENIOR OFFICERS**

This application is for the approval by the Commission of:

Director Compliance Officer Senior Officer
(Please specify): _____

1. Details of Regulated Person submitting application

Name of regulated person: _____

Address: _____

Certificate/Licence No. of regulated person: _____

2. Contact Person(s)

Please provide details of the individual who should be contacted in relation to this application:

Name: _____

Position: _____ Telephone: _____

Fax: _____ E-mail: _____

3. Applicant Details

Title: _____ Surname: _____ First Name: _____ Middle Name(s): _____

Date of Birth: _____ Place of Birth: _____ Nationality: _____

Passport No.: _____ Social Security No.: _____

Other Identification No. (Please specify): _____

Previous Name(s) (if any): _____ Date of Name Change: _____

Reason for change: _____

Current address: _____

Length of time resident at current address: _____

Date first resided: _____

Previous address(es): _____
(within last 10 yrs) _____

Resided from _____ until _____

4. Details of Position Being Sought

Title for which approval is sought: _____

Proposed date effecting
employment/appointment: _____

In the case of an application for Compliance Officer, will the applicant also serve as the regulated person's Money
Laundering Reporting Officer? Yes No

5. Relationship Between Applicant and Regulated Person

What is the nature of the arrangement between the regulated person and the person proposed for appointment as
director/compliance officer/senior officer:

Employee: FT/PT Group Employee: Name of Group: _____

Contract for services: Partner/Sole Trader:

Other:

If you checked "Other", or if the applicant will be employed on a part-time basis, please provide details of terms of
employment:

Does the applicant hold any shares, or have any interest, legal or equitable, direct or indirect, in the regulated
person? Yes No

If "Yes", provide details of shareholding or other interest: _____

Is the applicant able, directly, to exercise more than 10% of the voting power of the firm? Yes No

If "Yes", please provide details: _____

6. Education

Name of Institution(s) attended	Degree/Diploma/Other Qualification Received	Date of Completion
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. Memberships in Professional Bodies

Organisation/Association	Membership Status (e.g. Student, Associate, Fellow, etc.)	Member Since	Membership Number (if applicable)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

8. Experience (Employment History for past seven years including current position if currently employed) (If there is relevant employment history spanning beyond seven years, that may be included)

(a) Position held: _____ Period: _____

Name of Employer: _____ Nature of Business: _____

Supervisor/Contact Person: _____ Name of Regulator(s) (if any): _____

Address: _____ Outline responsibilities held: _____

Tel: _____ Fax: _____ E-mail: _____

Reason for leaving: Resignation Expiration of Contract Redundancy
 Retirement Termination/Dismissal Other

If "Other", please specify: _____

If "Termination/Dismissal", please state the reason(s) for the termination or dismissal:

(b) Position held: _____ Period: _____

Name of Employer: _____ Nature of Business: _____

Supervisor/Contact Person: _____ Name of Regulator(s) (if any): _____

Address: _____ Outline responsibilities held: _____

Tel: _____ Fax: _____ E-mail: _____

Reason for leaving: Resignation Expiration of Contract Redundancy
Retirement Termination/Dismissal Other

If "Other", please specify: _____

If "Termination/Dismissal", please state the reason(s) for the termination or dismissal:

(c) Position held: _____ Period: _____

Name of Employer: _____ Nature of Business: _____

Supervisor/Contact Person: _____ Name of Regulator(s) (if any): _____

Address: _____ Outline responsibilities held: _____

Tel: _____ Fax: _____ E-mail: _____

Reason for leaving: Resignation Expiration of Contract Redundancy
Retirement Termination/Dismissal Other

If "Other", please specify: _____

If "Termination/Dismissal", please state the reason(s) for the termination or dismissal:

9. Fitness and Propriety (To be completed by the person proposed for appointment as Director/Compliance Officer/Senior Officer)

If you answer YES to any of the questions below you must supply full details by way of a written attachment to the application:

	Yes	No
Has an application for your regulatory approval ever been refused?	<input type="checkbox"/>	<input type="checkbox"/>
Have you ever been asked to resign, or been dismissed from any fiduciary position of trust?	<input type="checkbox"/>	<input type="checkbox"/>
Have you been refused, restricted in, or had suspended, the right to carry on a trade, business or profession for which a specific licence, authorisation, registration, membership or other permission is required?	<input type="checkbox"/>	<input type="checkbox"/>
Have you at any time been convicted of any criminal offence by any court in the Virgin Islands or elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>
Are you currently the subject of a criminal investigation or an extradition request?	<input type="checkbox"/>	<input type="checkbox"/>
Have you been found guilty of conducting any unauthorised regulated activity or been investigated for possible conduct of unauthorised regulated activity?	<input type="checkbox"/>	<input type="checkbox"/>
Have you, in the last ten years, been censured or disciplined by any professional body to which you belong or belonged, or been dismissed from office or employment or refused entry to any profession or occupation in the Virgin Islands or elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>
Have you, in the last ten years, filed for bankruptcy or been adjudicated bankrupt by a court in the Virgin Islands or elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>
Have you at any time failed to satisfy any debt due and payable to you as a judgment-debtor under an order of a court in the Virgin Islands or elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>
Have you in the last ten years been found liable in a civil suit which elicited dishonest or unlawful conduct on your part?	<input type="checkbox"/>	<input type="checkbox"/>
Have you, in connection with the formation, control or management of any corporate, partnership or unincorporated institution within the last ten years been adjudged by a court in any jurisdiction civilly liable for any fraud, malfeasance or other misconduct by you towards such a body or company, or towards any members thereof?	<input type="checkbox"/>	<input type="checkbox"/>
Has any body corporate, partnership or unincorporated institution with which you were associated as a director, shareholder or controller, anywhere, been compulsorily wound up or made any compromise or arrangement with its creditors where they did not receive or have not yet received full settlement of their claims, either while you were associated with it or within one year after you ceased to be associated with it?	<input type="checkbox"/>	<input type="checkbox"/>
Has any body corporate, partnership or unincorporated institution with which you were associated as a director, shareholder or controller, anywhere, been fined or censured by any securities commission, banking commission or any similar regulatory commission or body?	<input type="checkbox"/>	<input type="checkbox"/>

10. Personal Statement (must be completed by the person proposed for appointment as Director, Compliance Officer or Senior Officer)

Explain briefly why you consider yourself qualified to carry out the functions of this position. Please indicate any directorships or other positions previously or currently held and the jurisdictions in which they were/are held.

11. Declaration by the Proposed Director/Compliance Officer/Senior Officer

I, _____, do hereby declare that the personal information provided in this application is true and accurate and that all documents submitted with this application in respect thereof are authentic. I understand that providing false or misleading information in respect of this application may cause the Commission to deny the application and any subsequent applications which may be submitted on my behalf.

Signed by: _____

Name (Print): _____

Date: _____

12. Declaration by the Regulated Entity

I, _____ do hereby declare, on behalf of _____ (name of regulated person) that the information provided in this application is, to our knowledge and belief, true and accurate and that all documents submitted with this application with respect to the applicant have been verified as authentic. I understand that providing false or misleading information in respect of this application may cause the Commission to deny the application and any subsequent applications which may be submitted on behalf of this applicant, and may cause enforcement action to be taken against us.

Signed by: _____

Name (Print): _____

On behalf of: _____

Date: _____

BVI Financial Services Commission Use Only

Date Received: _____

Application Processed By: _____

Date Considered By Commission: _____

Application Status: **Approved** **Denied** **Deferred**

Reason(s) for denial or deferral (if applicable):

DOCUMENT CHECKLIST

The following documents must be submitted together with this application for the application to be considered complete.

1. Certified copies of academic and other qualifications
2. Resume or curriculum vitae:
 - i) outlining the relevant qualifications and experience of the applicant; and
 - ii) including the names, addresses and telephone numbers of previous employers
3. Current job description for position for which approval is being sought
4. Current organizational chart for regulated entity completing application
5. Notarized copies of identification documents (e.g. passport identification pages)
6. Professional reference from a person who can speak to the experience and ability of the applicant
7. Financial reference from a financial institution in respect of the applicant
8. Personal reference from an individual who has known the applicant for at least five (5) years
9. Certification of absence of criminal record
10. Certification of absence of dishonesty, bankruptcy or any arrangement with creditors

NOTES

1. This form should be completed by all regulated persons submitting applications for approval.
2. An application for approval should be made by the regulated person, not the prospective Director/Compliance Officer or Other Senior Officer, even in cases where the prospective regulated person is awaiting approval for licensing or authorisation.
3. A non-refundable administration fee of one hundred dollars must be submitted with this application form.
4. In the case of an application for Compliance Officer, a single application form with a single fee may be submitted for a group of companies, provided that those companies are subsidiaries of a common parent or share common ownership. Sections 1, 2, 5 and 12 of this form must be completed by each regulated person in the group. Please print additional pages of these sections as necessary.
5. A police report must be submitted in respect of every person proposed for approval as a director, Compliance Officer or senior officer. Where a police report cannot be obtained in a case where a criminal record exists, evidence of the nature of the criminal record, including description of proceedings, dates, circumstances and other related matters pertaining to the criminal record must be submitted with the application. If a written judgment exists and can be obtained, this must be submitted.
6. Where it is found that the applicant does possess a history of such, written information outlining the nature of the record, dates, description of proceedings, circumstances and other related matters pertaining to the record must be submitted with the application.
7. Please note that the Commission may request additional information from the applicant for the purposes of completeness or verification.
8. An approval fee is required to be paid upon approval by the Commission of this application. This fee is payable in accordance with such instrument made pursuant to the FSC Act or any regulatory legislation, or such directive as may be provided by the Commission.

FORM B-1

[Paragraph 21]

**APPLICATION FOR APPROVAL OF
ACTUARIES/ AUDITORS/ OTHER INDEPENDENT OFFICERS**

This application is for the approval by the Commission of:

Auditor **Actuary** **Other (Please specify):** _____

1. Details of Regulated Person Submitting Application

Name of regulated person: _____

Company Licence No.: _____

2. Regulated person's address : _____

3 (a) Where the Actuary, Auditor or Independent Officer is a Company or Firm:

Name of Company or Firm: _____

Company Licence No.: _____

Address of Company or Firm: _____

Name of Person Responsible: _____

3 (b) Where the Actuary, Auditor or Independent Officer is an Individual:

Title: Dr.____ Mr.____ Mrs.____ Ms.____ Miss ____

Surname: _____

First Name: _____

Middle Name(s): _____

Address: _____

4. Qualifications

Degree/Diploma/Other Qualification Attained	Name of Institution(s) attended	Date of Completion
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

5. Experience (where the person to whom the application relates is a company or firm, please state the qualifications of the individuals intended to undertake the actuarial, audit or other work)

Number of years of experience: _____

Provide details of experience: (This should relate to experience in the relevant field of actuarial, auditing or other expertise)

6. Type of Regulated Person to be Audited

Banking Insurance Investment Business Fiduciary Services

Other (please specify): _____

If regulated person holds any specific class or category of licence, please specify: _____

7. Indemnity Coverage

(a) Please indicate whether the actuary, auditor or other independent officer, or the company or firm for which he/she acts, holds Professional Indemnity insurance: Yes No

(b) If your answer to (a) is YES, please indicate the amount of indemnity coverage held by the actuary, auditor or other independent officer, or the company or firm for which he/she acts: _____

8. Consent

Has the Auditor/Actuary/Other Independent Officer consented to act in this capacity: Yes No

9. Fitness and Propriety (To be completed by the auditor/actuary or other independent officer)

If you answer YES to any of the questions below you must supply full details by way of a written attachment to the application:

	Yes	No
Have you ever been asked to resign, or been dismissed from any fiduciary position of trust?	<input type="checkbox"/>	<input type="checkbox"/>
Have you been refused, restricted in, or had suspended, the right to carry on a trade, business or profession for which a specific licence, authorisation, registration, membership or other permission is required?	<input type="checkbox"/>	<input type="checkbox"/>
Have you at any time been convicted of any criminal offence by any court in the Virgin Islands or elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>
Are you currently the subject of a criminal investigation or an extradition request?	<input type="checkbox"/>	<input type="checkbox"/>
Have you, in the last ten years, been censured or disciplined by any professional body to which you belong or belonged, or been dismissed from office or employment or refused entry to any profession or occupation in the Virgin Islands or elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>
Have you, in the last ten years, filed for bankruptcy or been adjudicated bankrupt by a court in the Virgin Islands or elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>
Have you at any time failed to satisfy any debt due and payable to you as a judgment-debtor under an order of a court in the Virgin Islands or elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>
Have you in the last ten years been found liable in a civil suit which elicited dishonest or unlawful conduct on your part?	<input type="checkbox"/>	<input type="checkbox"/>
Have you, in connection with the formation, control or management of any corporate, partnership or unincorporated institution within the last ten years been adjudged by a court in any jurisdiction civilly liable for any fraud, malfeasance or other misconduct by you towards such a body or company, or towards any members thereof?	<input type="checkbox"/>	<input type="checkbox"/>
Has any body corporate, partnership or unincorporated institution with which you were associated as a director, shareholder or controller, anywhere, been compulsorily wound up or made any compromise or arrangement with its creditors where they did not receive or have not yet received full settlement of their claims, either while you were associated with it or within one year after you ceased to be associated with it?	<input type="checkbox"/>	<input type="checkbox"/>
Has any body corporate, partnership or unincorporated institution with which you were associated as a director, shareholder or controller, anywhere, been fined or censured by any securities commission, banking commission or any similar regulatory commission or body?	<input type="checkbox"/>	<input type="checkbox"/>

10. Declaration by Actuary/ Auditor/ Other Independent Officer

(a) I, _____, do hereby declare, that I have read the legislation in relation to which this application for approval is being made, and in which the duties and responsibilities of an actuary/auditor/other independent officer* are detailed and understand the provisions set out therein.

Signed by: _____

Name (Print): _____

On Behalf Of: _____
(Where applicable)

Date: _____

(b) Please list the relevant legislation that relate to the duties and responsibilities for which this application for approval is being made:

11. Declaration by Regulated Person

I, _____, do hereby declare, on behalf of _____, that the information provided in this application is, to our knowledge, true and accurate, and that all documents submitted with this application are authentic. I understand that providing false information in respect of this application may cause the Commission to deny this and any subsequent applications which may be submitted, and may cause enforcement action to be taken against us.

Signed by: _____

Name (Print): _____

On Behalf Of: _____

Date: _____

BVI Financial Services Commission Use Only

Date Received: _____

Application Processed By: _____

Date Considered: _____

Application Status: **Approved** **Denied** **Deferred**

Reason(s) for denial or deferral (if applicable)

DOCUMENT CHECKLIST

The following documents must be submitted together with this application for the application to be considered complete.

- Three references (Banking, Professional and Personal)

In the case of an application for Auditor of Public Mutual Funds, the following information should also be provided in support of the application:

1. Company profile, including an outline of the firm's business and services (a corporate brochure will be accepted)
2. Latest accounts of the firm
3. Details of the firm's senior managers/audit managers who will be involved in or oversee the audits performed by the office
4. Statement of the accounting principles to which the firm will perform audits (this will not apply where the accounting principles outlined in the Regulatory Code apply)
5. List of the firm's mutual fund clients
6. List of the BVI mutual funds to which services will be provided
7. In the case of a non-BVI auditor, a copy of the letter of approval from the home country regulatory authority to audit domestic mutual funds, or if no such letter is issued, other evidence of approval to audit mutual funds

FORM B-2

[Paragraph 22(a)(ii)]

APPLICATION FOR APPROVAL OF CHANGE OF AUDITORS

This application applies ONLY to a change in auditor where the auditor to be appointed is already an auditor approved by the Commission. If the auditor to be appointed has not been approved by the Commission Form B-1 should be completed

1. Details of Regulated Person Submitting Application

Name of regulated person: _____

Company Licence No.: _____

2. Regulated Person's Address : _____

3. Type of Regulated Person to be Audited

Banking Insurance Investment Business Fiduciary Services

Other (please specify): _____

If the regulated person holds any specific class or category of licence, please specify:

4. Details of Change

Name of Former Auditor: _____

Address : _____

Name of Auditor
To Be Appointed: _____

Address : _____

5. Reason(s) for Change:

6. Verification

Signed by: _____

Name (Print): _____

On Behalf Of: _____

Date: _____

BVI Financial Services Commission Use Only

Date Received: _____

Application Processed By: _____

Date Considered: _____

Application Status: **Approved** **Denied** **Deferred**

Reason(s) for denial or deferral (if applicable)

FORM B-3

[Paragraph 22(b)]

**NOTIFICATION OF RESIGNATION/TERMINATION
OF ACTUARY/ AUDITOR/ OTHER INDEPENDENT OFFICER**

I/We, _____ being the duly appointed actuary/auditor/other independent officer* (please specify)_____ for _____ (regulated person) do hereby notify the Commission that I/we have ceased to act as actuary/auditor/independent officer* _____ for the said _____ with effect from _____ due to resignation/termination* of my/our services, and declare that the reasons and/or circumstances set out below are a true reflection of the events which gave rise to such resignation/termination*.

** Please delete as appropriate*

Verification

Signed by: _____

Name (Print): _____

On Behalf Of: _____

Date: _____

NOTE: A copy of your resignation or termination letter should be submitted with this form

.....
.....
.....
.....
.....

(Address of declarant)

****Delete as necessary***

APPENDIX A

[Paragraph 25F]

GUIDANCE ON CONTENT AND STRUCTURE OF THE MANUAL OF COMPLIANCE PROCEDURES

1. Under Section 34 of the FSC Act, every regulated person shall establish and maintain a manual of compliance procedures, the implementation of which shall be overseen by the Compliance Officer.

(Explanatory Note:

(i) This Guidance on the Structure of the Manual of Compliance Procedures serves as a guide with respect to the structure and content of a manual of compliance procedures and is not definitive or exhaustive. The contents of the manual of compliance procedures will depend on the nature, size and complexity of the business activity undertaken by the regulated person. It is therefore the duty of every regulated person to ensure that it has in place an appropriate manual of compliance procedures that is properly and effectively suited to its business and for the Compliance Officer to have it implemented.

(ii) The manual of compliance procedures should be reviewed periodically and any recommendations for any updates or revisions should be submitted to the board of directors of the regulated person for consideration and approval.)

3. In preparing a manual of compliance procedures a regulated person shall have regard to the provisions of Division 4 of Part II of the Regulatory Code, 2009.

(Explanatory Note:

The manual of compliance procedures should provide sufficient information concerning the legal and practical framework to enable staff to apply general principles to specific situations that may be outside the precise scope of the manual.)

3. Although the manual of compliance procedures will cover specific tasks in detail, it should not be considered as simply a “tick box” checklist of procedures. A manual of compliance procedures should, apart from the general areas outlined in section 46 of the Regulatory Code, 2009, at a minimum address the following:

- (a) **Record Keeping and Disclosure**
- (i) the records to be kept (for example, identification, transaction and accounting records);
 - (ii) how records should be kept and whether it would be useful to provide pro forma records;
 - (iii) how long records should be kept (those covered by the Anti-money Laundering Regulations, 2008 and Anti-money Laundering and Terrorist Financing Code of Practice, 2008 must be kept for a minimum period of five years);
 - (iv) the risks (including legislative and regulatory) associated with keeping incorrect or insufficient records;
 - (v) how records are to be stored (for example, hard or electronic records, in a safe, or secured filing cabinet); and
 - (vi) how and when compliance is monitored (whether by the Compliance Officer or external auditor).
- (b) **Know Your Customer (KYC), Client Acceptance and Due Diligence Procedures**
- i. the KYC, client acceptance and due diligence procedures, if not detailed in writing elsewhere (significant guidance is provided in the Anti-money Laundering and Terrorist Financing Code of Practice, 2008);
 - ii. the risks associated with a failure to apply KYC, client acceptance and due diligence procedures (in respect of customers, intermediaries and external service providers); and
 - iii. the procedures for the ongoing monitoring of clients and service providers.
- (c) **Training and Recruitment**
- i. a training manual indicating what type of programmes will be conducted;
 - ii. a staff training plan covering type and frequency of training and a succession plan (in respect of key personnel and new staff);
 - iii. who will provide staff training;
 - iv. staff training records;
 - v. the risks (legislative and regulatory) of inadequate staff training; and
 - vi. how the effectiveness of staff training will be assessed.

(d) **Compliance with Statutory Filing, Reporting and Other Regulatory Obligations**

This should cover all statutory and regulatory obligations, including the procedures for reporting suspicious transactions to the Financial Investigation Agency. The manual should also identify persons responsible for compliance in respect of each obligation referred to above and indicate the procedures for recording and monitoring compliance.

(e) **Significant Complaints Handling**

- i. the person responsible for handling complaints;
- ii. procedures for dealing with complaints (for example, the time period for an initial decision on complaints and which complaints should be referred to the Compliance Officer or other senior management);
- iii. how complaints will be investigated;
- iv. what action should be taken where complaints are found to be justified;
- v. records to be kept of complaints;
- vi. communication with complainant; and
- vii. monitoring of complaints handling.

(f) **Reporting Breaches Of Compliance**

The manual should include detailed procedures for reporting breaches of compliance, including reporting lines and penalties.

(Explanatory Note:

The specific contents of a manual of compliance procedures will vary depending on the size and complexity of the regulated person's business activities. For example, a trust company will have specific trust and company management functions, and fund managers, banks and insurance companies will all have their own specific functions. It is for each regulated person to identify the scope of the material that should be embodied in its manual of compliance procedures.)

APPENDIX B

[Paragraph 25F]

REPORTING REQUIREMENTS

1. Section 34(7)(d) of the FSC Act makes provisions for the Commission to require a Compliance Officer to prepare and submit to the Commission a report detailing the level of the regulated person's compliance with

- (a) the provisions of the FSC Act and other relevant financial services legislation;
- (b) the Regulatory Code, or any Guidance issued by the Commission, that applies to the regulated person; and
- (c) any directives or practice directions issued by the Commission that apply to the regulated person.

(Explanatory Note:

These reporting requirements provide guidance to the Compliance Officer as to the structure and contents of such a report. The report will vary depending on the type of business that the regulated person undertakes.

2. The report submitted by the Compliance Officer shall at a minimum contain the matters outlined in section 48 of the Regulatory Code, 2009.

(Explanatory Note:

The Commission may specify further details as to the manner and frequency of reporting by a Compliance Officer.)

APPENDIX C

[Paragraph 25F]

GUIDANCE NOTES ON COMPLAINT MANAGEMENT

INTRODUCTION

These Guidance Notes essentially outline the requirement for regulated persons to establish and maintain a complaints procedure for the monitoring and handling of complaints.

Regulated persons must maintain a complaint register documenting complaints received and actions taken to address each complaint. It is to be noted that the provisions of these Guidance Notes are expected to be complied with fully.

1.
 - (1) A regulated person must establish and maintain a complaints procedure for the monitoring and handling of complaints received by it in relation to the conduct of its business, activities and employees.
 - (2) A regulated person must take reasonable steps to ensure that all of its employees are aware of the complaints procedure and of the duty to comply with it.
2. The complaints procedure established and maintained by the regulated person should, at a minimum, address the following:
 - (a) the person responsible for handling complaints;
 - (b) procedures for dealing with complaints (for example, the time period for an initial decision on complaints and which complaints should be referred to the Compliance Officer or other senior management);
 - (c) how complaints are to be investigated;
 - (d) what action should be taken where complaints are found to be justified;
 - (e) records to be kept of complaints;
 - (f) communication with complainant; and
 - (g) monitoring of complaints handling.

- 3.** A complaint must be considered by an officer or employee of suitable seniority who was not concerned in the matter or, where this is not possible, by another person of appropriate standing who is not an officer or employee of the regulated person, and a substantive response must be sent to the complainant within a reasonable period after the receipt of the complaint. While the response period may vary depending on the nature, complexity and investigation to be conducted into the complaint, it is expected that a substantive response should be sent within four weeks after the date of receipt of the complaint.
- 4.** After being received, a complaint shall be investigated and, if necessary, relevant action shall be taken to rectify the complaint.
- 5.** All complaints and follow-up actions shall be duly recorded in the complaints register, as shown in paragraph 11.
- 6.** The complaints register shall include the following information:

 - (a) Complainant's name and address;
 - (b) Date when complaint was made;
 - (c) Date when complaint was reported to the person with authority to deal with complaints;
 - (d) Details of the nature of the complaint;
 - (e) How and when the complaint was investigated; and
 - (f) What action was taken regarding the complaint.
- 7.** The complaints register shall be used by all regulated persons. This register shall document complaints received by regulated persons and provide a record of the manner in which regulated persons respond to rectify complaints.
- 8.** The complaints register may be in summary form provided that a full record is kept elsewhere. A full record of each complaint and of the action taken in response to it shall be kept by the regulated person for at least five years after the date of the last response.
- 9.** The details of each complaint made to the regulated person, including investigations into the complaint and action(s) taken to rectify the subject matter of the complaint, shall be reviewed by senior management. Senior management shall sign off on the complaint form after it has been completed and reviewed.
- 10.** If a customer registers a complaint with the regulated person and it is not dealt with satisfactorily in the first instance, the customer may issue the complaint to any member of senior management.

11. The complaints register shall include the following information:

COMPLAINT REGISTER	
Complainant's Name	
Complainant's Address	
Date Complaint Made	
Date Complaint Reported to Person with Authority to deal with Complaints	
Details of the Nature of Complaint	
Details of Investigation into Complaint	
Action Taken	

Senior Management

Date

ISSUED by the Financial Services Commission this 2nd day of February, 2009.

Sgd:
Robert Mathavious
Managing Director/CEO
Financial Services Commission