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A photograph of a modern glass skyscraper with a grid-like facade, reflecting the sky and surrounding environment. The building is partially obscured by a semi-transparent blue overlay containing text.

British Virgin Islands Securities and Investment Business Act and Related Legislation

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Preface

As a service to our clients, we have prepared this compendium of the Securities and Investment Business Act (Revised Edition 2020) (as amended), together with related rules, regulations and BVI FSC Guidelines. All amendments have been incorporated, to-date.

This compendium takes into account changes and updates to the legislation as set out in the following recent revisions: the Securities and Investment Business Act (Revised Edition 2020), the Mutual Funds Regulations (Revised Edition 2020), the Mutual Funds (Foreign Funds) Regulations (Revised Edition 2020), the Private Investment Funds Regulations (Revised Edition 2020), the Investment Business (Approved Managers) Regulations (Revised Edition 2020), the Investment Business (Registers) Regulations (Revised Edition 2020), the Securities and Investment Business (Incubator and Approved Funds) Regulations (Revised Edition 2020), the Financial Services (Fees) Regulations (Revised Edition 2020), the Financial Services (Miscellaneous Exemptions) Regulations (Revised Edition 2020), the Securities and Investment Business (Recognised Jurisdictions) Notice (Revised Edition 2020), and the Public Funds Code (Revised Edition 2020).

The most recent legislative update includes amendments to the Securities and Investment Business Act, Revised Edition 2020 made by the Securities and Investment Business (Amendment) Act, 2023, in force 22 March 2023, and amendments to the Schedule to the Financial Services (Fees) Regulations, Revised Edition 2020 (select SIBA fees) made by the Financial Services (Fees) (Amendment) Regulations, 2023, in force 1 April 2023.

The BVI Financial Services Commission issued the Private Investment Funds Regime Guidelines, the Fund Safekeeping Arrangements Guidelines, and the Fund Financial Guidelines, effective 31 December 2019, and these have been added to this consolidation. The Approved Investment Managers Guidelines, effective 2012 are also included. The forms to these Guidelines have not been included and are available from your Conyers contact upon request, or by visiting the BVI FSC website: <https://www.bvifsc.vg/library/guidance>.

Part II - Public Issues of Securities sections 23 – 39 of the Securities and Investment Business Act, 2010 are not in force.

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British Virgin Islands

Revised: April 2023

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This compendium is intended for informational purposes only. While every effort has been made to ensure the accuracy of the legislation and related material, and it is believed that the only errors are those contained in the official legislation itself (which errors have been faithfully reproduced), no responsibility is assumed for the content. Reference should be made to the official versions of the legislation for an authoritative statement of the law and any subsequent amendments. Nothing in this compendium is to be considered as creating an attorney-client relationship or indeed any contractual relationship or as rendering legal or professional advice for any specific matter. Readers are responsible for obtaining such advice from their own legal counsel. No client or reader should act or refrain from acting on the basis of any content within this document without first obtaining matter-specific legal and/or professional advice. Conyers accepts no responsibility for any loss or damage, howsoever incurred, which may result from accessing or reliance on this content.

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VIRGIN ISLANDS

SECURITIES AND INVESTMENT BUSINESS ACT

REVISED EDITION 2020 (AS AMENDED)

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014, and updated with amendments by Conyers

(Acts 2 of 2010, 13 of 2012, 7 of 2015 and 12 of 2019, S.I.s 42/2010 and 3/2011, and Act 5 of 2023)

An Act to provide for the licensing, regulation and supervision of investment business, the registration of public mutual funds, the recognition of professional and private mutual funds and the control of offers of securities to the public in the Virgin Islands, to create offences relating to insider trading and market abuse and to provide for connected and consequential matters.

[Commencement: 17 May 2010, except for Part II]

PRELIMINARY PROVISIONS

1. Short title

This Act may be cited as the Securities and Investment Business Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“affiliate”, with respect to an undertaking, means another undertaking that is in the same group as that undertaking;

“allot”, in relation to a security, includes issuing, selling, transferring or assigning the security;

“approved form” means a form approved by the Commission under the Financial Services Commission Act;

“auditor” means a person qualified under the Regulatory Code to act as an auditor;

“buy” includes to acquire;

“BVI business company” means a company that is on the Register of Companies maintained under the BVI Business Companies Act;

“capital resources”, with respect to a licensee, means the licensee’s capital resources calculated in accordance with the Regulatory Code;

“category” and “sub-category”, in relation to an investment business licence, mean a category or sub-category of investment business as specified in Schedule 3;

“client”, in relation to a licensee, means a person, whether resident in or outside the Virgin Islands, to whom the licensee provides, agrees to provide or has provided a service that constitutes investment business, and includes a mutual fund;

“client assets” means investments and other assets that, in the course of its licenced business, a licensee holds, has custody or control of or is otherwise responsible for that—

- (a) belong to a client or potential client of the licensee; or
- (b) are held by the licensee on behalf of a client or potential client;

“commencement date” means the date when this Act comes into force;

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

“company” means a body corporate, wherever incorporated, registered or formed, and includes a BVI business company;

“controlling interest”, in relation to a licensee, means the ownership or interest in the licensee or in any holding company of the licensee which entitles a person to exert influence over a licensee, or any holding company of the licensee, and includes a person who¹

- (a) has more than 50% of the voting rights of the licensee;
- (b) has a significant interest in the licensee which, although not constituting 50% of the voting rights of the licensee (in aggregate or otherwise), gives the person a considerable advantage in the voting rights of the licensee;
- (c) has an influence over the activities of the licensee without having a significant interest; or
- (d) makes instructions to a director or senior officer of the licensee to which that director or senior is accustomed to acting;

“corporate licensee” means a licensee that is a company;

“country” includes a territory;

“Court” means the High Court;

“director”, in relation to an undertaking, means a person appointed to direct the affairs of the undertaking and includes—

- (a) a person who is a member of the governing body of the undertaking; and
- (b) a person who, in relation to the undertaking, occupies the position of director, by whatever name called;

“document” means a document in any form and includes—

- (a) any writing or printing on any material;
- (b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium or device, including discs and tapes;
- (c) books and drawings; and
- (d) a photograph, film, tape, negative, facsimile or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced, and, without limiting the

generality of the foregoing, includes any court application, order and other legal process and any notice;

“dollar” or “\$” means the lawful currency of the United States of America;

“financial statements” has the meaning specified in section 69;

“financial year”, in relation to financial statements, has the meaning specified in section 68;

“foreign company” means a company that is incorporated, formed or registered outside the Virgin Islands, but excludes a BVI business company;

“foreign undertaking” means—

- (a) a foreign company; or
- (b) an undertaking other than a foreign company that has its principal office outside the Virgin Islands;

“fund interest” means the rights or interests, however described, of the investors in a mutual fund with regard to the property of the fund, but does not include a debt;

“group”, in relation to an undertaking (the “first undertaking”), means the first undertaking and any other undertaking that is—

- (a) a parent of the first undertaking;
- (b) a subsidiary of the first undertaking;
- (c) a subsidiary of a parent of the first undertaking;
- (d) a parent of a subsidiary of the first undertaking;
- (e) an undertaking in which the first undertaking, or an undertaking specified in paragraphs (a) to (d), has a significant interest;

“instrument” includes any record, whether or not in the form of a document;

“investment” means an asset, right or interest specified in Schedule 1;

“investment activity” has the meaning specified in section 3;

“investment business” has the meaning specified in section 3;

“Investment Business Regulations” [DELETED]²;

“investor”, in relation to a mutual fund, means a person who owns or holds fund interests issued by a mutual fund;

“joint enterprise” means an enterprise into which 2 or more persons enter for a commercial purpose related to a business carried on by those persons, other than an investment business, and, where one of the participants is an undertaking, each undertaking in the same group as the first undertaking is regarded as a participant in the joint enterprise;

“licence” means an investment business licence issued under section 6;

“licenced fund administrator” means a licensee holding a category 6, sub- category B licence;

“licenced fund manager” means a licensee holding a category 3, sub-category B licence;

“licensee” means a person holding a licence;

“licensed private investment fund manager” means a licensee holding a category 3, sub-category E licence that provides investment management services to a private investment fund or a fund with equivalent characteristics in another jurisdiction;³

“listing rules” has the meaning specified in the Public Issuers Code;

“Market Abuse Regulations” means the Market Abuse Regulations made under section 94;

“market operator” has the meaning specified in the Public Issuers Code;

“mutual fund” or “fund” has the meaning specified in section 40;

“Mutual Fund Regulations” means the Mutual Fund Regulations made under section 62;

“parent”, in relation to an undertaking (the “first undertaking”), means another undertaking that—

- (a) is a member of the first undertaking and whether alone, or under an agreement with other members, is entitled to exercise a majority of the voting rights in the first undertaking;
- (b) is a member of the first undertaking and has the right to appoint or remove the majority of the directors of the first undertaking;
- (c) has the right to exercise a dominant influence over the management and control of the first undertaking pursuant to a provision in the constitutional documents of the first undertaking;
- (d) is a parent of a parent of the first undertaking; or
- (e) is an undertaking that the Commission, by written notice, has directed shall be regarded as a parent of the first undertaking;

“participant”, in relation to a joint enterprise, means a person who has entered into the joint enterprise;

“partnership” includes—

- (a) a limited partnership, wherever situated; and
- (b) a partnership constituted or formed under the law of a country outside the Virgin Islands;

“person” means an individual or an undertaking and includes a mutual fund, however constituted;

“prescribed” means prescribed in the Regulatory Code, or the Public Issuers Code, as the case may be;

“private fund” has the meaning specified in section 40;

“private investment fund” has the meaning specified in section 63A (1);⁴

“professional fund” has the meaning specified in section 40;

“prospectus” has the meaning specified—

- (a) in relation to a public fund, in section 40; or
- (b) in relation to an issuer that is not a mutual fund, in section 24;

“public fund” has the meaning specified in section 40;

“Public Issuers Code” means the Code issued by the Commission with respect to public issuers under section 39;

“recognised exchange” means an investment exchange that is prescribed as a recognised exchange in the Regulatory Code;

“recognised foreign fund” has the meaning specified in section 40;

“registers” means the registers required to be maintained by the Commission under section 99;

“Registrar of Corporate Affairs” means the Registrar of Corporate Affairs appointed under section 229 (1) of the BVI Business Companies Act;

“Regulatory Code” means the Regulatory Code issued by the Commission under the Financial Services Commission Act;

“security”—

- (a) for the purposes of Part V, has the meaning specified in Schedule 5; and
- (b) for the purposes of any other provision of this Act, means—
 - (i) a share of any kind;
 - (ii) a debt obligation of any kind;
 - (iii) an option, warrant or right to acquire a share or debt obligation; or
 - (iv) an interest or right specified in the Public Issuers Code as a security,

but excludes an interest or right that the Public Issuers Code specifies is deemed not to be a security;

“segregated portfolio company” means a company incorporated or registered as a segregated portfolio company under Part VII of the BVI Business Companies Act;

“sell” includes to dispose of;

“senior officer” has the meaning prescribed in the Regulatory Code;

“significant interest”, in relation to an undertaking, means a holding or interest in the undertaking or in any parent of the undertaking held or owned by a person, either alone or with any other person and whether legally or equitably, that entitles or enables the person, directly or indirectly⁵

- (a) to control 10% or more of the voting rights of the undertaking;
- (b) to a share of 10% or more in any distribution made by the undertaking;
- (c) to a share of 10% or more in any distribution of the surplus assets of the undertaking; or
- (d) to appoint or remove one or more directors of the undertaking;

“subsidiary”, in relation to an undertaking (the “first undertaking”), means an undertaking of which the first undertaking is a parent;

“trustee”, in relation to a unit trust, means the person holding the property of the fund on trust for the investors;

“undertaking” means—

- (a) a company;
- (b) a partnership; or
- (c) an unincorporated association;

“unit trust” means a mutual fund under which the property of the fund is held on trust for the investors.

(2) Where the Commission is permitted or required by this Act to consider the “public interest”, the “public” includes—

- (a) the public inside and outside the Virgin Islands; and
- (b) any persons who have a legitimate interest in the decision to be made by the Commission including, in the case of a mutual fund, its investors or potential investors.

(3) For the purposes of this Act, one person (the first person) has a close connection with another person (the second person) if the first person is—

- (a) where the second person is an undertaking—
 - (i) a director or employee of the second person;
 - (ii) an affiliate of the second person;
 - (iii) a relative of an individual who is, or was, a director or employee of the second person;
- (b) where the second person is an individual, a relative of the second person;
- (c) such other person as may be specified, in relation to issuers, in the Public Issuers Code or, in relation to mutual funds, in the Mutual Fund Regulations.

(4) An individual’s relatives are his or her parents, spouse, siblings, children (including step-children) and their descendants.

(5) Unless the context otherwise requires, any reference to this Act includes a reference to any regulations made under this Act.

3. Meaning of “investment activity” and “investment business”

A person carries on investment business if, by way of business, he or she engages in an activity that—

- (a) is of a kind specified as an investment activity in Schedule 2, Part A; and
- (b) is not excluded by Schedule 2, Part B.

PART I - INVESTMENT BUSINESS

UNAUTHORISED INVESTMENT BUSINESS

4. Prohibition on unauthorised investment business

- (1) Subject to subsections (2) and (3), no person shall carry on, or hold himself or herself out as carrying on, investment business of any kind in or from within the Virgin Islands unless he or she holds a licence authorising him or her to carry on that kind of investment business.
- (2) For the purposes of, but without limiting, subsection (1)—
- (a) a person carries on investment business in the Virgin Islands if—
 - (i) he or she occupies premises in the Virgin Islands for the purposes of carrying on investment business; or
 - (ii) he or she solicits a person in the Virgin Islands for the purpose of offering to provide a service that constitutes investment business; and
 - (b) a BVI business company that carries on, or holds itself out as carrying on, investment business outside the Virgin Islands is deemed to carry on, or hold itself out as carrying on, investment business from within the Virgin Islands.
- (3) Subsection (1) does not apply to any person excluded under Schedule 2, Part C in such circumstances and to such extent as may be specified.

LICENSING

5. Categories of, and restrictions on, investment business licence

An investment business licence—

- (a) shall be issued in one or more of the categories specified in Schedule 3 and shall state the categories and sub-categories of investment business that the licensee is authorised to carry on;
- (b) is subject to such conditions as may be imposed by the Commission under section 40B of the Financial Services Commission Act; and
- (c) does not authorise the holder to carry on any category or sub- category of investment business that is not specified on the licence.

6. Application for, and issuance of, licence

- (1) A person may make an application to the Commission for an investment business licence.
- (2) Subject to subsections (3) and (4), the Commission may issue a licence to an applicant if it is satisfied that—
- (a) the applicant intends, if issued with a licence, to carry on the relevant investment business;
 - (b) the applicant satisfies the requirements of this Act and the Regulatory Code with respect to the application;
 - (c) the applicant will, on the issuance of the licence—

- (i) have capital resources at least equal to the amount that it is required to maintain under section 8(1); and
 - (ii) otherwise be in compliance with this Act, the Regulatory Code and any practice directions applicable to it;
 - (d) the applicant, its directors and senior officers and any persons having a significant interest or controlling interest in the applicant satisfy the Commission's fit and proper criteria;⁶
 - (e) the organisation, management and financial resources of the applicant are, or on the issuance of the licence will be, adequate for the carrying on of the relevant investment business; and
 - (f) issuing the licence is not against the public interest.
- (3) Without limiting the discretion given to the Commission under subsection (2), the Commission may refuse to issue a licence to an applicant if it is of the opinion that any person having a share or other interest in the applicant, whether legal or equitable, does not satisfy the Commission's fit and proper criteria.
- (4) For the purposes of subsection (2), "relevant investment business" means the category and sub-category of investment business that the applicant will be authorised to carry on if a licence is issued to it.
- (5) A licence issued under subsection (2) shall be in writing and in the approved form and shall comply with section 5.

FINANCIAL RESOURCE REQUIREMENTS

7. Maintenance of financially sound condition

- (1) A licensee shall, at all times, maintain its business in a financially sound condition by—
- (a) having assets;
 - (b) providing for its liabilities; and
 - (c) generally conducting its business,

so as to be in a position to meet its liabilities as they fall due.

- (2) If a licensee forms the opinion that it does not comply with subsection (1), it shall forthwith notify the Commission in writing.

8. Maintenance of capital resources

- (1) Without limiting section 7 and subject to subsection (4), where the Regulatory Code prescribes a minimum capital resource requirement with respect to a category or sub-category of licence, a licensee holding a licence in such category or sub-category shall ensure that at all times its capital resources are maintained in an amount not less than the prescribed minimum.

- (2) If the Commission considers it appropriate, having regard to the nature and extent of the investment business carried on, or proposed to be carried on, by a licensee, the Commission may direct the licensee—

- (a) in the case of a licensee to whom subsection (1) applies, to increase its capital resources to an amount higher than the prescribed minimum applicable to the licensee; or
 - (b) in the case of a licensee to whom subsection (1) does not apply, to maintain its capital resources in an amount not less than the amount specified in the direction.
- (3) A direction issued under subsection (2) shall specify a reasonable period for compliance with the direction.
- (4) Notwithstanding subsection (1), where the Commission issues a direction under subsection (2) to a licensee, the licensee shall ensure that at all times its capital resources are maintained in an amount not less than the amount specified in the direction.
- (5) If the capital resources of a licensee fall below the amount that it is required to maintain under subsection (1) or (4), it shall forthwith notify the Commission in writing.

9. Shares

- (1) Subject to subsection (2), every share in a corporate licensee issued after the commencement date shall be fully paid for in cash on issue.
- (2) A share in a corporate licensee may be issued for a consideration other than cash—
- (a) where permitted by the Regulatory Code; or
 - (b) where authorised by the Commission in writing, on the application of the licensee.

OBLIGATIONS OF, AND RESTRICTIONS ON, LICENSEES

10. Appointment of directors and senior officers

- (1) A licensee shall not appoint a director or senior officer without the prior written approval of the Commission.
- (2) The Commission shall not grant approval under subsection (1) unless it is satisfied that the person concerned—
- (a) satisfies the Commission's fit and proper criteria; and
 - (b) complies with the requirements of any guidelines issued by the Commission relating to the approval of directors and senior officers.

11. Disposing of, or acquiring significant interest in, licensee

- (1) A person owning or holding a significant interest or controlling interest in a licensee shall not, whether directly or indirectly,⁷ sell, transfer, charge or otherwise dispose of his or her interest in the licensee, or any part of his or her interest, unless the prior written approval of the Commission has been obtained.⁸
- (2) A person shall not, whether directly or indirectly, acquire a significant interest or controlling interest in a licensee unless the prior written approval of the Commission has been obtained.⁹
- (3) A licensee shall not, unless the prior written approval of the Commission has been obtained—
- (a) cause, permit or acquiesce in a sale, transfer, charge or other disposition referred to in subsection (1);

- (b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation of its share capital that results in—¹⁰
 - (i) a person acquiring a significant interest or controlling interest in the licensee; or
 - (ii) a person who already owns or holds a significant interest or controlling interest in the licensee, increasing or decreasing the size of his interest.

(3A) Where a sale, transfer, charge or other disposition referred to in subsection (1) takes place, the licensee shall, for the purposes of subsection (3), be deemed to have caused, permitted or acquiesced in the sale, transfer, charge or other disposition referred to in subsection (1).¹¹

(4) An application to the Commission for approval under subsection (1), (2) or (3) shall be made by the licensee and any fees payable for the application and any approval of the application in that regard shall be paid by the licensee.¹²

(5) The Commission shall not grant approval under subsection (1), (2) or (3) unless it is satisfied that, following the acquisition or disposal, any person who will acquire a significant interest or controlling interest in the licensee satisfies the Commission's fit and proper criteria.¹³

(6) Where the Commission, in exercise of its powers under the Financial Services Commission Act or any other enactment, is minded to take enforcement action for the breach of subsection (1) or (2), such enforcement action may be taken against the licensee as if the licensee has caused, permitted or acquiesced in the sale, transfer, charge or other disposition or in the acquisition as referred to in the subsection.¹⁴

12. Authorisation required with respect to offices and subsidiaries

A licensee shall not, without the prior written approval of the Commission—

- (a) open, maintain or carry on business through a branch or a representative or contact office outside the Virgin Islands; or
- (b) incorporate, form or acquire a subsidiary.

13. Professional indemnity and other insurance

A licensee shall at all times maintain such professional indemnity and other insurance as may be prescribed.

14. Change of name

(1) A licensed fund manager and a licensed fund administrator shall notify the Commission within 21 days of any change in its corporate name or the name under which it carries on business.

(2) A licensee, other than one to which subsection (1) applies, shall not, without the prior written approval of the Commission having been obtained, change its corporate name or the name under which it carries on business.

14A. Undertaking new fund business¹⁵

(1) A licensed fund manager and a licensed private investment fund manager shall notify the Commission within 21 days of commencing to act as an investment manager of a mutual fund or a private investment fund, or a fund with equivalent characteristics to a mutual fund or a private investment fund.

(2) Notification under subsection (1) shall include the following in relation to any fund undertaken—

- (a) the name of the fund;
- (b) the jurisdiction and date of incorporation, registration or formation of the fund; and
- (c) confirmation as to whether the fund is—
 - (i) a private fund;
 - (ii) a professional fund;
 - (iii) a public fund;
 - (iv) a private investment fund; or
 - (v) a fund with equivalent characteristics of one of the types of funds specified in sub-paragraphs (i) to (iv).

15. Commission may require licensee to change name under which it carries on business

The Commission may, by written notice, direct a licensee to change the name under which it carries on business if the Commission is of the opinion that the name is—

- (a) identical to that of any other person, whether within or outside the Virgin Islands, or which so nearly resembles that name as to be likely to deceive; or
- (b) otherwise misleading or undesirable.

16. Bearer shares

- (1) A licensee shall not issue any bearer shares.
- (2) For the purposes of subsection (1), “bearer share” means—
 - (a) in the case of a corporate licensee, a share represented by a certificate which states that the bearer of the certificate is the owner of the share, and includes a share warrant to bearer; and
 - (b) in the case of any other licensee, a certificate of ownership interest in the licensee that is issued in bearer form.

CORPORATE GOVERNANCE

17. Maintenance of records by licensee

- (1) A licensee shall keep records that are sufficient—
 - (a) to show and explain its transactions;
 - (b) at any time, to enable its financial position to be determined with reasonable accuracy;
 - (c) to enable it to prepare such financial statements and make such returns as it is required to prepare and make under this Act and the Regulatory Code; and
 - (d) to enable, if applicable, its financial statements to be audited in accordance with this Act.

- (2) The Regulatory Code may prescribe—
- (a) the form, manner and place in which the records specified in subsection (1) are to be maintained;
 - (b) other records required to be maintained by a licensee and the form, manner and place in which such records are to be maintained.
- (3) A licensee shall retain the records required to be maintained under this section for a period of at least 5 years after the completion of the transaction to which the records relate.
- (4) Subsection (3) applies to a licensee after the cancellation or revocation of its licence as if its licence had not been cancelled or revoked.

18. Client assets

- (1) A licensee shall—
- (a) ensure that client assets are identified, or identifiable, and appropriately segregated and accounted for; and
 - (b) make arrangements for the proper protection of client assets.
- (2) Without limiting subsection (1), the Regulatory Code may provide for the holding, control, and handling of, and the accounting for, client assets by a licensee and, in particular, it may provide for—
- (a) the manner in which client assets are to be identified, or made identifiable, segregated, accounted for and protected;
 - (b) the opening and maintenance of client accounts and the payment of moneys into client accounts;
 - (c) the audit of client accounts and records keeping requirements concerning client assets;
 - (d) how interest and other moneys earned with respect to client assets is to be dealt with;
 - (e) circumstances in which client assets held by a licensee are deemed to be held on trust for the client; and
 - (f) such other matters relating to the custody and control of client assets by a licensee as the Commission considers appropriate.

CONTROL OF ADVERTISEMENTS AND CONDUCT OF BUSINESS

19. Misleading advertisements, statements, etc.

- (1) A licensee shall not, in relation to any activity that constitutes investment business, whether or not carried on by him or her and whether or not the activity is one that he or she is authorised to carry on, or in relation to any investment—
- (a) issue, or cause or permit to be issued, an advertisement, brochure or similar document or make, or cause or permit to be made, a statement, promise or forecast, which he or she knows, in a material particular—
 - (i) is false or misleading; or

- (ii) contains an incorrect statement of fact;
 - (b) issue, or cause or permit to be issued, an advertisement, brochure or similar document or make, or cause or permit to be made, a statement, promise or forecast, where he or she is reckless as to whether the advertisement, brochure, document, statement, promise or forecast, in a material particular—
 - (i) is false or misleading; or
 - (ii) contains an incorrect statement of fact;
 - (c) dishonestly conceal a material fact, whether in connection with an advertisement, brochure or similar document, statement, promise or forecast, or otherwise.
- (2) If the Commission is of the opinion that an advertisement, brochure or other similar document issued, or to be issued, or a statement, promise or forecast made, or to be made, by or on behalf of a licensee contravenes subsection (1) or is contrary to the public interest, it may—
- (a) direct the licensee in writing not to issue the document, or not to make the statement, promise or forecast, or to withdraw it; or
 - (b) grant written approval to the licensee to issue the document, or make the statement, promise or forecast, with such changes as the Commission may specify.
- (3) Subsection (2) does not limit the powers of the Commission to take enforcement action under Part V of the Financial Services Commission Act.

20. Regulatory Code may provide for advertising, etc.

The Regulatory Code may—

- (a) prohibit the issue of advertisements, brochures or similar documents relating to investment activities of a particular type or description, whether as to the contents of the advertisement, brochure or other document or the persons for whom they are intended; and
- (b) provide for—
 - (i) the issue, form and content of advertisements, brochures or similar documents; and
 - (ii) the making of statements, promises and forecasts, relating to investment business.

ADMINISTRATION

21. Investment business regulations

- (1) The Cabinet may, on the advice of the Commission make regulations in relation to investment business and for the administration of this Act by the Commission as it relates to investment business.¹⁶
- (2) Regulations made under subsection (1) may—¹⁷
- (a) be made for the purposes of this Act or for specified provisions of this Act;

- (b) make different provision in relation to different persons, circumstances or cases; and
 - (c) subject to subsection (3), provide for offences and penalties for any contravention of or failure to comply with specified requirements of the regulations.
- (2A) Without prejudice to the generality of subsection (2) but subject to subsection (2B), regulations made under subsection (1) may, in particular—¹⁸
- (a) establish a regime for the approval by the Commission of persons who conduct or engage in certain investment business as may be specified in the regulations, and such persons shall not be required to be licensed under this Act so long as they continue to be approved or deemed approved as such by the Commission; and
 - (b) disapply or limit the scope of application of this Act to any person approved or deemed approved by the Commission by virtue of paragraph (a).
- (2B) Regulations made under subsection (2A)¹⁹—
- (a) shall outline the functions that may be performed by a person approved by the Commission as mentioned in subsection (2A) (a);
 - (b) shall take into account risks that may be posed by or associated with approving a person mentioned in subsection (2A) (a) not requiring a licence under this Act and provide such restrictions and conditions as may be considered necessary;
 - (c) may provide an asset threshold that a person mentioned in subsection (2A) (a) may have under his or her management;
 - (d) may require a person mentioned in subsection (2A) (a) to file with the Commission periodic returns on such matters as may be considered necessary;
 - (e) may require the keeping and maintenance of a register of persons mentioned in subsection (2A) (a); and
 - (f) may provide for such other matters as may be considered necessary to the efficient and effective functioning of a regime of persons mentioned in subsection (2A) (a).
- (3) A penalty provided for an offence under the regulations made under subsection (1)²⁰ may not exceed—
- (a) in the case of a fine, the sum of \$20,000; and
 - (b) in the case of a period of imprisonment, the term of 3 years.

22. Regulatory Code

- (1) Without limiting the powers of the Commission under this Act or the Financial Services Commission Act, the Regulatory Code may specify or provide for—
- (a) systems and controls, including internal controls, to be maintained by licensees;
 - (b) policies and procedures to be maintained by licensees with respect to the assessment and management of risk;
 - (c) principles and rules of corporate governance to be adhered to by licensees;
 - (d) the duties and responsibilities of the directors of a licensee;
 - (e) prudential requirements not inconsistent with this Act applicable to licensees;

- (f) business conduct rules to be followed by licensees; and
 - (g) circumstances in which an individual is required to be approved by the Commission for appointment by a licensee, whether as an employee, as an agent or in such other capacity as may be specified.
- (2) The Regulatory Code may—
- (a) make provision in relation to different persons or class of persons, circumstances or cases;
 - (b) contain such incidental, supplemental and transitional provisions as the Commission considers necessary or expedient.

[Part II of SIBA, sections 23-39 are not in force. This Part is governed by the Public Issuers Code ("the Code"), which has yet to be enacted.]

PART II - PUBLIC ISSUES OF SECURITIES [PART II -SECTIONS 23 – 39 NOT IN FORCE]

SCOPE AND INTERPRETATION

23. Scope of this Part

This Part does not apply with respect to a security—

- (a) *issued, to be issued, or guaranteed by the Government of the Virgin Islands;*
- (b) *issued, or to be issued, by a person—*
 - (i) *registered, or required to be registered, under Part III as a public fund; or*
 - (ii) *recognised, or required to be recognised, under Part III as a private fund or a professional fund; or*
- (c) *issued, or to be issued, by such persons as may be specified in the Public Issuers Code.*

24. Interpretation for this Part

- (1) *For the purposes of this Part, unless the context otherwise requires—*

“advertisement” means any form of communication that—

- (a) *relates to a specific offer to the public to subscribe for securities; and*
- (b) *is intended to specifically promote the potential subscription of securities;*

“foreign listed issuer” means a foreign company, any securities of which are approved for listing on a recognised exchange;

“issuer”, in relation to a security, means the person by whom the security is, or is to be, issued;

“listed”, in relation to a security, means that the security is listed on a recognised exchange;

“listed issuer” means a BVI business company, any securities of which are approved for listing on a recognised exchange;

“offer” includes—

- (a) *an invitation and any proposal or invitation to make an offer;*
- (b) *an offer made through a licensee or any other person;*
- (c) *an offer however communicated or made;*

“promoter”, in relation to an offer of securities to the public, means a person other than the issuer who, whether acting alone or in conjunction with others, is instrumental in organising the offer of the securities to the public;

“prospectus” means a document that contains an offer of securities to the public for purchase or subscription and, where appropriate, includes a supplementary prospectus;

“public issuer” means an issuer, with respect to which, a prospectus has been registered under section 28;

“public offer” is to be construed in accordance with section 25;

“qualified investor” means a person specified as a qualified investor in Schedule 4;

“registered prospectus” means a prospectus that has been registered by the Commission under section 28, the registration of which has not been cancelled and, where appropriate, includes a supplementary prospectus that has been registered by the Commission under section 29; and

“supplementary prospectus” means a document containing details of amendments to a registered prospectus.

(2) *A reference in this Part to an offer of securities to the public shall be construed as including a reference to distributing an advertisement, a prospectus, a registered prospectus or an application form for the subscription of securities.*

CONTROL OF PUBLIC OFFERS

25. Prohibition on public offer of securities

(1) *Subject to subsection (4), no security shall be offered to the public in the Virgin Islands for purchase or subscription by or on behalf of an issuer, unless—*

- (a) *the offer is contained in a registered prospectus; and*
- (b) *the offer complies with such requirements as may be specified in the Public Issuers Code.*

(2) *For the purposes of subsection (1)—*

- (a) *an offer of securities to any person in the Virgin Islands is an offer of the securities to the public in the Virgin Islands;*
- (b) *a security is offered to a person in the Virgin Islands if the offer is received by the person in the Virgin Islands; and*
- (c) *no regard shall be had to—*
 - (i) *the place where the allotment arising out of the offer occurs; or*
 - (ii) *where the issuer is incorporated, formed or registered or where it carries on business.*

(3) *Notwithstanding subsection (2)(b), the fact that a BVI business company receives an offer of securities at its registered office in the Virgin Islands does not, of itself, constitute receipt of the offer in the Virgin Islands.*

(4) *Subsection (1) does not apply to an offer that—*

- (a) *is deemed not to be a public offer under section 26(1); or*
- (b) *is exempted by the Public Issuers Code in accordance with section 26(4).*

26. Circumstances in which offer not public offer

(1) *An offer of securities to a person is deemed not to constitute an offer of securities to the public if—*

- (a) *the offer is made to, or directed exclusively at, one or more of the following—*
 - (i) *a qualified investor;*
 - (ii) *a person having a close connection with the issuer;*
 - (iii) *the Government of the Virgin Islands;*
- (b) *the minimum aggregate purchase price payable by a person for securities acquired by him or her pursuant to the offer—*
 - (i) *must be paid before the securities are issued; and*
 - (ii) *equals or exceeds the minimum specified in the Public Issuers Code, or the equivalent in another currency; or*
- (c) *the offer is made—*
 - (i) *to such persons;*
 - (ii) *with respect to securities issued, or to be issued, by such persons; or*
 - (iii) *in such circumstances,*

as may be specified in the Public Issuers Code.

(2) *In determining the purchase price paid, or to be paid, for the purposes of subsection (1)(b), any amount paid, or payable, for the securities shall be disregarded to the extent that it is paid or to be paid out of money loaned by the issuer or by a person associated with the issuer.*

(3) *For the purposes of subsection (2), a person is associated with an issuer if the person is—*

- (a) *an affiliate of the issuer;*
- (b) *a director of the issuer; or*
- (c) *holds a significant interest in the issuer.*

(4) *Without limiting subsection (1)(c), the Public Issuers Code may provide for section 25 to be modified or disapplied where—*

- (a) *the issuer is a listed company or a foreign listed company; and*
- (b) *the offer complies with the requirements specified for public offers made by listed companies or foreign listed companies, as the case may be, in the Public Issuers Code.*

PROSPECTUSES**27. Form and content of prospectus**

- (1) *A prospectus intended to be submitted to the Commission for registration shall—*
- (a) *be in writing and be dated;*
 - (b) *provide full and accurate disclosure of all such information as investors would reasonably require and expect to find for the purpose of making an informed investment decision;*
 - (c) *contain a summary statement of investors' rights as provided in the Public Issuers Code;*
 - (d) *be in the form, contain the information, statements, certificates and other matters specified in the Public Issuers Code; and*
 - (e) *have attached to it such documents as may be specified in the Public Issuers Code.*
- (2) *The date of a prospectus shall be no later than the date of the application to the Commission for registration of the prospectus.*
- (3) *Any documents attached to a prospectus referred to in subsection (1) shall comply with the requirements contained in the Public Issuers Code.*

28. Registration of prospectus

- (1) *Application may be made to the Commission for the registration of a prospectus by—*
- (a) *the issuer; or*
 - (b) *a person authorised by the issuer to make the application on the issuer's behalf.*
- (2) *Subject to subsection (3), the Commission may register a prospectus if it is satisfied that the prospectus complies with this Act and the Public Issuers Code.*
- (3) *The Commission shall not register a prospectus if it is of the opinion that, although complying with this Act and the Public Issuers Code—*
- (a) *the prospectus contains a material error or misdescription or a statement that is misleading, omits a material fact or particular or is unclear;*
 - (b) *the prospectus does not provide full and accurate disclosure of all such information as investors would reasonably require and expect to find for the purpose of making an informed investment decision; or*
 - (c) *approving the prospectus would be contrary to the public interest.*
- (4) *The Commission shall—*
- (a) *if it registers the prospectus, provide the applicant with written confirmation of its approval; or*
 - (b) *if it refuses to register the prospectus, provide the applicant with a written notice of its decision.*
- (5) *For the avoidance of doubt, section 40B of the Financial Services Commission Act applies to an application under this section.*

29. Registration of supplementary prospectus

(1) *An application to the Commission to register a supplementary prospectus setting out amendments to a registered prospectus—*

- (a) *may be made by or on behalf of an issuer at any time during the relevant period; and*
- (b) *shall be made by the issuer or the person who applied for the registration of the prospectus on the issuer's behalf if, during the relevant period, the issuer, or the person who applied for registration of the prospectus, becomes aware that the registered prospectus—*
 - (i) *contains a material inaccuracy; or*
 - (ii) *omits a material fact or particular.*

(2) *For the purposes of subsection (1)—*

- (a) *the “relevant period” is the period commencing with the registration of a prospectus and ending with the closure of the offer to which the prospectus relates; and*
- (b) *subsection (1)(b) applies whether the inaccuracy or omission is due to the fact that the prospectus contained an error on issue, a change in circumstances or some other reason.*

(3) *Section 27 applies to the supplementary prospectus and section 28 applies to the registration of the supplementary prospectus as if, in each case, the supplementary prospectus was the original prospectus.*

(4) *Where a supplementary prospectus is registered under this section, the issuer shall ensure that a copy is made available to every person who has received a copy of the original prospectus.*

30. Distribution of prospectus

(1) *A registered prospectus shall not be distributed by, or on behalf of, an issuer—*

- (a) *if the person distributing it knows, or ought reasonably to know, that the prospectus contains a material error, is materially misleading or omits a material fact or particular; or*
- (b) *where a supplementary prospectus has been registered, unless the registered prospectus incorporates all the amendments in the supplementary prospectus.*

(2) *For the purposes of subsection (1)(a), it is immaterial whether or not the prospectus became misleading or false by reason of a change in circumstances subsequent to the registration of the prospectus.*

(3) *A registered prospectus shall not be distributed unless it is accompanied by the documents, if any, required by the Public Issuers Code.*

31. Prospectus issued, other cases

If a prospectus is distributed with respect to an offer of securities in the Virgin Islands in circumstances where section 25 does not apply, the prospectus shall comply with section 27(1), except to the extent that the Public Issuers Code otherwise provides.

32. Public Issuers Code may provide for prospectuses

The Public Issuers Code may make provision for—

- (a) the form of, and information, statements, certificates and other matters to be contained in, a prospectus;*
- (b) the documents to be attached to a prospectus;*
- (c) the manner in which a prospectus may be communicated or distributed or otherwise made available to members of the public;*
- (d) the circumstances in which prospectuses prepared in accordance with the laws or requirements of a country outside the Virgin Islands may be registered by the Commission; and*
- (e) such other requirements with respect to prospectuses and their registration as are reasonably required to give effect to this Part.*

COMPENSATION ORDERS**33. Compensation false or misleading advertisement or prospectus**

(1) Subject to section 34, where a prospectus, whether registered or not, is distributed, the Court may, on the application of a subscriber, make a compensation order against one or more persons specified in subsection (2) if the subscriber—

- (a) acquired securities in reliance on the prospectus; and*
- (b) suffered loss or damage by reason of—*
 - (i) any untrue or misleading statement in the prospectus; or*
 - (ii) the omission from the prospectus of any matter required to be included in a registered prospectus by virtue of this Act or the Public Issuers Code.*

(2) Subject to subsection (3), a compensation order may be made against—

- (a) the issuer of the securities referred to in the prospectus, unless the issuer proves that it did not make or authorise the offer in relation to which the prospectus was issued;*
- (b) where the issuer is an undertaking, a person who—*
 - (i) has signed the prospectus as a director;*
 - (ii) is a director of the issuer at the time that the prospectus was distributed; or*
 - (iii) has authorised himself or herself to be named, and is named, in the prospectus as a director or as having agreed to become a director of the company either immediately or at a future time;*
- (c) if there is a guarantor for the issue, the guarantor in relation to information in the prospectus that relates to the guarantor and the guarantee;*
- (d) a person who accepts, and is stated in the prospectus as accepting, responsibility for the prospectus;*

- (e) *a person who is a promoter of the offer and, where the promoter is a company, a person who is a director of the promoter when the prospectus is distributed; and*
 - (f) *a person not falling within paragraphs (a) to (e) who has authorised the contents of the prospectus.*
- (3) *The Court shall not make a compensation order against a person who is a director of the issuer if that person proves that—*
- (a) *the prospectus was distributed without his or her knowledge or consent; and*
 - (b) *on becoming aware of the distribution of the prospectus, he or she gives reasonable public notice that it was distributed without his or her knowledge or consent.*
- (4) *The Court shall not make a compensation order under subsection (1)(b)(ii), if the prospectus concerned is not required to be registered by reason of any disapplication or modification of section 25 pursuant to section 26(4).*
- (5) *The Court may, on the application of a subscriber, make a compensation order against a person who fails to comply with section 29(1)(b) if the subscriber—*
- (a) *acquired securities in reliance on the prospectus in question; and*
 - (b) *suffered loss or damage in respect of the securities by reason of the failure.*
- (6) *This section does not affect any liability which may be incurred apart from this section.*

34. Circumstances in which no compensation to be awarded

The Court shall not require a person to compensate a subscriber under section 33 for loss or damage caused with respect to a statement or omission referred to in section 33(1)(b)(i) or (ii) if the person proves, to the satisfaction of the Court, that—

- (a) *at the time that the prospectus was distributed, he or she reasonably believed, having made such enquires as were reasonable, that the statement was true and not misleading, or the matter whose omission from the prospectus caused the loss was properly omitted and that one or more of the following applies—*
 - (i) *he or she continued in this belief until the time when the securities in question were acquired;*
 - (ii) *the securities were acquired before it was reasonably practicable to bring a correction to the attention of persons likely to acquire them;*
 - (iii) *before the securities were acquired, he or she had taken all such steps as were reasonable for him or her to have taken to secure that a correction was brought to the attention of those persons;*
- (b) *before the securities in question were acquired, a correction had been published in a manner calculated to bring it to the attention of persons likely to acquire the securities or that he or she took all such steps as were reasonable for him or her to take to secure publication and reasonably believed that publication had taken place before the securities were acquired; or*
- (c) *the person suffering the loss acquired the securities in question knowing, as the case may be—*

- (i) *that the statement was false or misleading;*
- (ii) *of the matter that had been omitted; or*
- (iii) *of the change or new matter.*

ENFORCEMENT

35. Cancellation or suspension of registration

(1) *The Commission may suspend or cancel the registration of a prospectus if it is of the opinion that—*

- (a) *the prospectus—*
 - (i) *contains a material error or is materially misleading;*
 - (ii) *omits a material fact or particular; or*
 - (iii) *does not comply with this Act or the Public Issuers Code; or*
- (b) *the continued registration of the prospectus is not in the public interest.*

(2) *The period of suspension of the registration of a prospectus under subsection (1) shall not exceed 30 days.*

(3) *Before cancelling the registration of a prospectus, the Commission shall give written notice to the issuer stating—*

- (a) *the grounds upon which it intends to cancel the registration; and*
- (b) *that unless the issuer, by written notice submitted to the Commission, shows good reason why the registration of the prospectus should not be cancelled, the registration will be cancelled on a date no earlier than 14 days after the date of the notice and no later than the date that the suspension notice expires.*

(4) *Where the Commission suspends the registration of a prospectus, it shall immediately notify the issuer in writing of the suspension and the reasons for the suspension.*

(5) *If it is satisfied that the suspension of the registration of a prospectus should not continue, the Commission may withdraw the suspension.*

(6) *While the registration of a registered prospectus is suspended, no allotment may be made of any securities subscribed for but not allotted, whether the securities were subscribed for before or after the suspension.*

(7) *The suspension of the registration of a prospectus shall be kept confidential by the Commission, unless the registration is subsequently cancelled.*

36. Suspension or prohibition of public offer

(1) *Where a person makes an offer of securities to which this Part applies and the Commission has reasonable grounds for suspecting that a provision of this Part or the Public Issuers Code has been, or will be, contravened, the Commission may direct that the offer is suspended for a period not exceeding 14 days.*

(2) *Where the Commission issues a direction under subsection (1), it may also direct that the offer should not be advertised and that any existing advertisement is suspended in accordance with the Commission's direction.*

(3) *If the Commission forms the opinion that a provision of this Part or the Public Issuers Code has been contravened, it may direct that the offer be withdrawn.*

(4) *A direction under subsection (3) may be made—*

- (a) *after a direction has been made under subsection (1); or*
- (b) *even though no direction has been issued under subsection (1).*

OTHER PROVISIONS APPLYING TO PUBLIC ISSUERS

37. Modification of Companies Act, public issuers

The BVI Business Companies Act is disapplied and modified with respect to public issuers that are BVI business companies to the extent provided for in Schedule 6

OFFERS MADE OUTSIDE THE VIRGIN ISLANDS

38. Offer made outside the Virgin Islands, BVI company

(1) *An offer for securities issued, or to be issued, by a BVI business company that is made outside the Virgin Islands, shall be made in accordance with the laws or rules of the country in which the offer is made.*

(2) *For the purposes of subsection (1), “laws” includes any subordinate legislation and “rules” includes any applicable listing rules or any rules issued by a market operator to which the BVI business company is subject.*

ADMINISTRATION

39. Public Issuers Code

(1) *The Commission may issue a Public Issuers Code—*

- (a) *providing for—*
 - (i) *the public issues of securities and the duties and obligations of public issuers;*
 - (ii) *the preparation of financial statements by public issuers and their audit and for the powers and duties of auditors of public issuers; and*
 - (iii) *meetings of members, including the notice to be given to members;*
- (b) *giving effect to this Part and for the administration of this Part by the Commission; and*
- (c) *in respect of anything permitted by this Part to be contained in the Public Issuers Code.*

(2) *The Public Issuers Code may—*

- (a) *make provision in relation to different persons or class of persons, circumstances or cases; and*
- (b) *contain such incidental, supplemental and transitional provisions as the Commission considers necessary or expedient.]*

PART III - MUTUAL FUNDS

INTERPRETATION

40. Interpretation for this Part

(1) In this Part, unless the context otherwise requires—

“authorised representative” means a person appointed in accordance with section 64;

“constitutional documents” means—

- (a) in the case of a company, the memorandum and articles of association, the company’s constitution or such other equivalent constituting instrument;
- (b) in the case of a partnership, the agreement or other instrument by which the partnership is formed and governed;
- (c) in the case of a unit trust, the trust deed or other equivalent instrument by which the unit trust is organised or governed;
- (d) in the case of a mutual fund that does not fall within paragraph (a), (b) or (c), the principal instrument by which the mutual fund is constituted, formed or organised and governed;

“custodian” means a person to whom the fund property is entrusted for safe keeping;

“experienced investor” means—

- (a) a person who holds—
 - (i) a licence issued under section 6;
 - (ii) a licence issued under the Banks and Trust Companies Act; or
 - (iii) an insurer’s licence issued under section 8 of the Insurance Act;
- (b) a person licensed in a jurisdiction outside the Virgin Islands to carry on an activity equivalent to an activity for which a licence specified in paragraph (a) is required, provided that the person is regulated and supervised in the carrying on of that business; or
- (c) a public, private or professional fund;

“foreign fund” means a mutual fund that is incorporated, constituted, formed or organised under the laws of a country outside the Virgin Islands;

“functionary”, in relation to a mutual fund, means—

- (a) the manager, administrator, investment advisor or custodian of the fund;
- (b) in the case of a fund that is a unit trust, the trustee;
- (c) a prime broker acting for, or in relation to, a fund; or
- (d) a person undertaking such other function with respect to the fund as may be specified in the Mutual Fund Regulations;

“fund administrator” means a person who, by way of business, provides a mutual fund with fund administration services;

“fund manager” means a person who, by way of business, provides a fund with fund management services;

“mutual fund” or “fund” means a company or any other body, a partnership or a unit trust that is incorporated, formed or organised, whether under the laws of the Virgin Islands or the laws of any other country, which—

- (a) collects and pools investor funds for the purpose of collective investment, and
- (b) issues fund interests that entitle the holder to receive on demand or within a specified period after demand an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the company or other body, partnership or unit trust, as the case may be, and includes—
 - (i) an umbrella fund whose fund interests are split into a number of different class funds or sub-funds; and
 - (ii) a fund which has a single investor which is a mutual fund not registered or recognised under this Act, but excludes any company or other body, partnership or unit trust which is of a type or description designated by the Mutual Fund Regulations as not being a mutual fund;

“private fund” means a fund that is recognised under section 55 as a private fund;

“professional fund” means a fund that is recognised under section 55 as a professional fund

“professional investor” means a person—

- (a) whose ordinary business involves, whether for that person’s own account or the account of others, the acquisition or disposal of property of the same kind as the property, or a substantial part of the property, of the fund; or
- (b) who has signed a declaration that he or she, whether individually or jointly with his or her spouse, has net worth in excess of such sum as shall be specified in the Mutual Fund Regulations or its equivalent in any other currency and that he or she consents to being treated as a professional investor;

“promoter” means a person who, whether acting alone or in conjunction with others, directly or indirectly takes the initiative in forming or organising a mutual fund, but does not include an underwriter who receives underwriting commission without taking any part in the forming or organising of the mutual fund;

“prospectus”, in relation to a public fund, means a document that contains an invitation or offer to investors or potential investors to purchase or subscribe for fund interests, and includes an amended prospectus;

“public fund” means a fund that is registered under section 45 as a public fund;

“recognised country” means a country recognised by the Commission under subsection (4);

“recognised foreign fund” means a foreign fund that is recognised by the Commission under section 57;

“underwriter” means a person who—

- (a) as principal, agrees to purchase fund interests issued by mutual funds with a view to offering them to the public; or
- (b) as agent for a mutual fund, offers for sale or sells to the public fund interests issued by the mutual fund.

(2) For the purposes of the definitions of “fund administrator” and “fund manager”, “fund administration services” and “fund management services”—

- (a) include such specific activities; and
- (b) exclude such specific activities,

as may be prescribed in the Mutual Funds Regulations.

(3) Regulations made in accordance with subsection (2) do not limit the generality of “fund administration services” or “fund management services”.

(4) The Commission may, by notice published in the Gazette, recognise a country for the purposes of this Act.

PROHIBITIONS

41. Prohibitions with respect to business of unregistered or unrecognised funds

(1) Subject to sections 43 and 44—

- (a) a company shall not carry on business or hold itself out as carrying on business as a mutual fund in or from within the Virgin Islands;
- (b) the partners of a partnership that is a mutual fund shall not carry on or hold themselves out as carrying on the business of the fund in or from within the Virgin Islands;
- (c) the trustee of a unit trust that is a mutual fund shall not carry on or hold itself out as carrying on the business of the unit trust in or from within the Virgin Islands; and
- (d) a mutual fund that does not fall within paragraph (a), (b) or (c) shall not carry on or hold itself out as carrying on business as a mutual fund in or from within the Virgin Islands, unless, the mutual fund concerned is a public fund, a professional fund, a private fund or a recognised foreign fund.

(2) A person shall not act as the functionary, or otherwise be concerned with the management or administration, of a mutual fund that carries on business in or from within the Virgin Islands, unless the mutual fund concerned is a public fund, a professional fund, a private fund or a recognised foreign fund.

(3) For the purposes of this section, but without limiting the section—

- (a) a mutual fund, whether incorporated, formed or organised within or outside the Virgin Islands, is deemed to carry on business in the Virgin Islands, if—
 - (i) it operates from a place of business in the Virgin Islands; or

- (ii) it solicits an individual within the Virgin Islands to subscribe for, or purchase, any of its fund interests; and
 - (b) a mutual fund that carries on business outside the Virgin Islands, is deemed to carry on business from within the Virgin Islands if it is—
 - (i) a BVI business company;
 - (ii) a partnership formed under the laws of the Virgin Islands; or
 - (iii) a unit trust governed by the trust laws of the Virgin Islands and managed from within the Virgin Islands.
- (4) For the avoidance of doubt, a foreign fund does not carry on business in the Virgin Islands as a mutual fund solely by reason of the fact that it appoints a licensee as its fund administrator, fund manager, investment advisor or custodian.

42. Prohibition against promotion of mutual funds

- (1) A person, including the mutual fund itself, shall not, whether in or from within the Virgin Islands, promote a mutual fund unless—
- (a) the fund is—
 - (i) a public fund;
 - (ii) a professional or private fund; or
 - (iii) a recognised foreign fund; and
 the fund is promoted as permitted by this Act; or
 - (b) the communication or advice is exempted by the Mutual Fund Regulations made in accordance with subsection (3).
- (2) Without limiting subsection (1), a person promotes a mutual fund if he or she communicates, or causes to be communicated, an invitation or inducement to any other person, or advises or procures any other person, to become an investor, or to offer to become an investor, in a mutual fund.
- (3) The Mutual Fund Regulations may provide that subsection (1) does not apply in relation to communications or advice—
- (a) of a specified category or description; or
 - (b) made or given in specified circumstances.

43. General exemptions to prohibition

- (1) A mutual fund incorporated, formed or organised outside the Virgin Islands does not solicit an individual within the Virgin Islands to subscribe for, or purchase, any of its fund interests in circumstances where the subscription or purchase is a result of an approach made by the individual to the fund without any solicitation being made by or on behalf of the fund.
- (2) The Mutual Fund Regulations may specify circumstances in which section 41(1) or (2) does not apply with respect to certain specified categories or descriptions of mutual fund or person.

44. Exemptions: fund to be recognised as professional fund

(1) A mutual fund may carry on business in or from within the Virgin Islands, as if a professional fund, for a continuous period not exceeding twenty-one days, if the fund—

- (a) satisfies the criteria for a professional fund specified in section 55(2)(a), (c) and (d); and
- (b) complies with, and is managed and administered in accordance with, the requirements of this Act and the Mutual Fund Regulations relating to professional funds, other than with respect to recognition.

(2) A mutual fund that commences business in reliance on subsection (1) shall submit an application with the Commission for recognition as a professional fund within 14 days after the commencement of its business.

(3) For the purposes of the Financial Services Commission Act, a fund that commences business in reliance on subsection (1) is deemed to have been recognised as a professional fund for the period in which it carries on business in reliance on subsection (1).

(4) During the period in which a mutual fund carries on business in accordance with subsection (1)—

- (a) the fund, a partner of the fund or, where the fund is a unit trust, the trustee, does not commit an offence under section 41(1);
- (b) a person does not commit an offence under section 41(2) by acting as the functionary of or being concerned with management or administration of the fund; and
- (c) a person does not commit an offence under section 42(1) by promoting the fund.

PUBLIC FUNDS**45. Registration of fund as public fund**

(1) Application may be made to the Commission for the registration of a mutual fund as a public fund by—

- (a) in the case of a mutual fund that is a BVI business company, the company itself; or
- (b) in the case of a unit trust, by the trustee.

(2) The Commission may grant an application for registration under subsection (1), if it is satisfied that—

- (a) the fund is—
 - (i) a BVI business company; or
 - (ii) a unit trust that is governed by the trust laws of the Virgin Islands and has a trustee that is based in the Virgin Islands;
- (b) the fund satisfies the requirements of this Act and, where applicable, the Public Funds Code with respect to the application;

- (c) the fund will, on registration, be in compliance with this Act, the Public Funds Code, where applicable, and any practice directions applicable to the fund;
 - (d) the fund's functionaries satisfy the Commission's fit and proper criteria;
 - (e) the fund has, or on registration will have, an independent custodian;
 - (f) the fund's name is not undesirable or misleading; and
 - (g) registering the fund is not against the public interest.
- (3) Where the Commission grants an application for registration under subsection (1), it shall—
- (a) register the public fund in the Register of Public Funds; and
 - (b) issue the fund with a certificate of its registration in the approved form.
- (4) The registration of a public fund is subject to such conditions as may be imposed by the Commission under section 40B of the Financial Services Commission Act.

46. Prohibition on invitation to public to subscribe by public fund

- (1) A public fund shall not, whether in or outside the Virgin Islands, make an invitation to the public to subscribe for or purchase its fund interests, unless the invitation—
- (a) is contained in a registered prospectus; and
 - (b) complies with such requirements as may be specified in the Mutual Fund Regulations and the Public Funds Code.
- (2) For the purposes of subsection (1), an invitation to any person, whether in or outside the Virgin Islands, to subscribe for or purchase fund interests, is an invitation to the public to subscribe for or purchase fund interests.
- (3) Subsection (1) does not apply to an invitation that is deemed not to be an invitation to the public under section 47.

47. Circumstances in which invitation not invitation to the public

An invitation to a person to subscribe for or purchase fund interests is deemed not to constitute an invitation to the public if—

- (a) the invitation is made to, or directed exclusively at, one or more of the following—
 - (i) an experienced investor;
 - (ii) a person having a close connection with the issuer; or
 - (iii) the Government of the Virgin Islands;
- (b) the minimum aggregate purchase price payable by a person for the fund interests acquired by him or her pursuant to the invitation—
 - (i) must be paid before the fund interests are issued; and
 - (ii) equals or exceeds the minimum specified in the Mutual Fund Regulations, or the equivalent in another currency; or
- (c) the invitation is made—
 - (i) to such persons;

- (ii) with respect to fund interests issued, or to be issued, by such persons; or
- (iii) in such circumstances, as may be specified in the Mutual Fund Regulations.

48. Form and content of prospectus

- (1) A prospectus intended to be submitted to the Commission for registration shall—
 - (a) be in writing, be dated and be signed by or on behalf of—
 - (i) in the case of a BVI business company, the board of the company; or
 - (ii) in the case of a BVI unit trust, the fund manager or the trustee of the trust;
 - (b) provide full and accurate disclosure of all such information as investors would reasonably require and expect to find for the purpose of making an informed investment decision;
 - (c) contain a summary statement of investors' rights as provided in section 52;
 - (d) be in the form, contain the information, statements, certifications and other matters specified in the Public Funds Code; and
 - (e) have attached to it such documents as may be specified in the Public Funds Code.
- (2) The date of a prospectus shall be the date the prospectus is registered by the Commission and such date shall be clearly written on the prospectus.²¹
- (2A) The date of registration of a prospectus shall not be construed to prevent the prospectus from bearing a different date of issue.²²
- (2B) Where a prospectus bears a date of issue that is different from the date of registration of the prospectus by the Commission, the date of issue of the prospectus shall not be earlier than the date of registration of the prospectus by the Commission.²³
- (3) Any documents attached to a prospectus referred to in subsection (1) shall comply with the requirements contained in the Public Funds Code.

49. Registration of prospectus

- (1) An application may be made to the Commission for the registration of a prospectus by the directors of a public fund that is a company or the trustee of a public fund that is a unit trust.
- (2) If all or any part of the prospectus is not in the English language, the Commission may require that an English translation of the prospectus or that part of the prospectus, verified in a manner satisfactory to the Commission, be provided along with the prospectus.
- (3) Subject to subsection (4), the Commission may register a prospectus if it is satisfied that it complies with this Act.
- (4) The Commission shall not register a prospectus if it is of the opinion that, although complying with this Act—
 - (a) the prospectus contains a material error or misdescription or a statement that is misleading, omits a material fact or particular or is unclear;
 - (b) the prospectus does not provide full and accurate disclosure of all such information as investors would reasonably require and expect to find for the purpose of making an informed investment decision; or

- (c) approving the prospectus would be contrary to the public interest.
- (5) The Commission shall—
 - (a) if it registers the prospectus, provide the applicant with written confirmation of its approval²⁴; or
 - (b) if it refuses to register the prospectus, provide the applicant with a written notice of its decision.
- (6) For the avoidance of doubt, section 40B of the Financial Services Commission Act applies to an application under this section.

50. Prospectus: supplementary provisions

- (1) A public fund shall make its prospectus available to each of its investors and provide a copy upon request.
- (2) Where any of the disclosures required under section 48(1)(b) cease to be accurate in a material particular, the public fund concerned shall, within fourteen days of the change occurring, apply to the Commission under section 51 to register an amended prospectus giving accurate disclosures and, when registered, provide a copy of the amended prospectus to each of its investors.
- (3) Any advertisement issued or published, in whatever form or through whatever medium, by or on behalf of a public fund, the purpose of which is to make an invitation to the public or any section thereof to subscribe for or purchase fund interests issued by a public fund shall contain information as to where, at what times and at what cost, if any, a copy of the prospectus can be obtained and a copy of the advertisement shall be provided to the Commission within 14 days of its publication.

51. Amendment of prospectus

- (1) An application to the Commission to register an amended prospectus—
 - (a) may be made by the directors of a public fund that is a BVI business company or the trustee of a public fund that is a unit trust at any time during the relevant period; and
 - (b) shall be made by the directors of a public fund that is a BVI business company or the trustee of a public fund that is a unit trust if, during the relevant period, the directors become, or the trustee becomes, aware that the registered prospectus—
 - (i) contains a material error; or
 - (ii) omits a material fact or particular.
- (2) For the purposes of subsection (1), the “relevant period” is the period commencing with the registration of the prospectus and ending with the closure of the offer of fund interests to which the prospectus relates.
- (3) Section 48 applies to an amended prospectus and section 49 applies to the registration of an amended prospectus as if, in each case, the amended prospectus was the original prospectus.

52. Investors’ rights

- (1) If a public fund issues a prospectus that contains any misrepresentation relating to any of the disclosures required under section 48(1)(b), a person who purchased any fund interests on

the basis of the prospectus is deemed to have relied upon the misrepresentation and shall have the rights provided in subsection (2).

- (2) A person referred to in subsection (1) may elect to exercise a right of action—
 - (a) for the rescission of the purchase; or
 - (b) for damages, jointly and severally against the fund, and every director of the fund, or in the case of a unit trust, every member of the equivalent governing body who, while aware of the misrepresentation, or would have been aware of the misrepresentation had he or she made reasonable investigations consistent with his or her duties, authorised the signing of, or approved, the prospectus and consented to its issue.
- (3) For the purposes of this section, “misrepresentation” means—
 - (a) an untrue or misleading statement with respect to any of the disclosures required under section 48(1)(b); or
 - (b) an omission to disclose any of the disclosures required.
- (4) No person is liable under this section if he or she proves that the purchaser purchased the fund interests offered by the prospectus with knowledge of the misrepresentation.
- (5) The right of action for rescission or for damages conferred by subsection (2) is in addition to and without derogation from any other right the purchaser may have at law.

53. Limitation of action and amount recoverable

- (1) Notwithstanding any provision of any other enactment to the contrary, any action under section 52(2) shall not be commenced after the earlier of—
 - (a) 180 days from the day that the investor first had knowledge of the misrepresentation; or
 - (b) 2 years from the date of the purchase transaction that gave rise to the cause of action.
- (2) In any action under section 52(2), the amount recoverable shall not exceed the amount for which the fund interests were purchased or subscribed, including any fees or other charges paid by the investor.

54. Appointment and termination of directors, functionaries and others

- (1) No person shall be appointed as a director or functionary of a public fund without the prior written approval of the Commission.
- (2) The Commission shall not grant an approval under subsection (1) unless it is satisfied that the person concerned satisfies its fit and proper criteria and, where applicable, complies with the requirements of any guidelines issued by the Commission for the approval of such a person.
- (3) Written notice shall be given to the Commission within—
 - (a) 7 days after—
 - (i) a director ceases to hold office with a public fund; or
 - (ii) a functionary ceases to act for a public fund; or
 - (b) such longer period as the Commission may specify.

(4) The notice provided under subsection (3) shall include a statement of the reasons and any other matters required under any guidelines issued by the Commission for the director ceasing to hold office with, or the functionary ceasing to act for, the public fund and a written notice shall be deemed not to be provided under that subsection if it does not include such a statement.

PRIVATE AND PROFESSIONAL FUNDS

55. Recognition of private and professional funds

(1) An application may be made to the Commission for the recognition of a mutual fund as a private fund or as a professional fund by—

- (a) in the case of a mutual fund that is a company, the fund itself;
- (b) in the case of a unit trust, by the trustee;
- (c) in the case of a mutual fund that is a partnership, by a partner;
- (d) in any other case by the manager, or proposed manager, of the fund.

(2) The Commission may recognise a mutual fund as a private fund or a professional fund if it is satisfied that—

- (a) the fund is lawfully incorporated, constituted, formed or organised under the laws of the Virgin Islands or under the laws of a country outside the Virgin Islands;
- (b) in the case of a private fund, the constitutional documents of the fund specify that—
 - (i) the fund is not authorised to have more than 50 investors; or
 - (ii) an invitation to subscribe for, or purchase, fund interests issued by the fund shall be made on a private basis only;
- (c) in the case of a professional fund, the constitutional documents of the fund specify that—
 - (i) the fund interests of the fund shall be issued only to professional investors; and
 - (ii) the initial investment of each investor in the fund, other than exempted investors, shall be not less than such sum as may be prescribed in the Mutual Fund Regulations;
- (d) the fund satisfies such other criteria as may be specified for recognition of a private or professional fund, as the case may be, in the Mutual Fund Regulations;
- (e) the fund satisfies the requirements of this Act with respect to the application;
- (f) the fund will, on being recognised, be in compliance with this Act and any practice directions applicable to the fund;
- (g) recognising the fund as a private or professional fund is not against the public interest.

(3) For the purposes of subsection (2)(b)(ii), an invitation to subscribe for, or purchase, fund interests issued by a mutual fund on a private basis includes an invitation which is made—

- (a) to specified persons (however described) and is not calculated to result in fund interests becoming available to other persons or to a large number of persons; or

- (b) by reason of a private or business connection between the person making the invitation and the investor.
- (4) For the purposes of subsection (2)(c), the minimum investment limit referred to does not apply in respect of an investment made by a person specified in the Mutual Funds Regulations as an exempted investor.
- (5) Where the Commission grants an application for recognition under subsection (1), it shall—
 - (a) register the fund in the Register of Private Funds or the Register of Professional Funds, as appropriate; and
 - (b) issue the fund with a certificate of recognition in the approved form.
- (6) The recognition of a private or professional fund is subject to such conditions as may be imposed by the Commission under section 40B of the Financial Services Commission Act.

56. Obligation to act in accordance with constitutional documents

- (1) No private or professional fund shall make any offer or invitation of its fund interests, issue any fund interests or carry on business in any manner that would result in the fund—
 - (a) in the case of a private fund—
 - (i) having more than 50 investors; or
 - (ii) making any invitation to subscribe for, or purchase, its fund interests otherwise than on a private basis; or
 - (b) in the case of a professional fund, issuing fund interests—
 - (i) to any person who is not a professional investor; or
 - (ii) where the initial investment, in respect of a professional investor who is not an exempted investor, is less than the sum prescribed in the Mutual Fund Regulations.
- (2) Without limiting subsection (1), no person shall be accepted as an investor in a private or professional fund unless that person has provided—
 - (a) in the case of a professional fund, written confirmation that he or she is a professional investor within the meaning specified in section 40(1); and
 - (b) in the case of a private or professional fund, a written acknowledgment that he or she has received, understood and accepted the investment warning prescribed in the Mutual Funds Regulations.²⁵

RECOGNISED FOREIGN FUNDS

57. Recognition of a foreign fund

- (1) An application may be made to the Commission by a foreign fund or by its manager for the fund to be a recognised foreign fund.
- (2) The Commission may grant an application for the recognition of a foreign fund if the Commission is satisfied that—

- (a) the fund complies with the requirements of this Act in respect of the application and will, upon being recognised, be in compliance with the requirements of this Act with respect to recognised foreign funds;
- (b) the fund is subject to an authorisation and supervisory regime in the jurisdiction in which it is constituted that, in the opinion of the Commission, provides to investors in the Virgin Islands protection at least equivalent to the protection provided under this Act for investors of public funds;
- (c) adequate arrangements exist, or will exist, for co-operation between the authorities of the country responsible for the authorisation and supervision of the fund and the Commission; and
- (d) the fund is being operated and managed in compliance with the authorisation and supervisory regime to which it is subject.

58. Mutual Fund Regulations may provide for recognised foreign funds

The Mutual Fund Regulations may make provision with respect to recognised foreign funds, including as to—

- (a) the submission to the Commission and the publication of such particulars as regards recognised foreign funds as may be prescribed;
- (b) the notifications to be provided to the Commission with respect to recognised foreign funds, including as to the amendment of the constituting instruments of a recognised foreign fund and changes of the functionaries of a recognised foreign fund;
- (c) the maintenance in the Virgin Islands of deposits and property by and with respect to recognised foreign funds.

PROVISIONS APPLICABLE GENERALLY TO REGISTERED AND RECOGNISED FUNDS

59. Maintenance of financial records

(1) A mutual fund that is a public fund, a private fund or a professional fund shall maintain records that are sufficient—

- (a) to show and explain its transactions;
- (b) at any time, to enable its financial position to be determined with reasonable accuracy;
- (c) to enable it to prepare such financial statements and make such returns as it is required to prepare and make under this Act and the Mutual Funds Regulations; and
- (d) if applicable, to enable its financial statements to be audited in accordance with this Act.

(2) The Mutual Fund Regulations may specify—

- (a) the form and manner in which the records specified in subsection (1) are to be maintained;

- (b) the place where the records required to be maintained under subsection (1) and under the Mutual Fund Regulations are required to be kept; and
 - (c) other records required to be maintained by a mutual fund to which this section applies, and the form, manner and place in which such records are to be maintained.
- (3) A mutual fund to which this section applies shall retain the records required to be maintained under this section for a period of at least 5 years after the completion of the transaction to which they relate.
- (4) Subsection (3) applies to a mutual fund after the cancellation or revocation of its registration or recognition as if the registration or recognition had not been cancelled or revoked.

60. Modification of Financial Services Commission Act with respect to mutual funds

- (1) In addition to the grounds specified in section 37(1) of the Financial Services Commission Act, the Commission may take enforcement action under that section against a public, private or professional fund or a recognised foreign fund if—
- (a) a functionary of the fund does not, in the Commission's opinion, satisfy its fit and proper criteria; or
 - (b) the fund no longer satisfies the criteria specified in this Act for its registration or recognition.
- (2) Without limiting the powers of the Commission under section 40 of the Financial Services Commission Act, where the Commission is entitled to take enforcement action against a public, private or professional fund, it may issue a directive that the fund suspends the issuance or redemption, or both, of fund interests in the fund.
- (3) Section 40D(1) of the Financial Services Commission Act also applies to a functionary of a public, private or professional fund.

61. Exemptions from certain enactments

- (1) This section applies to a public fund, a private fund, a professional fund and a recognised foreign fund and references in this section to a "fund" are to a fund to which this section applies.
- (2) Subject to subsection (4), a person to whom this subsection applies is exempt from the payment of income tax under the Income Tax Ordinance and stamp duty under the Stamp Act.
- (3) Subsection (2) applies to—
- (a) a fund; and
 - (b) an investor in a fund—
 - (i) where the investor is not ordinarily resident or domiciled in the Virgin Islands; and
 - (ii) with respect to any fund interest that he or she holds.
- (4) Subsection (2) does not apply to an instrument relating to—
- (a) the transfer to or by a fund of an interest in land situate in the Virgin Islands; or
 - (b) transactions in respect of fund interests of a fund, the assets of which include an interest in any land in the Virgin Islands.

- (5) For the purposes of subsection (4), a fund has an interest in land in the Virgin Islands if—
 - (a) any fund with which it is connected has an interest in land in the Virgin Islands; or
 - (b) the fund, or any fund with which it is connected, has an interest in a land owning company.
- (6) For the purposes of subsection (5), “land owning company” has the meaning specified in section 242(5) of the BVI Business Companies Act.
- (7) Notwithstanding any provision of the Registration and Records Act, all deeds and other instruments relating to—
 - (a) transfers of property to or by a fund;
 - (b) transactions in respect of the fund interests in a fund; and
 - (c) other transactions relating to the business of a fund;
 are exempt from the provisions of that Act.

GENERAL AND ADMINISTRATION

62. Mutual Fund Regulations

- (1) The Cabinet may, on the advice of the Commission, make Mutual Fund Regulations—
 - (a) providing for the establishment, operation and supervision of mutual funds;
 - (b) generally for giving effect to this Part and for the administration of this Part by the Commission; and
 - (c) in respect of anything permitted by this Act to be contained in the Regulations.
- (2) Without limiting subsection (1), the Mutual Fund Regulations may—
 - (a) provide for—
 - (i) applications for the registration or recognition of mutual funds;
 - (ii) the designation of classes and sub-classes of mutual funds;
 - (iii) the management, control and administration of mutual funds, including the functionaries required to be appointed by, or with respect to a mutual fund, the persons who may be appointed as the functionary of a mutual fund and the duties of functionaries;
 - (iv) the custodial arrangements to be put in place with respect to mutual funds;
 - (v) the circumstances in which an offer document is required to be issued and distributed by a private or professional fund, the form and content of offer documents and other requirements relating to offer documents;
 - (vi) the reporting of information and the submission of documents to the Commission, including periodic returns, and the verification of the information or documents, and returns to be submitted to the Commission by and in respect of funds;
 - (vii) the issue and redemption of fund interests;

- (viii) the rights of investors;
- (ix) title to, and the transfer of, fund property;
- (x) conflicts of interest in relation to the operation and management of funds;
- (xi) the segregation of fund property;
- (xii) the income of a mutual fund;
- (xiii) meetings of investors;
- (xiv) names that may, or shall not, be used by a mutual fund;
- (xv) the retention of records by funds and fund functionaries; and
- (xvi) the preparation and audit of the financial statements of a mutual fund; and
- (b) specify requirements and restrictions with respect to—
 - (i) the constitutional documents of a mutual fund;
 - (ii) investments and borrowing;
 - (iii) pricing and dealing;
 - (iv) the suspension and termination by a mutual fund of its operation or business;
 - (v) the valuation of assets and liabilities; and
 - (vi) payments made, and benefits provided, to the functionaries of a mutual fund.
- (3) The Mutual Fund Regulations may—
 - (a) specify matters relating to the establishment and operation of public funds, including any matters specified in subsection (2), that may be provided for in the Public Funds Code;
 - (b) make different provision in relation to different persons, circumstances or cases;
 - (c) provide for offences and penalties for any prohibition or contravention or failure to comply with a requirement specified in the Regulations; and
 - (d) include such transitional provisions as may be considered necessary or appropriate.

62A. Regulations establishing new fund business²⁶

- (1) The Cabinet may, on the advice of the Commission, make Regulations—
 - (a) establishing such other fund business as is not specified in this Act as it considers appropriate;
 - (b) providing for the operation and administration of such fund business; and
 - (c) generally for such fund business to benefit from anything permitted by this Act.
- (2) Regulations made under subsection (1) may—
 - (a) make different provisions in relation to different persons, circumstances or cases; and

- (b) provide for offences and penalties for any contravention of or failure to comply with specified requirements of the Regulations.
- (3) Without prejudice to the generality of subsection (1) but subject to subsection (4), regulations made under subsection (1) may, in particular—
 - (a) provide for the approval or licensing by the Commission of other fund business which conduct or engage in certain types of activity as may be specified in the Regulations; and
 - (b) disapply or limit the scope of application of this Act or any provision thereof to any fund business approved or licensed by the Commission by virtue of paragraph (a).
- (4) Regulations made under subsection (1) shall take into account risks that may be posed by or associated with approving or licensing other fund business and may—
 - (a) provide such restrictions and conditions as may be considered necessary;
 - (b) provide an asset threshold that applies in relation to the fund business;
 - (c) specify a limit in the number of investors that the fund business may accept or administer;
 - (d) provide a term limit as to the period the fund business may remain in existence and, in that regard, may allow for the fund business the option of converting into a private or professional fund or other fund as may be specified;
 - (e) require the fund business to file with the Commission periodic returns on such matters as may be considered necessary; and
 - (f) provide for such other matters as may be considered necessary for the efficient and effective functioning of the fund business.
- (5) A penalty provided for an offence under Regulations made pursuant to subsection (1) may not exceed—
 - (a) in the case of a fine, the sum of \$20,000; and
 - (b) in the case of a period of imprisonment, the term of 3 years.

63. Public Funds Code

- (1) The Commission may, with the approval of the Board, issue a Public Funds Code providing for—
 - (a) the establishment and operation of public funds; and
 - (b) anything permitted by the Mutual Funds Regulations to be contained in the Public Funds Code.
- (2) The Commission may, with the approval of the Board, amend the Public Funds Code in such manner and to such extent as it may determine.
- (3) The Public Funds Code may—
 - (a) make different provision in relation to different persons, circumstances or cases; and
 - (b) include such transitional provisions as the Commission considers necessary or appropriate.

- (4) The Public Funds Code, and any amendment thereto, shall be published in the Gazette.
- (5) Subject to subsection (6), the Commission may, on the application of, or with the consent of, a public fund, by notice in writing direct that specified provisions in the Public Funds Code—
- (a) shall not apply to the fund; or
 - (b) shall apply to the fund subject to such modifications as the Commission may specify.
- (6) An exemption or modification under subsection (5) may be given subject to such conditions as the Commission considers appropriate, and section 40B of the Financial Services Commission Act applies to such conditions as if they were licence conditions.
- (7) The Commission may, at any time, revoke or vary an exemption from, or modification of, the Public Funds Code given under subsection (5).

PART IIIA²⁷

PRIVATE INVESTMENT FUNDS

INTERPRETATION

63A. Interpretation for this Part²⁸

In this Part, unless the context otherwise requires—

“appointed person”, in relation to a private investment fund, means a person responsible for undertaking—

- (a) the management of a fund’s assets;
- (b) the valuation of a fund’s assets;
- (c) the safekeeping of a fund’s assets; or
- (d) such other function with respect to a fund as may be specified in the Private Investment Fund Regulations;

“constitutional documents” means—

- (a) in the case of a company, the memorandum and articles of association, the company’s constitution or such other equivalent constituting instrument;
- (b) in the case of a partnership, the agreement or other instrument by which the partnership is formed and governed;
- (c) in the case of a unit trust, the trust deed or other equivalent instrument by which the unit trust is organised or governed;
- (d) in the case of a private investment fund that does not fall within paragraph (a), (b) or (c), the principal instrument by which the fund is constituted, formed or organised and governed;

“private investment fund” means a company, a partnership, a unit trust or any other body that is incorporated, registered, formed or organised, whether under the laws of the Virgin Islands or the laws of any other country, which—

- (a) collects and pools investor funds for the purpose of collective investment and diversification of portfolio risk; and
- (b) issues fund interests, which entitle the holder to receive an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the company, partnership, unit trust or other body;

“professional investor” means a person—

- (a) whose ordinary business involves, whether for that person’s own account or the account of others, the acquisition or disposal of property of the same kind as the property, or a substantial part of the property, of the fund; or
- (b) who has signed a declaration that he, whether individually or jointly with his spouse, has net worth in excess of such sum as shall be specified in the Private Investment Funds Regulations or its equivalent in any other currency and that he consents to being treated as a professional investor.

63B. Prohibition and recognition of private investment funds ²⁹

- (1) Subject to subsection (2) and sections 63D and 63E—
 - (a) a company shall not carry on business or hold itself out as carrying on business as a private investment fund in or from within the Virgin Islands;
 - (b) the partners of a partnership that is a private investment fund shall not carry on or hold themselves out as carrying on the business of the fund in or from within the Virgin Islands;
 - (c) the trustee of a unit trust that is a private investment fund shall not carry on or hold itself out as carrying on the business of the unit trust in or from within the Virgin Islands; and
 - (d) a private investment fund that does not fall within paragraph (a), (b) or (c) shall not carry on or hold itself out as carrying on business as a private investment fund in or from within the Virgin Islands.
- (2) The restrictions outlined in subsection (1) shall not apply—
 - (a) to a private investment fund that is recognised under the Act; or
 - (b) to any fund or person or class of funds or persons specified by the Commission, through an Order published in the *Gazette*.
- (3) A person shall not act as an appointed person, or otherwise be concerned with the management or valuation, of a private investment fund that carries on business in or from within the Virgin Islands, unless the fund concerned is recognised as a private investment fund.
- (4) For the purposes of this section, but without limiting the section—
 - (a) a private investment fund, whether incorporated, registered, formed or organised within or outside the Virgin Islands, is deemed to carry on business in the Virgin Islands if—
 - (i) it operates from a place of business in the Virgin Islands; or

- (ii) it solicits an individual within the Virgin Islands to subscribe for, or purchase, any of its fund interests; and
- (b) a private investment fund that carries on business outside the Virgin Islands, is deemed to carry on business from within the Virgin Islands if it is—
 - (i) a BVI business company;
 - (ii) a partnership formed or organised under the laws of the Virgin Islands; or
 - (iii) a unit trust governed by the laws of the Virgin Islands and managed from within the Virgin Islands.

63C. Prohibition against promotion of private investment funds³⁰

- (1) A person, including the private investment fund itself, shall not, whether in or from within the Virgin Islands, promote a private investment fund unless—
- (a) the fund is recognised as a private investment fund and is promoted as permitted by this Act; and
 - (b) the communication or advice is exempted by the Private Investment Funds Regulations made in accordance with subsection (3).
- (2) A person promotes a private investment fund if he or she communicates, or causes to be communicated, an invitation or inducement to any other person, or advises or procures any other person, to become an investor, or to offer to become an investor, in a private investment fund.
- (3) The Private Investment Funds Regulations may provide that subsection (1) does not apply in relation to communications or advice—
- (a) of a specified category or description; or
 - (b) made or given in specified circumstances.

63D. General exemptions to prohibition³¹

- (1) A private investment fund incorporated, registered, formed or organised outside the Virgin Islands does not solicit an individual within the Virgin Islands to subscribe for, or purchase, any of its fund interests in circumstances where the subscription or purchase is a result of an approach made by the individual to the fund without any solicitation being made on or on behalf of the fund.
- (2) The Private Investment Funds Regulations may specify circumstances in which section 63B (1) or (2) does not apply with respect to certain specified categories or descriptions of private investment fund or person.

63E. Specific exemptions³²

- (1) A private investment fund may carry on business in or from within the Virgin Islands as if a private investment fund, prior to submitting its application for recognition, for a period not exceeding 21 days, if the fund—
- (a) satisfies the criteria for a private investment fund specified in section 63F (2) (a), (b) and (c); and
 - (b) complies with the requirements of this Act and the Private Investment Funds Regulations relating to private investment funds, other than with respect to recognition.

(2) A private investment fund that commences business in reliance on subsection (1) shall submit an application with the Commission for recognition as a private investment fund within 14 days after the commencement of its business.

(3) For the purposes of the Financial Services Commission Act, a fund that commences business in reliance on subsection (1) is deemed to have been recognised as a private investment fund for the period in which it carries on business in reliance on subsection (1).

(4) During the period in which a private investment fund carries on business in accordance with subsection (1)—

- (a) the fund, a partner of the fund or, where the fund is a unit trust, the trustee, does not commit an offence under section 63B (1);
- (b) a person does not commit an offence under section 63B (2) by acting as the appointed person of or being concerned with the management or administration of the fund; and
- (c) a person does not commit an offence under section 63C (1) by promoting the fund.

63F. Recognition of private investment funds³³

(1) An application for the recognition of a private investment fund may be made to the Commission by—

- (a) in the case of a private investment fund that is a company, the fund itself;
- (b) in the case of a private investment fund that is a partnership, a partner;
- (c) in the case of a private investment fund that is a unit trust, the trustee; and
- (d) in any other case, the manager, or proposed manager, of the fund.

(2) The Commission may recognise a private investment fund if it is satisfied that—

- (a) the fund is lawfully incorporated, registered, formed or organised under the laws of the Virgin Islands or under the laws of a country outside the Virgin Islands;
- (b) the constitutional documents of the fund specify that—
 - (i) the fund is not authorised to have more than 50 investors;
 - (ii) an invitation to subscribe for, or purchase, fund interests issued by the fund shall be made on a private basis only; or
 - (iii) the fund interests of the fund shall be issued only to professional investors with an initial investment of each professional investor, other than exempted investors, of not less than such sum as may be prescribed in the Private Investment Funds Regulations;
- (c) the fund satisfies such other criteria as may be specified for recognition of a private investment fund in the Private Investment Fund Regulations;
- (d) the fund will, on being recognised, be in compliance with this Act, the Private Investment Fund Regulations and any practice directions applicable to the fund; and
- (e) recognising the fund as a private investment fund is not against the public interest.

(3) For the purposes of subsection (2) (b) (ii), an invitation to subscribe for, or purchase, fund interests issued by a private investment fund on a private basis includes an invitation which is made—

- (a) to specified persons (however described) and is not calculated to result in fund interests becoming available to other persons or to a large number of persons; or
- (b) by reason of a private or business connection between the person making the invitation and the investor.

(4) For the purposes of subsection (2) (c), the minimum investment limit referred to does not apply in respect of an investment made by a person specified in the Private Investment Funds Regulations as an exempted investor.

(5) Where the Commission grants an application for recognition under subsection (1), it shall—

- (a) register the fund in the Register of Private Investment Funds; and
- (b) issue the fund with a certificate of recognition, upon payment of the fee prescribed in accordance with section 62 of the Financial Services Commission Act.

(6) The recognition of a private investment fund is subject to such conditions as may be imposed by the Commission under section 40B of the Financial Services Commission Act.

63G. Obligation to act in accordance with constitutional documents³⁴

(1) No private investment fund shall make any offer or invitation of its fund interests, issue any fund interests or carry on business in any manner that would result in the fund—

- (a) in the case of a fund whose constitutional documents make specifications in accordance with section 63F (2) (i), having more than 50 investors;
- (b) in the case of a fund whose constitutional documents make specifications in accordance with section 63F (2) (ii), making any invitation to subscribe for, or purchase, its fund interests otherwise than on a private basis; or
- (c) in the case of a fund whose constitutional documents make specifications in accordance with section 63F (2) (iii), issuing fund interests where the initial investment, in respect to a professional investor who is not an exempted investor, is less than the sum prescribed in the Private Investment Funds Regulations.

(2) Without limiting subsection (1), no person shall be accepted as an investor in a private investment fund whose constitutional documents make specifications in accordance with section 63F (2) (iii), unless that person has provided written confirmation that he or she is a professional investor within the meaning specified in section 63A (1).

PROVISIONS APPLICABLE GENERALLY TO RECOGNISED PRIVATE INVESTMENT FUNDS³⁵

63H. Maintenance of financial records³⁶

(1) A private investment fund shall maintain records that are sufficient—

- (a) to show and explain its transactions;

- (b) at any time, to enable its financial position to be determined with reasonable accuracy; and
 - (c) to enable it to prepare such financial statements and make such returns as it is required to prepare and make under this Act and the Private Investment Funds Regulations.
- (2) The Private Investment Funds Regulations may specify—
- (a) the form and manner in which the records specified in subsection (1) are to be maintained;
 - (b) the place where records required to be maintained under subsection (1) and under the Private Investment Funds Regulations are required to be kept; and
 - (c) other records required to be maintained by a private investment fund to which this section applies, and the form, manner and place in which such records are to be maintained.
- (3) A private investment fund to which this section applies shall retain the records required to be maintained under this section for a period of at least 5 years after the completion of the transaction to which they relate.
- (4) Subsection (3) applies to a private investment fund after the cancellation or revocation of its recognition as if the recognition had not been cancelled or revoked.

PART IV - PROVISIONS OF GENERAL APPLICATION

AUTHORISED REPRESENTATIVES

64. Application for certification as authorised representative

- (1) An application may be made to the Commission for certification as an authorised representative by—
- (a) a BVI business company;
 - (b) a partnership formed under the laws of the Virgin Islands; or
 - (c) an individual who is ordinarily or habitually resident in the Virgin Islands.
- (2) The Commission may grant an application for certification under subsection (1), if it is satisfied that—
- (a) the applicant satisfies the requirements of this Act and the Mutual Fund Regulations with respect to the application;
 - (b) the applicant satisfies the Commission's fit and proper criteria;
 - (c) where the applicant is a BVI business company, its directors and senior officers and any persons having a significant interest or controlling interest in the applicant satisfy the Commission's fit and proper criteria;³⁷
 - (d) where the applicant is a partnership, the partners satisfy the Commission's fit and proper criteria;
 - (e) certifying the applicant is not against the public interest.

(3) Without limiting the discretion given to the Commission under subsection (2), the Commission may refuse to certify an applicant if it is of the opinion that any person having a share or other interest in the applicant, whether legal or equitable, does not satisfy the Commission's fit and proper criteria.

(4) A certification issued under subsection (2) shall be in writing and in the approved form.

(5) A person who is certified as an authorised representative is not required to be licensed under the Business, Professions and Trade Licences Act to act in that capacity.

65. Licensees and funds to have authorised representative

(1) Subject to subsection (2), a licensee, and a public, private, professional private investment³⁸ or recognised foreign fund shall appoint and at all times have an authorised representative who shall be a person certified by the Commission under section 64.

(2) Subsection (1) and section 66 do not apply to a licensee that has a significant management presence in the Virgin Islands.

(3) Criteria for determining whether a licensee has a significant management presence in the Virgin Islands shall be specified in the Regulatory Code.

(4) Where an authorised representative resigns or his appointment is terminated or becomes vacant for any reason, a licensee or a public, private, professional, foreign or private investment fund does not commit an offence, if it appoints another authorised representative within 21 days of the date of the previous authorised representative ceasing to do so.³⁹

(5) No person shall accept appointment, or act, as the authorised representative of a licensee or a public, private, professional, foreign or private investment fund unless the person has the benefit of a certification issued under section 64.⁴⁰

66. Functions of authorised representative

(1) The functions of an authorised representative are—

- (a) to act as the main intermediary between the licensee, mutual fund or private investment fund that he or she represents, and the Commission;⁴¹
- (b) to accept service of notices and other documents on behalf of the licensee or mutual fund that he or she represents;
- (c) to keep in the authorised representative's office in the Virgin Islands such records, or copies of such records, as may be prescribed—
 - (i) where he or she acts as authorised representative for a licensee, in the Regulatory Code; or
 - (ii) where he or she acts as authorised representative of a mutual fund, in the Mutual Fund Regulations or a private investment fund in the Private Investment Funds Regulations.⁴²

(2) Except to the extent provided in the Regulatory Code, the Mutual Funds Regulations or the Private Investment Funds Regulations, as the case may be—⁴³

- (a) all documents to be submitted by a licensee, a mutual fund or a private investment fund to the Commission shall be submitted by its authorised representative; and

- (b) all fees to be paid by a licensee, a mutual fund or a private investment fund shall be paid by its authorised representative on behalf of the licensee, mutual fund or private investment fund.

FINANCIAL STATEMENTS AND AUDIT

67. Application of sections 68 to 80

- (1) For the purposes of sections 68 to 80—
 - “prescribed” means, in the case of a relevant licensee, prescribed in the Regulatory Code and, in the case of a public fund, specified in the Mutual Fund Regulations; and
 - “relevant licensee” means a licensee designated in the Regulatory Code as a relevant licensee.
- (2) Sections 68 to 80 apply to—
 - (a) a relevant licensee, except to the extent that they may be disapplied or modified by the Regulatory Code with respect to particular categories, types or descriptions of licensee; and
 - (b) a public fund, except to the extent that they are disapplied or modified by this Act or by the Mutual Fund Regulations.

68. Meaning of “financial year”

- (1) The financial year end of a relevant licensee or a public fund is—
 - (a) the date specified in its application for a licence or registration; or
 - (b) such other date as may be notified to the Commission following its licensing or registration, provided that the financial year end shall not be less than 9 months, or more than 15 months, after the date of the previous financial year end.
- (2) Subject to subsection (3), for the purposes of this Act, the financial year of a relevant licensee or a public fund is—
 - (a) in the case of its first financial year, the period from the date of its incorporation to the last day of the month specified in the application for a licence or registration provided to the Commission under subsection (1); and
 - (b) in the case of subsequent financial years, the period of one year commencing on the day immediately after the day of its previous financial year.
- (3) Subsection (2)⁴⁴ applies whether or not financial statements have actually been prepared for the financial year in question.
- (4) The Commission may, on the application of a relevant licensee or public fund, in respect of any financial year, direct that the financial year shall be a period not exceeding 18 months that is different to that determined in accordance with subsection (1).

69. Meaning of “financial statements”

In this Act, the Regulatory Code and the Mutual Fund Regulations, “financial statements”, in relation to a relevant licensee or a public fund, and to a financial year, means—

- (a) a statement of the financial position of the licensee or public fund as at the last date of the financial year;
- (b) a statement of the financial performance of the licensee or public fund in relation to the financial year;
- (c) a statement of cash flows for the licensee or public fund in relation to the financial year;
- (d) in the case of a relevant licensee, such statement relating to the prospects for the business of the licensee as may be prescribed or specified in the Mutual Fund Regulations, or as may be required by the accounting standards in accordance with which the financial statements are prepared; and
- (e) such other statements as may be prescribed or specified in the Mutual Fund Regulations, together with any notes or other documents giving information relating to the matters specified in paragraphs (a), (b), (c), (d) or (e).

70. Preparation of financial statements

- (1) A relevant licensee and a public fund shall prepare for each financial year financial statements that comply with such accounting standards as may be prescribed.
- (2) If, in complying with the accounting standards in accordance with which they are prepared, the financial statements do not give a true and fair view of the matters to which they relate, the notes to the financial statements shall contain such information and explanations as will give a true and fair view of those matters.
- (3) The financial statements prepared under subsection (1) shall—
 - (a) be approved by the directors of the relevant licensee or public fund or, where the public fund is a unit trust, by the trustee; and
 - (b) be signed by, in the case of a public fund that is a unit trust, the trustee, and in any other case by at least one director on behalf of all the directors, following approval under paragraph (a).
- (4) The director, or trustee, signing the financial statements shall state the date when the financial statements were approved by the directors or trustee and the date when he or she signs the financial statements.

71. Submission of financial statements to the Commission

- (1) The financial statements of a relevant licensee, or public fund, signed by a director, or the trustee of a unit trust, in accordance with section 70 shall be submitted to the Commission within 6 months of the end of the financial year to which they relate, accompanied by—
 - (a) a director's certificate, or a trustee's certificate, in the approved form;
 - (b) an auditor's report;
 - (c) a report on the affairs of the licensee or public fund made in respect of the relevant financial year to—
 - (i) the members of the licensee; or
 - (ii) the investors of the public fund; and
 - (d) such other documents as may be prescribed.

(2) Unless accompanied by the certificates, reports and documents specified in subsection (1), the financial statements referred to in subsection (1) are deemed not to have been submitted to the Commission.

72. Submission of short period financial statements and reports

(1) A relevant licensee and a public fund shall, in respect of, and within, such periods as may be prescribed, submit to the Commission—

- (a) short period financial statements, that may be unaudited;
- (b) a return in the approved form;
- (c) such other information and documentation as may be prescribed.

(2) In this section—

“financial statements” has the meaning specified in section 70 with the substitution of the period covered by the financial statements for “financial year”; and

“short period” means such period or periods shorter than a financial year in respect of which financial statements are required by the Regulatory Code to be submitted to the Commission.

73. Extension of time

(1) The Commission may, on the application of a relevant licensee or public fund, extend the time for compliance with section 71 or 72 for a period of, or where it grants more than one extension for an aggregate period not exceeding, 6 months.

(2) An extension under subsection (1) may be granted subject to such conditions as the Commission considers appropriate.

74. Amendment of financial statements

(1) If the Commission considers that any document submitted by a relevant licensee or a public fund under section 71 or 72 is inaccurate or incomplete or is not prepared in accordance with this Act or the Regulatory Code, it may by written notice require the licensee or public fund to amend the document or to submit a replacement document.

(2) If a relevant licensee or public fund fails to comply with a notice under subsection (1), the Commission may reject the document.

75. Relevant licensee and public fund to appoint auditor

(1) A relevant licensee and a public fund shall appoint and at all times have an auditor for the purposes of auditing its financial statements.

(2) An auditor shall not be appointed under subsection (1) unless—

- (a) he or she is qualified under the Regulatory Code to act as the auditor of a licensee;
- (b) he or she has consented to act as auditor; and
- (c) the auditor is an approved auditor within the meaning of subsection (3).

(3) For the purposes of subsection (2)(c), “approved auditor” means—

- (a) in the case of a relevant licensee, an auditor whose appointment the Commission has approved in writing prior to his or her appointment; and

- (b) in the case of a public fund, an auditor who is approved by the Commission to act as the auditor of public funds.
- (4) The Commission shall not approve the appointment of an auditor under subsection (3)(a) unless it is satisfied that he or she has sufficient experience and is competent to audit the financial statements of the relevant licensee.
- (5) For the purposes of—
 - (a) subsection (3), the Commission may rely on such guidelines as it may issue in relation to the approval of an auditor;
 - (b) subsection (3)(a), the approval of the Commission is not required where—
 - (i) the auditor appointed in respect of a financial year acted as the auditor of the relevant licensee in the previous financial year; and
 - (ii) the Commission has not revoked its approval of the auditor under section 78.
- (6) A relevant licensee or public fund shall, within 14 days of the appointment of its auditor, submit a notice of appointment to the Commission.
- (7) A relevant licensee and a public fund shall make such arrangements as are necessary to enable its auditor to audit its financial statements in accordance with this Act, the Regulatory Code and the Mutual Fund Regulations, including—
 - (a) by giving the auditor a right of access at all reasonable times to its financial records and to all other documents and records; and
 - (b) by providing the auditor with such information and explanations, as the auditor reasonably requires for the purposes of the audit.
- (8) Where, for whatever reason, a person ceases to be the auditor of a relevant licensee or public fund, the licensee or public fund does not commit an offence by failing to comply with subsection (1) if it appoints another auditor in accordance with this section within 2 months of the date that the person who was previously appointed auditor ceases to hold that appointment.

76. Audit and audit report

- (1) An auditor shall carry out sufficient investigation to enable him or her to form an opinion on the financial statements, and prepare an audit report, in compliance with the Regulatory Code or the Mutual Fund Regulations, as the case may be.
- (2) Upon completion of his or her audit of the financial statements of a relevant licensee or public fund, the auditor shall provide an audit report to the licensee or public fund complying with the Regulatory Code or the Mutual Fund Regulations, as the case may be.
- (3) The Commission may at any time, by notice in writing, direct a licensee or public fund to supply the Commission with a report, prepared by its auditor or such other person as may be nominated by the Commission, on such matters as the Commission may determine, which may include an opinion on the adequacy of the accounting systems and controls of the licensee or public fund.
- (4) A report prepared under subsection (3) shall be at the cost of the licensee or public fund.

77. Obligations of auditors

(1) Notwithstanding anything to the contrary in any other enactment, the auditor of a relevant licensee or a public fund shall report immediately to the Commission any information relating to the affairs of the licensee that he or she has obtained in the course of acting as its auditor that, in his opinion, suggests that—

- (a) the licensee or fund is insolvent or is likely to become insolvent or is likely to be unable to meet its obligations as they fall due;
- (b) in the case of a licensee—
 - (i) the licensee is in breach of section 7 or 8;
 - (ii) the licensee has significant weaknesses in its internal controls which render it vulnerable to significant risks or exposures that have the potential to jeopardise the licensee's financial viability;
- (c) a criminal offence has been or is being committed by the licensee or fund or in connection with the business of the licensee or fund; or
- (d) serious breaches of this Act or the Regulatory Code or such enactments, Guidelines or Codes relating to money laundering or the financing of terrorism as may be issued or prescribed have occurred in respect of the licensee or fund or in connection with the business of the licensee or fund.

(2) Where the appointment of an auditor of a relevant licensee or public fund is terminated, or an auditor resigns before the expiration of his or her term of office, the auditor whose appointment has been terminated or who has resigned shall—

- (a) forthwith inform the Commission of the termination of his or her appointment, or his or her resignation, and disclose to the Commission the circumstances that gave rise to such termination or resignation; and
- (b) if, but for the termination of his or her appointment, he or she would have reported information to the Commission under subsection (1), he or she shall report the information concerned to the Commission, as if his or her appointment had not been terminated.

(3) The Commission may require an auditor of a relevant licensee or public fund to discuss any audit he or she has conducted or commenced with, or provide additional information regarding the audit to, the Commission.

(4) Where, in good faith, an auditor or former auditor provides any information to the Commission under subsection (1), (2) or (3), he or she is deemed not to be in contravention of any enactment, rule of law, agreement or professional code of conduct to which he or she is subject and no civil, criminal or disciplinary proceedings shall lie against him or her in respect thereof.

(5) The failure, in good faith, of an auditor or former auditor to provide a report or any information to the Commission under subsection (1), (2) or (3) does not confer upon any other person a right of action against the auditor which, but for that failure, he or she would not have had.

78. Powers of Commission re appointment of auditor

- (1) Where the Commission is satisfied that the auditor of a relevant licensee or public fund has failed to fulfil his or her obligations under this Act or is otherwise not a fit and proper person to act as the auditor of a licensee or public fund, it may, by written notice to the licensee or public fund, revoke the approval of the appointment of the auditor and the licensee or public fund shall appoint a new auditor in accordance with section 75.
- (2) A notice revoking the appointment of an auditor under subsection (1) shall be given to the auditor.
- (3) If a licensee or public fund fails to appoint an auditor, the Commission may appoint an auditor for the licensee or public fund, as the case may be.
- (4) An auditor appointed under subsection (3) is deemed for the purposes of this Act to have been appointed by the licensee or public fund.

79. Group financial statements

- (1) Where a relevant licensee is a member of a group of companies, the relevant licensee may submit to the Commission its group financial statements, so long as the group financial statements are presented in a manner that would enable a proper evaluation of the licensee's financial position.⁴⁵
- (2) The Commission may require that the group financial statements are audited by the auditor of the relevant⁴⁶ licensee or by another auditor approved by the Commission.
- (3) The Regulatory Code may provide for the form and content of group financial statements to be submitted under this section.

80. Commission may require other licensee to have financial statements audited

- (1) The Commission may, by written notice, require a licensee that is not a relevant licensee, to appoint an auditor and to submit audited financial statements to the Commission.
- (2) The Commission shall in a written notice issued under subsection (1) specify the extent to which sections 68 to 79 apply to the licensee and its auditor.

GENERAL**81. Reporting of information to Commission**

- (1) A licensee, a public fund, a private fund, a professional fund and a recognised foreign fund shall report to the Commission such information as may be prescribed within such time and verified in such manner as may be prescribed.
- (2) If the Commission considers that any information reported by a licensee, public fund, private fund, professional fund or recognised foreign fund under subsection (1) is inaccurate or incomplete or is not verified in such manner as may be prescribed, it may by written notice and within such time as it may specify, require the licensee or fund to report amended or additional information to the Commission or to verify the information in such manner as may be specified in the notice.

PART V - MARKET ABUSE**INTERPRETATION****82. Interpretation for this Part**

(1) For the purposes of this Part—

“acquiring”, in relation to a security, includes—

- (a) agreeing to acquire the security; or
- (b) entering into a contract which creates the security;

“dealing”, in relation to a security, means acquiring or disposing of the security, whether as principal or agent, or directly or indirectly procuring the acquisition of the security by any other person;

“disposing”, in relation to a security, includes—

- (a) agreeing to dispose of the security; or
- (b) bringing to an end a contract which created the security;

“inside information” has the meaning specified in section 83;

“market information” means information consisting of one or more of the following facts—

- (a) that securities of a particular kind have been or are to be acquired or disposed of, or that their acquisition or disposal is under consideration or the subject of negotiation;
- (b) that securities of a particular kind have not been or are not to be acquired or disposed of;
- (c) the number of securities acquired or disposed of or to be acquired or disposed of or whose acquisition or disposal is under consideration or the subject of negotiation;
- (d) the price (or range of prices) at which securities have been or are to be acquired or disposed of or the price (or range of prices) at which securities whose acquisition or disposal is under consideration or the subject of negotiation may be acquired or disposed of;
- (e) the identity of the persons involved or likely to be involved in any capacity in an acquisition or disposal;

“market maker” means a person who—

- (a) holds himself or herself out, at all normal times in compliance with the rules of a securities market, as willing to acquire or dispose of securities; and
- (b) is recognised as doing so under those rules;

“market rules”, in relation to a securities market, means the rules that regulate the securities market in relation to the use and dissemination of information, provided that the rules are—

- (a) specified under a law or regulations of the country in which the securities market is located; or
- (b) made by the securities market, where the securities market is authorised to make such rules by a law or regulations of the country in which the securities market is located;

“professional intermediary” has the meaning specified in section 87;

“profit” includes the avoidance of a loss;

“public sector body” means—

- (a) the Government of the Virgin Islands or the government, or local government, of any country outside the Virgin Islands;
- (b) an international organisation specified in the Market Abuse Regulations; and
- (c) the central bank of any country or group of countries;

“regulated market” means a market specified by the Commission by a notice published in the Gazette as a regulated market;

“securities market” means a securities market that is established by or under, or is regulated by or under, a law or regulations of a country in which the securities market is located; and

“security” has the meaning specified in Schedule 5.

(2) For the purposes of the definition of “dealing” in subsection (1), but without limiting it, a person procures an acquisition or disposal of a security if the security is acquired or disposed of by another person who is—

- (a) his or her agent;
- (b) his or her nominee; or
- (c) acting at his or her direction in relation to the acquisition or disposal.

83 Meaning of “inside information”

“Inside information” means information which—

- (a) relates to one or more particular securities or one or more particular issuers and not to securities generally or to issuers generally;
- (b) is specific or precise in nature;
- (c) has not been made public; and
- (d) if it were made public, would be likely to have a significant effect on the price of any securities.

84. Meaning of having information as “insider”

(1) A person has information as an insider if—

- (a) the information is inside information, and he or she knows that it is inside information; and

- (b) he or she has the information, and knows that he or she has the information, from an inside source.
- (2) For the purposes of subsection (1), a person has information from an inside source if—
 - (a) he or she has the information through—
 - (i) being a director, employee or shareholder of an issuer; or
 - (ii) having access to the information by virtue of his employment, office or profession; or
 - (b) the direct or indirect source of the information is a person within paragraph (a).

85. Meaning of “made public”

- (1) Without limiting the expression, information is “made public” if—
 - (a) it is published in accordance with the rules of a securities market for the purpose of informing investors and their professional advisers;
 - (b) it is contained in records which, by virtue of any laws or regulations of the country in which the securities market is located, are open to inspection by the public;
 - (c) it can be readily acquired by those likely to deal in any securities—
 - (i) to which the information relates; or
 - (ii) of an issuer to which the information relates; or
 - (d) it is derived from information which has been made public.
- (2) Information may be treated as made public even though—
 - (a) it can be acquired only by persons exercising diligence or expertise;
 - (b) it is communicated to a section of the public and not to the public at large;
 - (c) it can be acquired only by observation;
 - (d) it is communicated only on payment of a fee; or
 - (e) it is published only outside the country, or the part of the country, in which the securities market is located and to which the information relates.

86. Meaning of “price-affected securities”

Securities are “price-affected securities” in relation to inside information, and inside information is “price-sensitive information” in relation to securities, if the information would, if made public, be likely to have a significant effect on the price of the securities and for this purpose, “price” includes value.

87. Meaning of “professional intermediary”

- (1) Subject to subsection (2), a “professional intermediary” is a person who—
 - (a) carries on, and who holds himself or herself out to the public, or any section of the public including a section of the public constituted by persons such as himself or herself, as willing to carry on, the business of—
 - (i) acquiring or disposing of securities, whether as principal or agent; or

- (ii) acting as an intermediary between persons taking part in any dealing in securities; or
 - (b) is employed by a person who carries on business in accordance with paragraph (a) to carry out such an activity.
- (2) A person is not to be treated as a professional intermediary if—
- (a) undertaking an activity specified in subsection (1)(a)(i) or (ii) is incidental to the carrying on of another business not specified in that subsection; or
 - (b) he or she undertakes an activity specified in subsection (1)(a)(i) or (ii) on an occasional basis only.
- (3) A person dealing in securities relies on a professional intermediary if a person who is acting as a professional intermediary carries on an activity specified in subsection (1)(a).

INSIDER DEALING

88. Offence of insider dealing

- (1) Subject to sections 89 and 90, a person who has information as an insider commits an offence if—
- (a) he or she deals in securities that are price-affected securities in relation to the information where—
 - (i) the acquisition or disposal that constitutes the dealing takes place on a securities market; or
 - (ii) the person dealing relies on a professional intermediary or is himself or herself acting as a professional intermediary;
 - (b) he or she encourages another person to deal in securities that are, whether or not that other person knows it, price-affected securities in relation to the information, knowing or having reasonable cause to believe that the dealing would take place in the circumstances specified in paragraph (a); or
 - (c) he or she discloses the information, otherwise than in the proper performance of the functions of his employment, office or profession, to another person.
- (2) A person who commits an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding \$40,000 or imprisonment for a term not exceeding 3 years, or both; or
 - (b) on conviction on indictment, to a fine not exceeding \$100,000 or imprisonment for a term not exceeding 5 years, or both.

89. Insider dealing defences

- (1) A person does not commit an offence under section 88(1)(a) by virtue of dealing in securities if he or she proves that—
- (a) he or she did not, at the time, expect the dealing to result in a profit attributable to the fact that the information in question was price-sensitive information in relation to the securities;

- (b) at the time, he or she believed on reasonable grounds that the information had been disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information; or
 - (c) he or she would have done what he or she did even if he or she had not had the information.
- (2) A person does not commit an offence under section 88(1)(b) by virtue of encouraging another person to deal in securities if he or she proves that—
 - (a) he or she did not, at the time, expect the dealing to result in a profit attributable to the fact that the information in question was price-sensitive information in relation to the securities;
 - (b) at the time, he or she believed on reasonable grounds that the information had been or would be disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information; or
 - (c) that he or she would have done what he or she did even if he or she had not had the information.
- (3) A person does not commit an offence under section 88(1)(c) by virtue of a disclosure of information if he or she proves that—
 - (a) he or she did not at the time expect any person, because of the disclosure, to deal in securities in the circumstances mentioned in section 88 (1)(a); or
 - (b) although he or she had such an expectation at the time, he or she did not expect the dealing to result in a profit attributable to the fact that the information was price-sensitive information in relation to the securities.
- (4) A person does not commit an offence under section 88 by virtue of dealing in securities or encouraging another person to deal in securities if he or she proves that—
 - (a) he or she acted in good faith in the course of—
 - (i) his or her business as a market maker; or
 - (ii) his or her employment in the business of a market maker; or
 - (b) the information which he or she had as an insider was market information and it was reasonable for an individual in his or her position to have acted as he or she did despite having that information as an insider at the time.
- (5) In determining for the purposes of subsection (4)(b) whether it is reasonable for a person to do any act despite having market information at the time, the following shall be taken into account—
 - (a) the content of the information;
 - (b) the circumstances in which he or she first had the information and in what capacity; and
 - (c) the capacity in which he or she now acts when the determination is made.
- (6) A person does not commit an offence under section 88 by virtue of dealing in securities in a securities market or encouraging another person to deal in securities in a securities market if

he or she proves that he or she acted in compliance with the market rules applicable to the securities market concerned.

(7) A person does not commit an offence under section 88 by virtue of dealing in securities or encouraging another person to deal if he or she proves—

- (a) that he or she acted—
 - (i) in connection with an acquisition or disposal which was under consideration or the subject of negotiation, or in the course of a series of such acquisitions or disposals; and
 - (ii) with a view to facilitating the accomplishment of the acquisition or disposal or the series of acquisitions or disposals; and
- (b) that the information which he or she had as an insider was market information arising directly out of his or her involvement in the acquisition or disposal or series of acquisitions or disposals.

90. Territorial scope: insider dealing

- (1) A person does not commit an offence under section 88(1)(a) unless—
 - (a) he or she was within the Virgin Islands at the time when he or she is alleged to have done any act constituting or forming part of the alleged dealing; or
 - (b) the professional intermediary referred to in section 88(1)(a) was within the Virgin Islands at the time when he or she is alleged to have done anything by means of which the offence is alleged to have been committed.
- (2) A person does not commit an offence under section 88(1)(b) or (c) unless—
 - (a) he or she was within the Virgin Islands at the time when he or she is alleged to have disclosed the information or encouraged the dealing; or
 - (b) the alleged recipient of the information or encouragement was within the Virgin Islands at the time when he or she is alleged to have received the information or encouragement.

MISLEADING STATEMENTS AND MARKET MANIPULATION

91. Misleading information and market manipulation

- (1) A person commits an offence if, for the purpose specified in subsection (2), he or she—
 - (a) makes a statement, promise or forecast which he or she knows to be misleading, false or deceptive;
 - (b) dishonestly conceals any material facts; or
 - (c) recklessly makes, whether dishonestly or otherwise, a statement, promise or forecast which is misleading, false or deceptive.
- (2) The purpose referred to in subsection (1) is the purpose of inducing another person, whether or not that other person is the person to whom the statement, promise or forecast is made or from whom the facts are concealed—

- (a) to enter, or offer to enter into, or refrain from entering into, an agreement or arrangement the making of which or performing of which constitutes investment business; or
 - (b) to exercise, or refrain from exercising, any rights conferred by an investment.
- (3) Subsection (2) applies whether the person intended to induce the other person or was reckless as to whether it would induce that other person, in the manner specified in that subsection.
- (4) A person commits an offence if he or she does any act or engages in any course of conduct and—
- (a) the act or course of conduct concerned creates a false or misleading impression as to the market, price or value of an investment;
 - (b) the person does the act or engages in the course of conduct concerned for the purpose of creating the impression and thereby inducing another person—
 - (i) to deal in the investment; or
 - (ii) refrain from doing so or to exercise, or refrain from exercising, any rights conferred by that investment.
- (5) A person commits an offence under this section only if—
- (a) the statement, promise or forecast is made in, or from, the Virgin Islands;
 - (b) the facts are concealed in, or from, the Virgin Islands; or
 - (c) the arrangement referred to in subsection (2)(a) are made in, or from, the Virgin Islands.
- (6) A person who commits an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding \$40,000 or imprisonment for a term not exceeding 3 years, or both; or
 - (b) on conviction on indictment, to a fine not exceeding \$100,000 or imprisonment for a term not exceeding 5 years, or both.

92. Defences

- (1) A person does not commit an offence under section 91 in relation to a statement, promise or forecast if—
- (a) the statement, promise or forecast was made in respect of a securities market; and
 - (b) he or she proves that he or she acted in compliance with the market rules applicable to the securities market concerned.
- (2) A person does not commit an offence under section 91 in relation to an act or a course of conduct if he or she undertook the act, or engaged in the course of conduct, in respect of a securities market and he or she proves that—
- (a) he or she reasonably believed that the act or conduct would not create an impression that was false or misleading as to the matters contained in section 91(4); or

- (b) he or she acted in compliance with the market rules applicable to the securities market concerned.

GENERAL EXCLUSION

93. Monetary policy exclusion

Sections 88 and 91 do not apply to anything done by a person acting on behalf of a public sector body in pursuit of—

- (a) monetary policies;
- (b) policies with respect to exchange rates; or
- (c) policies with respect to the management of public debt or foreign exchange reserves.

REGULATIONS

94. Market Abuse Regulations

(1) The Cabinet may, on the advice of the Commission, make Market Abuse Regulations generally for giving effect to this Part and for the administration of this Act by the Commission as it relates to market abuse.

(2) The Market Abuse Regulations may—

- (a) be made for the purposes of this Act or for specified provisions of this Act;
- (b) make different provision in relation to different persons, circumstances or cases; and
- (c) subject to subsection (3), provide for offences and penalties for any contravention of or failure to comply with specified requirements of the Regulations.

(3) A penalty provided for an offence under the Market Abuse Regulations may not exceed

- (a) in the case of a fine, the sum of \$30,000; and
- (b) in the case of a period of imprisonment, the term of 5 years.

PART VI - MISCELLANEOUS PROVISIONS

95. Restrictions on use of certain names and terms

(1) Subject to subsection (2)⁴⁷, no person shall, except with the prior written approval of the Commission or unless authorised by or under another enactment—

- (a) use, whether in the name under which he or she is registered or in the description or title under which he or she carries on business in or from the Virgin Islands—
 - (i) the words or terms “fund” or “mutual fund” or any combination or derivative thereof or any word or phrase specified in the Mutual Funds Regulations or Private Investment Fund Regulations as a word or phrase that suggests a person is operating as a mutual fund or a private investment fund;⁴⁸ or

- (ii) any word or phrase prescribed in the Investment Business Regulations as a word or phrase that suggests investment business; or
 - (b) make any representation, whether in a document or in any other manner, that is likely to suggest that he or she—
 - (i) is carrying on, or that he or she is licensed or otherwise entitled to carry on, investment business;
 - (ii) is operating as, or that he or she is registered as a public fund, recognised as a private or professional fund or otherwise entitled to operate as a mutual fund; or
 - (iii) is operating, or recognised, as a private investment fund or otherwise entitled to operate as a private investment fund.⁴⁹
- (2) Subsection (1) does not apply to a person holding an investment business licence, or to a public fund, a private or professional fund, or a private investment fund, provided that the name under which it is registered or the name which it uses does not suggest that⁵⁰—
- (a) in the case of a person holding an investment business licence, he or she carries on any business required to be licensed under this Act other than the business that he or she is authorised by its licence to carry on; or
 - (b) in the case of a mutual fund or a private investment fund, that the fund is of a different type than that for which it is registered or recognised.

96. Incorporation and change of name of companies

The Registrar of Corporate Affairs shall not register a company under, or register a change of name of a BVI business company to, a name that includes—

- (a) the word or term “fund” or “mutual fund” or any combination or derivative thereof; or
- (b) any other word or phrase specified or prescribed pursuant to section 95(1)(a),

unless the Registrar is satisfied that the company is authorised under this Act or another enactment to use the name or that the Commission has approved the use of the name by the company.

97. Exemption from certain enactments

(1) A foreign company which carries on business in the Virgin Islands within the meaning of section 185 of the BVI Business Companies Act is exempt from Part XI of that Act if the business it carries on in the Virgin Islands is limited to operating in the Virgin Islands as a public fund, a private fund or a professional fund.

(2) A licensee is exempt from the need to obtain a licence under the Business, Professions and Trade Licences Act to carry on any class of investment business in respect of which he or she is licensed.

(3) Subject to subsection (5), a licensee is exempt from the need to obtain a licence under the Financing and Money Services Act to carry on the business of providing currency exchange services if, not less than 14 days prior to commencing that business, or such shorter period as the Commission may allow, it has submitted a written notice to the Commission—

- (a) advising the Commission of its intention to carry on the business of providing currency exchange services; and
 - (b) specifying the nature and extent of that business.
- (4) If there is any significant change in the nature and extent of the currency exchange services business of a licensee that has the benefit of an exemption under subsection (3), the licensee shall provide written notification of the change to the Commission.
- (5) The Commission may, whether on receipt of a notice under subsection (3) or (4), or at any time subsequent thereto, disapply subsection (3) to a licensee where it is of the opinion that the nature and extent of the currency exchange services business carried on by the licensee is such that it should be licensed under the Financing and Money Services Act.

97A. Power to make Regulations generally⁵¹

The Cabinet may, on the advice of the Commission, make Regulations in respect of any matter, for which specific regulation-making powers are not provided under this Act, in order to achieve the objectives of this Act.

ADMINISTRATION

98. Applications

- (1) Every application made under this Act shall—
 - (a) be in writing and, where a form has been approved under the Financial Services Commission Act shall be in the approved form; and
 - (b) have included with it such documents or information as may be specified by this Act and the Mutual Fund Regulations or the Private Investment Funds Regulations⁵² or the Regulatory Code, as the case may be.
- (2) The Commission may require an applicant to—
 - (a) provide it with such documents and information, in addition to those specified in subsection (1)(b), as it reasonably requires to determine the application and any such information shall be in such form as the Commission may require; and
 - (b) verify any document and information provided in support of an application in such manner as the Commission may specify.
- (3) If, before the determination by the Commission of an application—
 - (a) there is a material change in any information or documentation provided by or on behalf of the applicant to the Commission in connection with the application; or
 - (b) the applicant discovers that any such information or documentation is incomplete, inaccurate or misleading,

the applicant shall forthwith give the Commission written particulars of the change or of the incomplete, inaccurate or misleading information or documentation.

99. Registers

- (1) The Commission shall maintain—
 - (a) a Register of Investment Business Licensees;

- (b) a Register of Public Funds;
- (c) a Register of Private Funds;
- (d) a Register of Professional Funds;⁵³
- (e) a Register of Certified Authorised Representatives; and⁵⁴
- (f) such other register as the Commission deems fit.⁵⁵

(2) The registers and the information contained in any document submitted to the Commission may be kept in any form the Commission considers fit including, either wholly or partly, by means of a device or facility that—

- (a) records or stores information in magnetic or electronic form; and
- (b) permits the information to be inspected and reproduced in legible and useable form.

100. Inspection of registers and information held by Commission

- (1) Subject to subsection (2), a person may, during normal business hours—
 - (a) inspect the registers and any records kept by the Commission that . are specified as public records in the Investment Business Regulations or the Mutual Fund Regulations or the Private Investment Funds Regulations⁵⁶; and
 - (b) require the Commission to provide him or her with a copy or certified copy of, or extract from, any document that he or she would be entitled to inspect under paragraph (a) upon the payment of such fee as the Commission determines.
- (2) In respect of documents submitted or kept in electronic form, the rights granted under subsection (1) extend only to reproductions of those documents in useable written form produced in such manner as the Commission considers appropriate.
- (3) A copy or reproduction of, or extract from, any document or record that is kept by the Commission and certified as such by it is admissible in evidence in all legal proceedings to the same extent as the original document.

101. Electronic filing of documents

- (1) In this section, a document in electronic form is a document in a computer processable message format that is capable of being transmitted electronically.
- (2) The Investment Business Regulations, the Mutual Funds Regulations and the Private Investment Funds Regulations may provide for a system enabling documents required or permitted to be submitted to the Commission under this Act to be submitted in electronic form.⁵⁷
- (3) A system for the filing of documents in electronic form shall provide for—
 - (a) the criteria for authorising persons to submit documents in electronic form; and
 - (b) the security and authentication of the documents submitted.

102. Fees, penalties and charges payable to Commission

- (1) Regulations made under section 62 of the Financial Services Commission Act may provide for the fees chargeable and payable under this Act.

(2) The Commission may refuse to take any action required of it with respect to a licensee under this Act for which a fee is payable until the fee and any other fees, penalties and charges payable by, or in respect of, the licensee have been paid.

(3) Any fee, charge or contribution which is owed to the Commission under this Act may be recovered as a debt due to the Commission.

103. Regulatory Code

(1) Without limiting the powers of the Commission under the Financial Services Commission Act, the Regulatory Code may, in addition to matters specifically provided for in this Act, specify or provide for—

- (a) the financial resources to be maintained by licensees;
- (b) the policies, procedures, systems and controls, including internal controls, to be established and maintained by licensees, including with respect to the assessment and management of risk;
- (c) principles and rules of corporate governance to be adhered to by licensees;
- (d) record keeping;
- (e) internal reporting;
- (f) staff training;
- (g) the solicitation of business and in particular unsolicited calls;
- (h) the preparation by a licensee of a business plan and the information to be included in, and the form of, the business plan.

104. Securities and Investment Business Advisory Committee

(1) The Commission, with the approval of its Board, may—

- (a) establish a Committee to be known as the “Securities, Investment Business and Mutual Funds Advisory Committee”; and
- (b) appoint as members of the Committee persons having such knowledge and experience as the Commission considers appropriate.

(2) The functions of the Securities, Investment Business and Mutual Funds Advisory Committee shall be—

- (a) to keep this Act, and such other enactments relevant to securities, investment business and mutual funds as may be specified by the Commission, under review;
- (b) to make such recommendations as it considers appropriate to the Commission for changes to this Act and to any other enactments specified by the Commission under paragraph (a); and
- (c) to make such recommendations as it considers appropriate to the Commission for the development and reform of the law relating to securities, investment business and mutual funds.

(3) The Chairman of the Committee shall be appointed by the Commission.

(4) The Committee—

- (a) may appoint such subcommittees as it considers appropriate; and
- (b) shall determine its own rules of procedure.

OFFENCE PROVISIONS

105. False or misleading representations, statements, reports or returns.

(1) No person shall make or assist in making a representation, statement, report or return, whether oral or written—

- (a) that is required or permitted by this Act to be made to or, in the case of a document, submitted to the Commission; and
- (b) that—
 - (i) contains a false statement of a material fact; or
 - (ii) omits to state a material fact required to be provided to the Commission or necessary to avoid the statement or document being materially misleading.

(2) A person does not contravene subsection (1) if he or she did not know and, with the exercise of reasonable diligence, could not have known that the representation or statement contained a false statement or omitted a material fact.

106. Schedule of offences

(1) A person who contravenes a provision of this Act specified in Column 1 of Schedule 7 and described in Column 2 of that Schedule commits an offence and is liable on conviction up to the maximum of the penalty provided—

- (a) in Column 4 of that Schedule, in the case of a company; or
- (b) in Column 5 of that Schedule, in the case of an individual.

(2) Where an offence is committed by a company, a director and every senior officer of that company who knowingly authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on conviction to the same penalty prescribed for the company.

(3) Schedule 7 does not apply to an offence committed under Part V.

107. Order to comply

Where a person is convicted of an offence under this Act or any regulations, the court having jurisdiction to try the offence may, in addition to any punishment it may impose, order that person to comply with the provision of this Act or of the regulations for the contravention of which he or she has been convicted.

FINAL PROVISIONS

108. Amendment of Schedules

(1) The Cabinet may by Order, on the advice of the Commission, amend any Schedule to this Act in such manner as it considers necessary.

(2) An Order made under subsection (1) shall be published in the Gazette; and be subject to a negative resolution of the House of Assembly.

109. [Omitted]

110. [Omitted]

SCHEDULE 1 – INVESTMENTS

[Section 2]

1. Shares, interests in a partnership or fund interests, etc.

Any of the following—

- (a) shares in, and stock in the share capital of, a company;
- (b) interests in a partnership;
- (c) a fund interest in a mutual fund that does not fall within paragraph (a) or (b).

2. Debentures, etc.

Debentures, debenture stock, loan stock, bonds, certificates of deposit and any other instruments creating or acknowledging indebtedness, other than—

- (a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
- (b) a cheque or other bill of exchange, a bankers draft or a letter of credit;
- (c) a banknote or a statement showing a balance in a current, deposit or savings account;
- (d) by reason of any financial obligation contained in it—
 - (i) a lease or other disposition of property;
 - (ii) a mortgage or any other charge; or
 - (iii) an insurance policy.

3. Instruments giving entitlement to shares, interests or debentures

(1) Subject to sub-paragraph (2), warrants or other instruments entitling the holder to subscribe for investments falling within paragraph 1 or 2.

(2) For the purposes of subparagraph (1)—

- (a) it is immaterial whether the investments are for the time being in existence or identifiable; and
- (b) an investment falling within subparagraph (1) shall not be regarded as falling within paragraph 5, 6 or 7.

4. Certificates representing investments

Certificates or other instruments which confer contractual or property rights—

- (a) in respect of any investment falling within paragraph 1, 2 or 3, being an investment held by a person other than the person on whom the rights are conferred by the certificate or instrument; and
- (b) the transfer of which may be effected without the consent of that person.

5. Options

Options to acquire or dispose of—

- (a) an investment falling within any other paragraph of this Schedule;
- (b) any currency;
- (c) palladium, platinum, gold or silver; or
- (d) an option to acquire or dispose of an investment falling within subparagraph (a), (b) or (c) of this paragraph.

6. Futures

- (1) Rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed upon when the contract is made, other than a contract made for commercial and not investment purposes.
- (2) A contract shall be regarded as made for investment purposes if it is made or traded on an investment exchange, or made otherwise than on such an exchange but expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.
- (3) A contract not falling within subparagraph (2) shall be regarded as made for commercial purposes if, under the terms of the contract, delivery is to be made within 7 days.

7. Contracts for differences

- (1) Rights under—
 - (a) a contract for differences; or
 - (b) any other contract the purpose or intended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in—
 - (i) the value or price of property of any description; or
 - (ii) an index or other factor designated for that purpose in the contract,
 other than a contract where the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates.
- (2) This paragraph does not apply to rights under a contract under which money is received by way of deposit on terms that any interest or other return to be paid on the sum deposited will be calculated by reference to fluctuations in an index or other factor.

8. Life and Health insurance contracts

- (1) Rights under a contract the effecting and carrying out of which constitutes Class 1 or Class 2 life and health business within the meaning of the Insurance Act.
- (2) This paragraph does not apply to rights under a reinsurance contract.
- (3) Rights falling within this paragraph shall not be regarded as falling within paragraph 7.

9. Rights and interests in investments

Rights to and interests in any investment falling within any of the preceding paragraphs of this Schedule.

10. Specified investment

Anything specified as an investment in the Investment Business Regulations.

SCHEDULE 2 - INVESTMENT ACTIVITIES

[Sections 3 and 4]

PRELIMINARY**Interpretation for this Schedule**

For the purposes of this Schedule, “member of the public”, in relation to a person soliciting him or her (the first person), means any other person except—

- (a) a company in the same group as the first person;
- (b) a person who is a participant with the first person in a joint enterprise;
- (c) a person holding—
 - (i) a licence issued under section 6 of this Act;
 - (ii) a licence issued under the Banks and Trust Companies Act;
 - (iii) a licence issued under the Company Management Act; or
 - (iv) an insurer’s licence issued under the Insurance Act;
- (d) a person licensed in a jurisdiction outside the Virgin Islands to carry on an activity equivalent to an activity for which a licence specified in paragraph (c) is required, provided that the person is regulated and supervised in the carrying on of that business.

For the purposes of an exclusion in this Schedule relating to the sale of goods and the supply of services, “related sale or supply” means a sale of goods or supply of services to the customer otherwise than by the supplier, but for or in connection with the sale of goods or the supply of services by the supplier to the customer.

PART A - INCLUDED ACTIVITIES**1. Dealing in Investments**

- (a) Buying, selling, subscribing for or underwriting investments as an agent.
- (b) Buying, selling, subscribing for or underwriting investments as principal where the person—
 - (i) holds himself or herself out as willing, as principal, to enter into transactions of that kind at prices determined by him or her generally and continuously rather than in respect of each particular transaction;
 - (ii) holds himself or herself out as engaging in the business of underwriting investments of the kind to which the transaction relates;
 - (iii) holds himself or herself out as engaging, as a market maker or dealer, in the business of buying investments of the kind to which the transaction relates with a view to selling them; or
 - (iv) regularly solicits members of the public for the purpose of inducing them, whether as principals or agents, to buy, sell, subscribe for or underwrite

investments and the transaction is, or is to be entered into, as a result of the person having solicited members of the public in that manner.

For the purposes of this paragraph, one investment is of the same kind as another investment if they both fall within the same paragraph of Schedule 1.

2. Arranging Deals in Investments

Making arrangements with a view to—

- (a) another person (whether as a principal or an agent) buying, selling, subscribing for or underwriting a particular investment, being arrangements which bring about, or would bring about, the transaction in question; or
- (b) a person who participates in the arrangements buying, selling, subscribing for or underwriting investments.

3. Managing Investments

- (a) Managing investments belonging to another person in circumstances involving the exercise of discretion (other than as manager of a mutual fund).
- (b) Acting as manager of a mutual fund.

4. Providing Investment Advice

- (a) Advising a person on investments (other than as the investment adviser of a mutual fund) where the advice—
 - (i) is given to the person in his or her capacity as an investor, or a potential investor, or in his or her capacity as agent for an investor or potential investor; and
 - (ii) concerns the merits of the investor, or a potential investor, doing any of the following (whether as principal or agent)—
 - (A) buying, selling, subscribing for or underwriting a particular investment; or
 - (B) exercising any right conferred by an investment to acquire, sell, subscribe for, underwrite or convert an investment.
- (b) Acting as the investment adviser of a mutual fund.

5. Providing Custodial Services with Respect to Investments

- (a) Acting as custodian or depository of assets belonging to another person, other than as custodian of a mutual fund or trustee of unit trust, where—
 - (i) those assets include investments falling within paragraphs 1 to 6 of Schedule 1; or
 - (ii) the custodial (or depository) arrangements are such that those assets may consist of or include investments specified in subparagraph (a)(i) and the arrangements have at any time been held out as being arrangements under which investments would be safeguarded.
- (b) Acting as custodian of a mutual fund.
- (c) Acting as the trustee of a unit trust.

6. Providing Administration Services with Respect to Investments

- (a) Administering or arranging for the administration of assets belonging to another person (other than as administrator of a mutual fund) where—
 - (i) those assets include investments falling within paragraphs 1 to 6 of Schedule 1; or
 - (ii) the administration arrangements are such that those assets may consist of or include investments and the arrangements have at any time been held out as being arrangements under which investments would be administered.
- (b) Acting as administrator, registrar or transfer agent of a mutual fund.

7. Operating an Investment Exchange

Providing a facility, whether by electronic means or otherwise, for the orderly trading of investments or for the listing of investments for the purposes of trading, by members of the investment exchange.

PART B - EXCLUDED ACTIVITIES**1. Dealing in Investments**

Where they would otherwise constitute dealing in investments, the following activities or transactions are deemed not to constitute dealing in investments for the purposes of paragraph 1 of Part A in the circumstances and to the extent specified—

- (1) Investments evidencing indebtedness

A person, whether as principal or agent, accepting, transferring or becoming a party to (otherwise than as a debtor or surety) an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he or she, or his or her principal, has made, granted or provided.

- (2) Issuance, redemption or re-purchase of own investments

- (a) The issuing, redeeming or re-purchasing by a company of its own—

- (i) shares;
 - (ii) debentures; or
 - (iii) instruments giving entitlement to shares in, or debentures issued by, the company.

For the purposes of this paragraph, “debenture” includes any other instrument falling within paragraph 2 of Schedule 1.

- (b) The issuing, redeeming or re-purchasing by a unit trust of its own fund interests; or
 - (c) The issuing, redeeming or re-purchasing by a partnership of its own partnership interests.
- (3) Sale of goods and supply of services

- (a) Subparagraphs (b) and (c) apply in respect of a supplier of goods or services only if the supplier does not—
 - (i) hold himself or herself out generally as engaging in the business of buying investments with a view to selling them; or
 - (ii) regularly solicit members of the public to buy, sell, subscribe for or underwrite investments.
 - (b) A transaction entered into by a supplier of goods or services with a customer where the supplier is acting as principal and the transaction is, or is to be, entered into by the supplier with the customer for the purposes of, or in connection with, the sale of goods or the supply of services by the supplier to the customer or a related sale or supply.
 - (c) A transaction entered into by a supplier of goods or services with a customer where the supplier is acting as agent for the customer, and—
 - (i) the transaction is, or is to be, entered into by the supplier with the customer for the purposes of, or in connection with, the sale of goods or the supply of services by the supplier to the customer or a related sale or supply; and
 - (ii) the investment falls within paragraph 1(a), 2 or 3 of Schedule 1 or, as far as is relevant to those paragraphs, paragraph 9 of Schedule 1.
- (4) Risk Management
- (a) A transaction where—
 - (i) the transaction relates to one or more investments falling within paragraphs 5, 6(1) or 7(1) of Schedule 1 or, as far as is relevant to those paragraphs, paragraph 9 of Schedule 1;
 - (ii) none of the parties to the transaction are individuals;
 - (iii) the sole or main purpose for which the person concerned enters into the transaction (either by itself or in combination with other such transactions) is to limit the extent to which a business specified as a “relevant business” in subparagraph (b) will be affected by an identifiable risk arising otherwise than as a result of the carrying on of any of the activities in Part A which are not excluded by this Part.
 - (b) A business is specified as a “relevant business” for the purposes of subparagraph (a) if it is a business other than investment business carried on by—
 - (i) the person entering the transaction;
 - (ii) a company that is in the same group as the person entering the transaction; or
 - (iii) a person who is, or is proposing, to participate in a joint enterprise with the person entering the transaction.
- (5) Dealing as agent in the course of a profession or non-investment business

Dealing in investments as an agent if—

- (a) the dealing is undertaken in the course of carrying on any business or profession which does not otherwise constitute investment business;
- (b) the dealing may reasonably be regarded as a necessary part of other services provided in the course of that business or profession; and
- (c) the person dealing as agent—
 - (i) does not receive or is not separately remunerated or rewarded in respect of his or her dealing as agent; and
 - (ii) does not hold himself or herself out generally as providing the service of dealing as agent.

(6) Employee share schemes

- (a) Dealing by a company (“the first company”), with a company in the same group as the first company or a relevant trustee in shares in, or debentures of, the first company, for the benefit of, or holding the shares or debentures for the benefit of—
 - (i) the employees or former employees of the first company or a company in the same group as the first company; or
 - (ii) the spouses, widows, widowers or children, or step-children, under the age of 18 years of the persons referred to in subparagraph (i).
- (b) For the purposes of subparagraph (a)—
 - (i) a “relevant trustee” is a person holding shares in, or debentures of, the first company as trustee for the purposes of the scheme specified in subparagraph (a); and
 - (ii) “share” and “debenture” includes any other instrument falling within paragraph 1 or 2 of Schedule 1, as the case may be, or, where relating to the share or debenture concerned, paragraph 3, 4 or 9.

(7) Dealing as bare trustee

Dealing in investments, as principal, which are, or are to be held, by a person as bare trustee for another person on the other person’s instructions where—

- (a) the dealing takes place in the course of a business that does not otherwise constitute investment business;
- (b) the person concerned does not receive any remuneration or reward, whether directly or indirectly, for the transaction that constitutes dealing in investments and, for the purposes of this subparagraph—
 - (i) remuneration includes commission; and
 - (ii) no account shall be taken of any remuneration that the person receives separately for acting as bare trustee; and
- (c) the person does not otherwise provide, or hold himself or herself out as providing, a service of dealing in investments.

(8) Dealing as agent with or through licensee

A person, who is not a licensee, entering into a transaction as agent for another person (“the client”) with or through a licensee if—

- (a) the agent does not receive from any person, other than the client, any remuneration or other reward for which he or she does not account to the client, arising out of his or her entering into the transaction; and
- (b) either—
 - (i) the transaction is entered into on advice given to the client by a licensee; or
 - (ii) it is clear, in all the circumstances, that the client is not seeking and has not sought advice from the agent as to the merits of the client’s entering into the transaction.

2. Arranging Deals in Investments

The following activities are deemed not to constitute arranging deals in investments for the purposes of paragraph 2 of Part A in the circumstances and to the extent specified—

(1) Arrangements not causing deal

In relation to paragraph 2(a) of Part A, arrangements which do not, or would not, bring about the transaction to which the arrangements relate.

(2) Investments evidencing indebtedness

A person making arrangements in respect of a transaction specified in paragraph 1(1) of this Part.

(3) Arranging own deals

Making arrangements for a transaction where the person making the arrangements enters or is to enter the transaction as principal or as agent for some other person

(4) Arrangements for issuance, redemption or re-purchase of own investments

Arrangements made by a company, unit trust or partnership in respect of a transaction specified in paragraph 1(2) of this Part.

(5) Enabling parties to communicate

Making arrangements to provide means by which one party to a transaction (or potential transaction) is able to communicate with other parties to the transaction or transactions.

(6) Arranging deals in investments in course of profession or non-investment business

Arranging deals in investments where—

- (a) the arrangements are made in the course of carrying on any business or profession which does not otherwise constitute investment business;
- (b) the arrangements may reasonably be regarded as a necessary part of other services provided in the course of that business or profession; and
- (c) the person dealing as agent—

- (i) does not receive or is not separately remunerated or rewarded in respect of making the arrangements; and
- (ii) does not hold himself or herself out generally as providing the service of arranging deals in investments.

(7) Arranging deals with or through licensees

A person, who is not a licensee, making arrangements for or with a view to a transaction which is to be entered into by another person ("the client") with or through a licensee if—

- (a) the person does not receive from any person any remuneration or other reward for which he or she does not account to the client, arising out of his making the arrangements; and
- (b) either—
 - (i) the transaction is or is to be entered into on advice given to the client by a licensee; or
 - (ii) it is clear, in all the circumstances, that the client is not seeking and has not sought advice from the person as to the merits of the client's entering into the transaction.

(8) Provision of finance

Making arrangements, the sole purpose of which is the provision of finance to enable a person to buy, sell, subscribe for or underwrite investments.

(9) Introducing

In relation to paragraph 2(a) of Part A, arrangements to introduce a person ("the client") to another person, where—

- (a) the person to whom the introduction is to be made is a licensee or a person listed in Part C as an excluded person; and
- (b) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to investments generally or in relation to any class of investments to which the arrangements relate.

(10) Sale of goods and supply of services

Arrangements made by a supplier of goods or services for, or with a view to, a transaction which is to be entered into by a customer for the purposes of, or in connection with, the sale of goods or the supply of services or a related sale or supply.

(11) Employee share schemes

Arrangements made by a company ("the first company"), a member of the same group as the first company or a relevant trustee, if the arrangements are for, or with a view, to a transaction of an employee share scheme of the kind referred to in paragraph 1(6) of this Part.

3. Managing Investments

The management of investments by a supplier of goods or services where the securities are, or are to be, managed for the purposes of, or in connection with, the sale of goods or the supply of

services by the supplier to a customer or a related sale or supply is deemed not to constitute managing investments for the purposes of paragraph 3 of Part A in the circumstances and to the extent specified.

4. Providing Investment Advice

The following activities are deemed not to constitute providing investment advice for the purposes of paragraph 4 of Part A in the circumstances and to the extent specified—

(1) Newspapers, broadcasting and information services

The giving of investment advice in—

- (a) a newspaper, journal, magazine or other periodical publication;
- (b) a television or sound broadcast; or
- (c) any electronic information service,

if the principal purpose of the publication, broadcast or information service, taken as a whole and including any advertisements contained in it, is not to induce persons to buy, sell, subscribe for or underwrite a particular investment.

(2) Providing investment advice in the course of a non-investment business

The giving of investment advice in the course of a business that does not constitute investment business where the person does not receive any remuneration for the advice and the advice is not, or does not include—

- (a) a recommendation to a person to buy, sell, subscribe for or underwrite a particular investment or to exercise or refrain from exercising rights conferred by a particular investment;
- (b) advice on the suitability of a particular investment for the person to whom, or in relation to whom, the advice is given; or
- (c) advice on the characteristics or performance of a particular investment.

(3) Providing investment advice in the course of a profession

The giving of legal or accounting advice with respect to an investment by a person in the course of carrying on business as a legal practitioner or an accountant.

(4) Trustee providing investment advice

The giving of investment advice by a person as trustee to—

- (a) a co-trustee for the purposes of the trust; or
- (b) a beneficiary under the trust concerning the beneficiary's interest under the trust, if the person does not otherwise carry on, or hold itself out as carrying on, the business of providing investment advice or managing investments.

(5) Director providing investment advice

The giving of investment advice by a director of a company to another director of the company for the purposes of the company, provided that the director does not otherwise carry on, or hold itself out as carrying on, the business of providing investment advice or managing investments.

(6) Sale of goods and services

The giving of advice by a supplier to a customer for the purposes of or in connection with the sale of goods or supply of services, or a related sale or supply, or to a person with whom the customer proposes to enter into a transaction for the purposes of or in connection with such a sale or supply or related sale or supply.

5. Providing Custodial Services with Respect to Investments

No excluded activities.

6. Providing Administration Services with Respect to Investments

No excluded activities.

7. Operating an Investment Exchange

No excluded activities.

PART C - EXCLUDED PERSONS

1. A person (the first person) does not carry on investment business solely by—
 - (a) soliciting—
 - (i) a person who is not a member of the public for the purpose of offering to provide that person with a service that constitutes investment business; or
 - (ii) a licensee for the purpose of offering to provide a client of the licensee with a service that constitutes investment business;
 - (b) making an offer to a person who is not a member of the public to provide that person with a service that constitutes investment business;
 - (c) making an offer to a person (the second person) to provide a service that constitutes investment business where—
 - (i) the offer is made to the second person through a licensee holding a category 4 licence of which the second person is a client;
 - (ii) the first person does not have a place of business in the Virgin Islands; and
 - (iii) the service is to be performed outside the Virgin Islands;
 - (d) providing information or documentation to the professional services provider of a BVI business company concerning an offer to provide, or the provision of, a service that constitutes investment business where—
 - (i) the first person does not have a place of business in the Virgin Islands; and
 - (ii) the service is to be performed outside the Virgin Islands.
2. For the purposes of section 4(3), the persons specified in paragraphs 3 to 8 of this Part are excluded persons in the circumstances and to the extent specified provided that, in each case, the person concerned—
 - (a) does not otherwise carry on, or hold himself or herself out as carrying on, investment business; and

- (b) does not receive any remuneration, whether directly or indirectly, for the activity that constitutes investment business, and for the purposes of this subparagraph—
 - (i) remuneration includes commission; but
 - (ii) no account shall be taken of any remuneration that the person receives separately for acting in the capacity specified in the relevant paragraph.
- 3. A company is an excluded person where it undertakes an activity that constitutes investment business exclusively with, or for, a company within the same group.
- 4. A person who is a participant in a joint enterprise is an excluded person where he or she undertakes an activity that constitutes investment business—
 - (a) with, or for, another participant in the same joint enterprise; and
 - (b) for the purposes of, or in connection with, the joint enterprise.
- 5. A person who is a partner in a partnership is an excluded person where he or she undertakes an activity that constitutes investment business—
 - (a) with or for another partner in the same partnership; and
 - (b) for the purposes of, or in connection with, the partnership.
- 6. A director of a company is an excluded person where he or she undertakes an activity that constitutes investment activity—
 - (a) with, or for—
 - (i) the company of which he or she is a director; or
 - (ii) a company in the same group as the company of which he or she is director; and
 - (b) for the purposes of, or in connection with, the company concerned.
- 7. A trustee of a trust is an excluded person where he or she undertakes an activity that constitutes investment business for the purposes of, or in connection with, the trust.
 This paragraph does not apply to a person when—
 - (a) acting as the trustee of a unit trust; or
 - (b) providing custodial services with respect to investments within the meaning of Part A, paragraph 5.
- 8. A person is an excluded person where he or she undertakes an activity that constitutes investment business in his capacity as—
 - (a) an executor or administrator of an estate;
 - (b) a receiver of an estate or of the assets of a company;
 - (c) the administrator or liquidator of a company; or
 - (d) a trustee in bankruptcy.
- 9. A public fund, a private or professional fund or a recognised foreign fund is an excluded person where the fund undertakes an activity that constitutes carrying on business as a mutual fund in or from within the Virgin Islands.

SCHEDULE 3 - CATEGORIES AND SUB-CATEGORIES OF INVESTMENT BUSINESS LICENCE

[Section 5]

Category 1

Dealing in Investments

- Sub-category A: Dealing as Agent
- Sub-category B: Dealing as Principal

Category 2

Arranging Deals in Investments

Category 3

Investment Management

- Sub-category A: Managing Segregated Portfolios (Excluding Mutual Funds)
- Sub-category B: Managing Mutual Funds
- Sub-category C: Managing Pension Schemes
- Sub-category D: Managing Insurance Products
- Sub-category E: Managing Other Types of Investment

Category 4

Investment Advice

- Sub-category A: Investment Advice (Excluding Mutual Funds)
- Sub-category B: Investment Advice (Mutual Funds)

Category 5

Custody of Investments

- Sub-category A: Custody of Investments (Excluding Mutual Funds)
- Sub-category B: Custody of Investments (Mutual Funds)

Category 6

Administration of Investments

- Sub-category A: Administration of Investments (Excluding Mutual Funds)
- Sub-category B: Administration of Investments (Mutual Funds)

Category 7

Operating an Investment Exchange

SCHEDULE 4 - QUALIFIED INVESTORS

[Section 24(1)]

The following are qualified investors for the purposes of section 24(1)—

1. A person who holds—
 - (a) an investment business licence issued under section 6 of this Act;
 - (b) a licence issued under the Banks and Trust Companies Act; or
 - (c) an insurer's licence issued under section 8 of the Insurance Act.
2. A company, any securities of which are listed on a recognised exchange.
3. A public fund, a private fund or a professional fund.
4. A professional investor within the meaning of section 40(1) of this Act.

SCHEDULE 5 - SECURITIES FOR PURPOSES OF PART V

[Section 82]

For the purposes of Part V, “securities” means any of the following—

1. Shares

Shares and stock in the share capital of a company (“shares”).

2. Debt securities

Any instrument creating or acknowledging indebtedness which is issued by a company or public sector body including, in particular, debentures, debenture stock, loan stock, bonds and certificates of deposit (“debt securities”).

3. Warrants

Any right, (whether conferred by warrant or otherwise) to subscribe for shares or debt securities.

4. Depositary receipts

- (1) The rights under any depositary receipt.
- (2) For the purpose of subparagraph (1) a “depositary receipt” means a certificate or other record (whether or not in the form of a document)—
 - (a) which is issued by or on behalf of a person who holds any relevant securities of a particular issuer; and
 - (b) which acknowledges that another person is entitled to rights in relation to the relevant securities or relevant securities of the same kind.
- (3) In sub-paragraph (2) “relevant securities” means shares, debt securities and warrants.

5. Options

Any option to acquire or dispose of any security falling within any other paragraph of this Schedule.

6. Futures

- (1) Rights under a contract for the acquisition or disposal of relevant securities under which delivery is to be made at a future date and at a price agreed when the contract is made.
- (2) In subparagraph (1)—
 - (a) the references to a future date and to a price agreed when the contract is made include references to a date and a price determined in accordance with terms of the contract; and
 - (b) “relevant securities” means any security within the meaning of any other paragraph of this Schedule.

7. Contracts for differences

- (1) Rights under a contract which does not provide for the delivery of securities but whose purpose or intended purpose is to secure a profit or avoid a loss by reference to fluctuations in—
 - (a) a share index or other similar factor connected with relevant securities;

- (b) the price of particular relevant securities; or
 - (c) the interest rate offered on money placed on deposit.
- (2) In subparagraph (1) “relevant securities” means any security falling within any paragraph of this Schedule.

SCHEDULE 6 - DISAPPLICATION AND MODIFICATION OF BVI BUSINESS COMPANIES ACT WITH RESPECT TO PUBLIC ISSUERS

[Section 37]

The BVI Business Companies Act is modified with respect to public issuers that are BVI business companies (referred to in this Schedule as BVI public issuers) as follows—

1. Section 9

Section 9 is modified with respect to a BVI public issuer as follows—

- (a) The memorandum of a BVI public issuer shall state that the company is limited by shares and section 9(1)(b)(ii), (iii), (iv) and (v) are disapplied with respect to BVI public issuers;
- (b) The memorandum of a BVI public issuer shall state that the company is not authorised to issue bearer shares;
- (c) In addition to the other matters required by section 9 to be stated in the memorandum of a company, the memorandum of a BVI public issuer shall state that the company is a public issuer within the meaning of this Act.

2. Section 12

Section 12(4) and (5) (amendment of memorandum and articles by resolution of directors) do not apply to a BVI public issuer.

3. Section 28

- (a) Subsection (2)(d) applies to a BVI public issuer as if the words “and, at the discretion of the directors, for any person having a direct or indirect interest in the company” were omitted.
- (b) Subsections (3) and (4) do not apply to a BVI public issuer.

4. Part III

- (a) Cabinet may make regulations providing for title to shares to be evidenced and transferred by means of a computer system, without a written instrument.
- (b) Without limiting subparagraph (a), regulations made by Cabinet under this paragraph may provide for—
 - (i) the approval or recognition and control of persons who operate such computer systems;
 - (ii) the duties of public issuers with respect to the keeping of registers, the registration of transfers and other matters; and
 - (iii) the circumstances in which transfers of shares transactions made in accordance with the regulations are considered to be effective.
- (c) The regulations made under this paragraph—
 - (i) may provide for such amendments to the BVI Business Companies Act as Cabinet considers necessary to give effect to the purpose of the Regulations as specified in paragraph (a);

- (ii) shall be published in the Gazette; and
- (iii) shall be subject to a negative resolution of the House of Assembly.

5. Section 46

Subsections (2) to (4) apply to a BVI public issuer and subsections (1) and (5) do not apply to a BVI public issuer.

6. Section 47

Every share in a public issuer shall be issued for money, except to the extent that the Public Issuers Code provides otherwise.

7. Section 59

- (a) Where a BVI public issuer purchases, redeems or otherwise acquires its own shares, it must do so in accordance with sections 60, 61 and 62.
- (b) Subsections (2) and (3) do not apply to a BVI public issuer.

8. Section 81

Subsection (1)(b) does not apply to BVI public issuer.

9. Section 82

Subsection (4) does not apply to BVI public issuer.

10. Section 83

Subsection (1) as effect has to BVI public issuer as if “twenty-one days” was substituted for “seven days”.

11. Section 85

Subsections (1) and (2) do not apply to a BVI public issuer.

12. Section 88

Section 88 does not apply to a BVI public issuer.

13. Section 113

Subsection (2) applies to a BVI public issuer as if—

- (a) paragraphs (a) and (b) were deleted; and
- (b) the words “may be appointed” were deleted and the words “shall be appointed by the members” were substituted.

14. Section 114

- (a) Subsection (1) applies to a BVI public issuer as if the words “Subject to the memorandum or articles of a company” were deleted.
- (b) Subsection (2) applies to a BVI public issuer as if paragraph (b) was deleted.
- (c) Subsections (4) and (5) do not apply to a BVI public issuer.

15. Section 119

The Public Issuers Code may disapply section 119 to a BVI public issuer and make alternative provision for the fixing of the emoluments of directors.

16. Part VII

Part VII has no application with respect to a BVI public issuer.

17. Section 184

A BVI public issuer shall not continue as a company incorporated under the laws of a jurisdiction outside the Virgin Islands unless the Commission has given its prior written consent to the company so continuing.

18. Part XII

- (a) Section 199(1)(a) and section 199(2) do not apply to a BVI public issuer.
- (b) For the purposes of section 199(3)(b), “eligible individual” with respect to the voluntary liquidator of a BVI public issuer means an individual holding a licence to act as an insolvency practitioner issued under section 476 of the Insolvency Act.
- (c) Section 213(1) applies to a BVI public issuer as if after the words “the Registrar may” were inserted the words, “with the prior written approval of the Commission,”.
- (d) Section 219(1) applies to a BVI public issuer as if the words “the Registrar” were deleted and the words “the Commission” were substituted.

19. Section 231

- (a) Section 231 does not apply to a BVI public issuer.
- (b) The Public Issuers Code may require a BVI public issuer to file details of its members and directors with the Registrar of Corporate Affairs.

SCHEDULE 7 - [SECTION 106] - OFFENCES UNDER THIS ACT⁵⁸

Section contravened	Description of offence	Method of trial	Penalty (company)	Penalty (individual)
4(1)	Person carries on, or holds himself or herself out as carrying on, investment business of any kind in or from within the Virgin Islands without holding a licence authorising him or her to carry on that kind of investment business	Summary Indictment	\$40,000 \$75,000	\$20,000 \$40,000
7(2)	Licensee fails to forthwith notify the Commission in writing that it has formed the opinion that it does not comply with section 7(1) (requirement to maintain its business in a financially sound condition)	Summary	\$25,000	\$15,000
8(4)	Licensee fails to forthwith notify the Commission in writing that its capital resources have fallen below the amount that it is required to maintain under section 8(1).	Summary	\$25,000	\$15,000
10(1)	Licensee appoints a director or senior officer without the prior written approval of the Commission	Summary	\$10,000	\$5,000
13	Licensee fails to maintain such professional indemnity and other insurance as is prescribed	Summary	\$30,000	\$20,000
15	Licensee fails to comply with direction of Commission to change the name under which it carries on business	Summary	\$25,000	\$15,000
16	Licensee issues a bearer share	Summary	\$25,000	\$20,000
18(1)	Licensee fails to ensure that— (a) client assets are identified, or identifiable, and appropriately segregated and accounted for; or (b) he or she makes arrangements for their proper protection	Summary Indictment	\$50,000 \$75,000	\$25,000 \$40,000
19(1)	Licensee, in relation to an activity that constitutes investment business, whether or not carried on by him or her and whether or not the activity is one that he or she is authorised to carry on, or in relation to any investment, contravenes paragraph (a), (b) or (c)	Summary	\$40,000	\$25,000
19(2)	Licensee issues or causes or permits to be issued an advertisement, brochure or other	Summary	\$40,000	\$25,000

Section contravened	Description of offence	Method of trial	Penalty (company)	Penalty (individual)
	similar document or makes a statement, promise or forecast contrary to a direction or approval of the Commission			
20(2)	Licensee issues, or causes or permits to be issued, whether in the Virgin Islands or elsewhere, an advertisement, brochure or similar document or makes a statement, promise or forecast the issue of which is prohibited by the Regulatory Code.	Summary	\$40,000	\$25,000
25(1)	Subject to section 25(3), issuer offers security to the public in the Virgin Islands for purchase or subscription where— (a) the offer is not contained in a registered prospectus; or (b) the offer does not comply with such requirements as may be specified in the Public Issuers Code	Summary Indictment	\$25,000 \$40,000	\$15,000 \$25,000
25(1)	Subject to section 25(3), person offers security to the public in the Virgin Islands for purchase or subscription on behalf of an issuer where (a) the offer is not contained in a registered prospectus; or (b) the offer does not comply with such requirements as may be specified in the Public Issuers Code	Summary Indictment	\$25,000 \$40,000	\$15,000 \$25,000
29(1)	Issuer or person who applied for the registration of the prospectus on the issuer's behalf becomes aware during relevant period that the registered prospectus contains a material inaccuracy or omits a material fact and fails to apply to Commission to register supplementary prospectus.	Summary	\$25,000	\$20,000
30(1)	Issuer, or person acting on issuer's behalf distributes registered prospectus when issuer or other person knows, or ought reasonably to know, that the prospectus contains a material error, is materially misleading or omits a material fact or particular	Summary Indictment	\$25,000 \$40,000	\$15,000 \$25,000
30(1)	Issuer, or person acting on issuer's behalf, distributes registered prospectus that does not	Summary	\$25,000	\$15,000

Section contravened	Description of offence	Method of trial	Penalty (company)	Penalty (individual)
	incorporate all the amendments in a registered supplementary prospectus			
31	Issuer or other person causing or permitting prospectus to be distributed in circumstances where section 25 does not apply and where the prospectus does not comply with section 27(1) (save as otherwise provided by the Public Issuers Code).	Summary	\$25,000	\$15,000
41(1)(a)	A company or other body, not being a public, private, professional or recognised foreign fund, carries on, or holds itself out as carrying on, business as a mutual fund in or from within the Virgin Islands	Summary Indictment	\$40,000 \$75,000	\$25,000 \$40,000
41(1)(b)	The partners of a partnership that is a mutual fund carry on, or hold themselves out as carrying on, the business of the fund, the partnership not being a public, private, professional or recognised foreign fund, in or from within the Virgin Islands	Summary Indictment	\$40,000 \$75,000	\$40,000 \$75,000
41(1)(c)	The trustee of a unit trust carries on, or holds itself out as carrying on, the business of the unit trust, the unit trust not being a public, private, professional or recognised foreign fund, in or from within the Virgin Islands	Summary Indictment	\$40,000 \$75,000	\$40,000 \$75,000
41(1)(d)	A mutual fund not falling under section 41(1)(a), (b) or (c) carries on, or holds itself out as carrying on, the business of a mutual fund, the mutual fund not being a public, private, professional or recognised foreign fund, in or from within the Virgin Islands	Summary Indictment	\$40,000 \$75,000	\$40,000 \$75,000
41(2)	A person acts as the functionary of, or is otherwise concerned with the management or administration of, a mutual fund that carries on business in or from within the Virgin Islands where the mutual fund concerned is not a public, private, professional or recognised foreign fund	Summary Indictment	\$40,000 \$75,000	\$40,000 \$75,000
42(1)	Person promotes a mutual fund in contravention of section 42(1)	Summary Indictment	\$40,000 \$50,000	\$25,000 \$30,000

Section contravened	Description of offence	Method of trial	Penalty (company)	Penalty (individual)
46(1)	A public fund, whether in or outside the Virgin Islands, makes an invitation to the public to subscribe for or purchase its fund interests, where— (a) the offer is not contained in a registered prospectus; or (b) the offer does not comply with such requirements as may be specified in the Mutual Fund Regulations	Summary Indictment	\$25,000 \$40,000	\$15,000 \$25,000
50(1)	A public fund fails to make its prospectus available to its investors or to provide a copy upon request	Summary	\$25,000	\$15,000
50(2)	A public fund fails to apply to the Commission, within 14 days of a disclosure required under section 48 (1) (b) ceasing to be accurate in a material particular, to register an amended prospectus, or provide a copy of the amended prospectus to its investors	Summary Indictment	\$25,000 \$40,000	\$15,000 \$25,000
51	Manager of a public fund becomes aware during relevant period that the prospectus contains a material error or omits a material fact or particular and fails to make application to Commission to register amended prospectus	Summary Indictment	\$25,000 \$40,000	\$15,000 \$25,000
59(1)	Public, private or professional fund fails to maintain records in compliance with section 59(1)	Summary	\$20,000	\$15,000
63B (1) (a)	A company or other body, not being recognised as a private investment fund, carrying on or holding itself out as carrying on business as a private investment fund, in or from within the Virgin Islands	Summary Indictment	\$40,000 \$75,000	\$25,000 \$40,000
63B (1) (b)	The partners of a partnership that is a private investment fund carrying on, or holding themselves out as carrying on the business of the fund, the partnership not being recognised as a private investment fund in the Virgin Islands	Summary Indictment	\$40,000 \$75,000	\$40,000 \$75,000
63B (1) (c)	The trustee of a unit trust carrying on, or holding itself out as carrying on business as a private investment fund, the unit trust not being	Summary Indictment	\$40,000 \$75,000	\$40,000 \$75,000

Section contravened	Description of offence	Method of trial	Penalty (company)	Penalty (individual)
	recognised as a private investment fund, in the Virgin Islands			
63B (1) (d)	A private investment fund not falling under section 63B (1) (a), (b) or (c) carrying on the business of a private investment fund without being recognised as a private investment fund, in the Virgin Islands	Summary Indictment	\$40,000 \$75,000	\$40,000 \$75,000
63B (3)	A person acting as an appointed person, or otherwise being concerned with the management or valuation of a private investment fund that carries on business in or from within the Virgin Islands, where the private investment fund is not recognised as a private investment fund	Summary Indictment	\$40,000 \$75,000	\$40,000 \$75,000
63C (1)	Person promoting a private investment fund in contravention of section 63C (1)	Summary Indictment	\$40,000 \$50,000	\$25,000 \$30,000
63H (1)	Private investment fund failing to maintain records in compliance with section 63G (1)	Summary	\$20,000	\$15,000
65(1)	Relevant licensee or a public, private, professional or recognised foreign fund fails to appoint or have an authorised agent certified by the Commission under section 64	Summary	\$15,000	\$10,000
65(5)	Person accepts appointment or acts as the authorised representative of a licensee or a public, private or professional fund without a certification issued under section 64	Summary Indictment	\$20,000 \$40,000	\$15,000 \$25,000
71(1)	Relevant licensee or public fund fails to submit to Commission financial statements complying with section 71(1) and accompanied by documents specified in paragraphs (a) to (d) within 6 months of the end of the financial year to which they relate	Summary	\$20,000	\$15,000
75(1)	Relevant licensee or public fund does not have an auditor who is eligible for appointment as specified in section 72(2)	Summary	\$15,000	\$10,000
77(1)	Auditor fails to make report to Commission in accordance with section 77(1)	Summary	\$20,000	\$15,000

Section contravened	Description of offence	Method of trial	Penalty (company)	Penalty (individual)
77(2)	Auditor whose appointment has been terminated or who has resigned fails to comply with section 77(2)(a) or (b)	Summary	\$20,000	\$15,000
95(1)	Person uses word, term or phrase in name contrary to section 95(1)(a)	Summary	\$20,000	\$15,000
95(1)	Person makes representation contrary to section 95(1)(b)	Summary	\$20,000	\$15,000
97(4)	Licensee fails to provide notice to Commission of significant change in the nature and extent of its currency exchange services business	Summary	\$20,000	\$15,000
98(3)	Applicant failing to forthwith give the Commission written particulars of a change or of incomplete, inaccurate or misleading information or documentation provided to Commission	Summary	\$20,000	\$15,000
105(1)	Person making or assisting in making representation, statement, report or return to the Commission that contains a false statement of a material fact or omits to state a material fact	Summary	\$25,000	\$20,000

SCHEDULE 8 - TRANSITIONAL PROVISIONS

[Section 109]

PRELIMINARY PROVISIONS

1. Interpretation

In this Schedule—

- “existing private fund” means a mutual fund that, immediately before the commencement date, was recognised as a private fund under the former Act;
- “existing professional fund” means a mutual fund that, immediately before the commencement date, was recognised as a professional fund under the former Act;
- “existing public fund” means a mutual fund that, immediately before the commencement date, was registered as a public fund under the former Act;
- “first transition date” [REPEALED]⁵⁹
- “former Act” means the Mutual Funds Act, 1996;
- “relevant period” [REPEALED]⁶⁰
- “second transition date” [REPEALED]⁶¹
- “specified period” means the period beginning on the commencement date and ending on 30 December 2010;
- “transition date” means 30 December 2010⁶².
- “transition period” means the period beginning on the date this Act (“Securities and Investment Business (Amendment) Act, 2019”) is brought into force and ending on 1st July 2020;⁶³

PART I

INVESTMENT BUSINESS

2. Existing investment businesses

A person who, immediately before the commencement date, was carrying on investment business of any kind shall not be guilty of an offence under section 4 and shall be deemed not to be carrying on unauthorised financial services business within the meaning of the Financial Services Commission Act by virtue of his carrying on that business—

- (a) during the specified period; or
- (b) if the person applies for a licence during the specified period, on or from the commencement date until the date that the application is determined, including as a result of any appeal to the Appeal Board of the Commission, or is withdrawn.

PART II

PUBLIC ISSUE OF SECURITIES

3. Commencement of section 25

Section 25 shall not take effect until the transition date⁶⁴.

4. Application of section 33

Section 33 does not have effect with respect to a prospectus distributed before the commencement date.

PART III**MUTUAL FUNDS****5. Transition, new definition of “mutual fund”**

(1) Section 41(1) and 42(1) shall not take effect until the transition date with respect to a company or other body, partnership or unit trust if both of the following conditions apply⁶⁵—

- (a) the company or other body, partnership or unit trust is a mutual fund within the meaning of section 40; and
- (b) the company or other body, partnership or unit trust is not a mutual fund within the meaning of section 2 of the former Act.

(2) Section 41(2) shall not take effect until the transition date with respect to a person who acts as the functionary of, or is otherwise concerned with the management or administration of, a company or other body, partnership or unit trust to which the conditions in subparagraph (1)(a) and (b) apply.⁶⁶

6. Continuation of registration of public funds

Every existing public fund is deemed to be registered as a public fund under section 45 with effect from the commencement date.

7. Commencement of certain sections, existing public funds.

Section 46 and section 50(3) shall not take effect until 30 June 2011 with respect to an existing public fund.^{67 68}

8. Registration of amended prospectus

Where, during the specified period, an existing public fund applies under section 51 to register an amended prospectus, the commission may register the amended prospectus under section 49, notwithstanding that the prospectus does not fully comply with section 48(1)(d) and (e) and section 48(3).⁶⁹

9. Investors' rights

(1) Sections 52 and 53 do not have effect in relation to a prospectus issued before the commencement date.

(2) Sections 16 and 17 of the former Act have effect in relation to a prospectus issued before the commencement date, notwithstanding the repeal of the former act.

10. Continuation of recognition of private and professional funds

With effect from the commencement date—

- (a) every existing private fund is deemed to be recognised as a private fund; and
- (b) every existing professional fund is deemed to be recognised as a professional fund, under section 55.

11. Issue of fund interests, professional fund

Notwithstanding section 56(1)(b)(ii), unless prohibited by its constituting documents, an existing professional fund may, during the specified period, issue fund interests to a professional investor for an

initial investment of less than the sum prescribed in the Mutual Fund Regulations if the initial investment in respect of the majority of the fund's investors is not less than \$100,000 or its equivalent in a currency other than United States dollars.⁷⁰

12. Saving for initial investors, existing professional funds

- (1) For the avoidance of doubt—
 - (a) where the constitutional documents of an existing professional fund are amended to comply with section 55(2)(c), the amendment—
 - (i) is not required to have retrospective effect; and
 - (ii) may provide that the initial investment of each investor in the fund, other than exempted investors, that is made on or after a specified date, no later than the transition date, shall be not less than such sum as may be prescribed in the Mutual Fund Regulations;⁷¹
 - (b) nothing in this Act or the Mutual Fund Regulations shall be taken as—
 - (i) requiring a professional investor of an existing professional fund who has lawfully made an initial investment of less than the sum prescribed in the Mutual Funds Regulations to increase his investment; or
 - (ii) making any such initial investment unlawful.
- (2) where a professional fund amends its constitutional documents in accordance with subparagraph (1)(b), for the purposes of section 60(1)(b), the criteria for recognition of the fund specified in section 55(2)(c)(ii) are deemed to be satisfied.

13. Maintenance of financial records

Section 59(1) (c) and (d) shall not take effect with respect to an existing private or professional fund until the transition date.⁷²

14. Enforcement action

Section 60(1)(b) shall not take effect with respect to an existing private or professional fund until the transition date.⁷³

15. Licensed fund managers and administrators

A fund manager or fund administrator that, immediately before the commencement date, is licensed as a fund manager, a fund administrator or a fund manager and administrator under the former act is deemed to be licensed as a fund manager or fund administrator (as the case may be) under section 6 with effect from the commencement date.

16. Recognised managers

- (1) A person who, immediately before the commencement date, is exempt, as a recognised manager, from the requirement to hold a licence under section 22 of the Mutual Funds Act 1996 by virtue of paragraph 2 of the Mutual Funds (Recognised Managers and Family Trusts) (Exemption) Directions, 1997—
 - (a) is exempt from section 4(1) of this Act; but
 - (b) is deemed to be a licensee for the purposes of the Financial Services Commission Act
- (2) Paragraphs 3, 4(2) and 5 of the Mutual Funds (Recognised Managers and Family Trusts) (Exemption) Directions, 1997 apply to a person specified in subparagraph (1), notwithstanding their revocation.

PART IIIA ⁷⁴**16A. Existing private investment funds.**

A person who, immediately before or after the coming into force of this Act, was carrying or carries on business as a private investment fund of any kind, shall not be guilty of an offence under section 63B and shall be deemed not to be carrying on unauthorised financial services business within the meaning of the Financial Services Commission Act by virtue of his or her carrying on that business—

- (a) during the transition period;
- (b) if the person applies for recognition as a private investment fund during the transition period, until the date the application is determined by the Commission or is withdrawn, whichever comes earlier; or
- (c) if an appeal is lodged during the transition period with the Financial Services Appeal Board established under section 3 of the Financial Services Appeal Board Act, until the appeal is determined by the Board or is withdrawn, whichever comes earlier.

PART IV**PROVISIONS OF GENERAL APPLICATION****17. Authorised representatives.**

Section 65 and 66(2) shall not take effect until the transition date. ⁷⁵

Passed by the House of Assembly this 12th day of April, 2010.

Sgd. ROY HARRIGAN,
Speaker.

Sgd. PHYLLIS EVANS,
Clerk of the House of Assembly.

LEGAL REPORT

This Act is designed to modernise the Territory's mutual funds and investment business regimes and introduce appropriate legislative provisions in relation to securities business. This process takes into full account current and emerging international standards of regulation as they relate to the regulation and administration of hedge funds and securities business.

The recent activities in the securities industries worldwide have culminated into calls by the G20, IMF and IOSCO for all regulators to improve their regulatory laws, rules and practices. Among key areas of the securities industry, the hedge fund industry is targeted for change; consequently, the Territory's regime for mutual funds (hedge funds) must also necessarily adapt in order to keep attuned to the established standards of regulation and supervision. This approach is consistent with the Government's policy of strengthening and safeguarding the Territory's financial services sector, while at the same time buttressing its international cooperation regime. Furthermore, as a member of the International Organisation of Securities Commissions (IOSCO), the Territory in effect subscribes to the international standards established for the regulation of securities, including the need to adopt appropriate measures to guard against market abuse and insider trading.

One of the fundamental policy issues in relation to the Act is the provision of an appropriate legal framework under which securities and investment business ventures will be regulated and administered in or from within the Territory, with the details thereof being embodied in relevant subsidiary legislation.

This approach has been adopted in order to provide sufficient flexibility for the regulatory framework to be adapted as the market in the Territory develops and as international standards change. When fully in place, the Act and its relevant subsidiary legislation are intended to ensure that the Territory is compliant with the

Objectives and Principles of Securities Regulation issued by IOSCO (as relevant and appropriate to the BVI); as well as other internationally accepted standards and best practices. Moreover, the framework is intended to ensure that the regulatory regime for securities and investment business is comprehensive, and at the same time appropriate for the existing business environment in the Territory.

The Act is divided into six Parts, each of which addresses a specific aspect of securities and/or investment business.

Part I deals with investment business and details the categories of licenses and the requirements for being granted a licence by the Commission. Financial resource requirements, including the maintenance of capital resources, are also outlined. Obligations of, and restrictions on, licensees including the appointment and termination of directors and senior officers, the need to maintain professional indemnity and other insurance, and the disposing or acquiring of significant interest in a licensee are also explained. Other areas covered within this Part include corporate governance requirements, such as the obligation of the licensee to maintain records explaining its transactions and allowing for the determination of its financial position; identification, protection and proper segregation of client assets; and the control of advertisements and conduct of business as may be provided for in the Regulatory Code or Public Funds Code.

Part II addresses the public issuance of securities. It outlines the requirements for the registration, issuance and distribution of a prospectus; circumstances under which a court may issue compensation order based on false or misleading advertisement of a prospectus, as well as those circumstances in which no compensation may be awarded. Clauses 34 and 35, in particular, address enforcement matters surrounding the cancellation or suspension of the registration or prohibition of a public offer. This Part further addresses the offer for securities issued by a BVI company outside of the Virgin Islands and gives the Commission the authority to issue a Public Issuers Code providing for the duties and obligations of public issuers, and the preparation of financial statements as well as the powers and duties of auditors

of public issuers. It also allows for the making of Investment Business Regulations which may provide for offenses and penalties for any contravention of, or failure to comply with, specified requirements of those Regulations.

Part III covers Mutual Funds and will replace the existing mutual fund provisions in the Mutual Funds Act of 1996 (which is being repealed) and related subsidiary legislation, and addresses various prohibitions with respect to unregistered or unrecognised funds and the promotion of mutual funds. The Part speaks to the registration of public funds and the recognition of private, professional and foreign funds, investors' rights, the appointment and termination of directors, functionaries and others, and maintenance of financial records and the making of the Mutual Funds Regulations. In developing the framework as it relates to mutual funds, care has been taken not to materially change the existing well functioning and established industry and product. Therefore, as far as possible, the status quo has been maintained but transformed, enhanced and modernised through the appropriate medium of issuing Regulations.

Part IV outlines the provisions of general application including the requirement of licensees and funds to have an authorised representative and the process of applying for certification as an authorized representative. The requirements for preparation and submission of financial statements to the Commission, appointment of auditors and their obligations, as well as the powers of the Commission to revoke the appointment of auditors who have failed to fulfill their obligations under the Act are also outlined.

Part V addresses market abuse and defines certain key terms used in the section. The Part outlines the offences related to insider dealing, the making of misleading statements and the act of market manipulation and possible defences for such actions, and provides for the creation of Market Abuse Regulations. This addresses several of the FATF Recommendations which call for the criminalisation of market manipulation and insider trading.

Miscellaneous provisions are addressed in Part VI which essentially includes the maintenance of registers by the Commission and inspection of such registers, the fees, penalties and charges payable to the Commission, the application of the Regulatory Code in respect of the Act and the establishment of a Securities and Investment Business Advisory Committee. This Part also outlines the various offence provisions of the Act.

The Act provides eight Schedules, with Schedule 1 dealing with definitions for the various investment vehicles, while Schedule 2 details the types of investment activities persons are permitted to engage in as well as those activities which are deemed not to constitute dealing in investments. Schedule 2 also outlines the categories of excluded persons who are not recognised as carrying on investment business. Schedule 3 defines the categories and sub-categories of investment business licences, while Schedule 4 provides a list of qualified investors. Schedule 5 defines the various types of securities for the purposes of Part V of the Act. Schedule 6 deals with the modification of the various sections of the BVI Business Companies Act, 2004 with respect to public issuers that are BVI business companies. Schedule 7 provides a detailed list of offences found under the Act, while Schedule 8 addresses the transitional provisions of the Act.

The enactment of the Act will demonstrate the Territory's ongoing commitment to continually reviewing and reforming its financial services legislation and to strengthening its current regimes to facilitate the conduct of business and make the Territory more competitive. It will also demonstrate the Territory's continued commitment to comply with established and emerging international standards of regulation and supervision thus helping to maintain the Territory's reputation. The Act is accordingly commended to the House of Assembly for consideration and enactment.

The Act was introduced in the House of Assembly on the 18th of March, 2010, taken through the remaining stages and passed on the 12th of April, 2010.

In my opinion, His Excellency the Governor may properly assent to this Act in the name and on behalf of Her Majesty.

Sgd. Kathleen D.K. Quartey

Attorney General

Date: 15th April, 2010

VIRGIN ISLANDS

MUTUAL FUNDS REGULATIONS

REVISED EDITION 2020 (AS AMENDED)

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014, and updated with amendments by Conyers

(S.I.s 18/2010, 41/2010 and 82/2019)

Section 62

[Commencement: 17 May 2010]

PRELIMINARY PROVISIONS

1. Short title

These Regulations may be cited as the Mutual Funds Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“Act” means the Securities and Investment Business Act;

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

“fund property”, in relation to a private or professional fund, means⁷⁶—

- (a) where the fund is a BVI business company or a partnership, the assets of the fund; and
- (b) where the fund is a unit trust, the assets subject to the trust deed that constitutes the fund;

“offering document” means a document that contains an invitation or offer to investors or potential investors to purchase or subscribe for fund interests in a private or professional fund, and includes an amended offering document.

3. Fund administration services

For the purposes of the definition of “fund administrator” in section 40(1) of the Act, “fund administration services” includes the following activities—

- (a) acting as registrar or transfer agent with respect to mutual funds; and
- (b) providing accounting services for, or with respect to, mutual funds, excluding the provision of audit and related services.

PART I - PRIVATE AND PROFESSIONAL FUNDS**APPLICATION FOR RECOGNITION****4. Application for recognition as private or professional fund**

(1) An application to the Commission for the recognition of a private or professional fund shall be in the approved form and shall specify the following—

- (a) the address of the fund's place of business in the Virgin Islands;
- (b) the name and address of each of the fund's directors;
- (c) the name and address of the fund's authorised representative;
- (d) if the fund is a unit trust, the name and address of the trustee;
- (e) the address of any place or places of business that the fund may have outside the Virgin Islands;
- (f) the name and address of the fund's auditor;
- (g) the name and address of each of the fund's functionaries;
- (h) whether the fund has issued, or intends to issue, an offering document;
- (i) in the case of a fund incorporated, constituted, formed or organised under the laws of a country outside the Virgin Islands, written details of the nature and scope of the fund's business; and
- (j) such other information as may be required by the approved form.

(2) An application under sub-regulation (1) shall be accompanied by the following—

- (a) a copy of the fund's constitutional documents;
- (b) a copy of the fund's certificate of incorporation, formation or registration or equivalent document, if any;
- (c) if application is made to exempt the fund from the requirement to appoint a custodian, an explanation as to—
 - (i) why it is not considered necessary for a custodian to be appointed; and
 - (ii) the arrangements made, or to be made, to ensure the safe custody of the fund property;
- (d) if application is made to exempt the fund from the requirement to appoint a manager, notification of the person who will fulfil the management function together with an explanation as to the arrangements made, or to be made, to ensure that the management function is adequately fulfilled;
- (e) if the mutual fund has issued, or intends to issue, an offering document, a copy of the offering document or the proposed offering document;⁷⁷
- (f) if the mutual fund has not issued and does not intend to issue an offering document, an explanation as to why no offering document is to be issued including, in particular, how relevant information concerning the fund and any invitation or offer will be provided to investors and potential investors; and⁷⁸

- (g) a copy of the fund's valuation policy.⁷⁹
- (3) The Commission may require any documents submitted under subregulation (2) (a) and (b) to be certified in such manner as it considers appropriate.

5. Matters required to be prescribed, professional investor and professional fund

- (1) For the purposes of the definition of "professional investor" in section 40 (1) of the Act, the specified sum is \$1,000,000.
- (2) For the purposes of section 55 (2) (c) of the Act, the minimum initial investment of each investor, other than an exempted investor, in a professional fund is \$100,000 or its equivalent in another currency.
- (3) For the purposes of section 55 (4) of the Act, the following are exempted investors with respect to a fund—
 - (a) the manager, administrator, promoter or underwriter of the fund;
 - (b) any employee of the manager or promoter of the fund; and
 - (c) such other class or description of persons as the Commission may, by notice published in the Gazette, specify as exempted investors.

OBLIGATIONS ON PRIVATE AND PROFESSIONAL FUNDS

6. Directors

- (1) A private fund and a professional fund shall at all times have at least 2 directors, at least one of whom shall be an individual.
- (2) Where a private or professional fund is in breach of sub-regulation (1), it shall immediately notify the Commission of that fact in writing.

7. Functionaries of private and professional funds

- (1) Subject to subsection (2), a private fund and a professional fund shall at all times have—
 - (a) a fund manager;
 - (b) a fund administrator; and
 - (c) a custodian.
- (2) The Commission may, on written application made by or on behalf of a private or professional fund, exempt the fund from the requirement to appoint a custodian or a fund manager.
- (3) An application under sub-regulation (2) may be made together with the application for recognition or at any subsequent time.
- (4) The custodian of a private or professional fund shall—
 - (a) be a person who is functionally independent from the fund manager and the fund administrator; or
 - (b) where the custodian is the same person as the fund manager or fund administrator, be a company having systems and controls that ensure that the persons fulfilling

the custodial function are functionally independent from the persons fulfilling the fund management or fund administration functions.

(5) Subject to sub-regulation (6), no person shall be appointed as a functionary of a private or professional fund unless at least 7 days prior notification of the proposed appointment has been given to the Commission.

(6) The Commission may agree to accept a shorter period of notice than that specified in subregulation (5).

8. Functionary ceasing to hold office

(1) Written notice shall be given to the Commission by a private or professional fund within—

- (a) 7 days after a functionary of the fund resigns, his or her appointment is terminated or he or she otherwise ceases to act as functionary of the fund; or
- (b) such longer period as the Commission may specify.

(2) The notice provided under subregulation (1) shall include a statement of the reason for the person ceasing to act as functionary of the fund and a written notice shall be deemed not to be provided under that subregulation if it does not include such a statement.

(3) Where a functionary of a private or professional fund resigns, has his or her appointment terminated or otherwise ceases to act as functionary of the fund, the fund does not contravene regulation 7 (1) if another person is appointed to act as functionary within 7 days of the original functionary ceasing to act.

9. Investment warning

(1) No offer or invitation shall be made to an investor or potential investor to purchase or subscribe for fund interests in a private or professional fund unless the investor or potential investor is provided with an investment warning that complies with these Regulations.

(2) Where a private or professional fund issues an offering document, the investment warning shall be included in a prominent place in the offering document.

(3) Where a private or professional fund does not issue an offering document, the investment warning shall be provided to each investor as a separate document.

(4) The investment warning required to be provided to an investor or potential investor shall clearly indicate that the fund has been established as a private or professional fund, as the case may be, and that—

- (a) in the case of a private fund, the fund is suitable for private investors only and that the fund is limited to 50 investors or any invitation to subscribe for fund interests may be made on a private basis only;
- (b) in the case of a professional fund—
 - (i) the fund is only suitable for professional investors, as defined in the Act; and
 - (ii) a minimum initial⁸⁰ investment of \$100,000 (or such larger sum as may apply with respect to the fund) is required;

- (c) the fund is not subject to supervision by the Commission or by a regulator outside the Virgin Islands and that requirements considered necessary for the protection of investors that apply to public funds do not apply to private or professional funds;
- (d) an investor in a private or professional fund is solely responsible for determining whether the fund is suitable for his or her investment needs;
- (e) by reason of the above, investment in a private or professional fund may present a greater risk to an investor than investment in a public fund.

9A. Valuation of fund property⁸¹

- (1) A private or professional fund shall maintain a clear and comprehensive policy for the valuation of fund property with procedures that are sufficient to ensure that the valuation policy is effectively implemented.
- (2) A private or professional fund shall ensure that its administrator or such other person having responsibility for the valuation of fund property, values fund property in accordance with the valuation policy.
- (3) The valuation policy and procedures of a private or professional fund shall—
 - (a) be appropriate for the nature, size, complexity, structure and diversity of the fund and fund property;
 - (b) be consistent with the provisions concerning valuation contained in its constitutional documents and offering document;
 - (c) require valuations to be undertaken at least on an annual basis;
 - (d) include procedures for preparing reports on the valuation of fund property; and
 - (e) specify the mechanisms in place for disseminating valuation information and reports to investors.
- (4) Subject to sub-regulation (5), a private or professional fund shall ensure that the fund's manager, or such other person having responsibility for the investment function, is independent from the fund's administrator, or such other person having responsibility for the valuation process.
- (5) Where a private or professional fund determines that the fund's manager, or such other person having responsibility for the investment function, must be the same as the administrator or such other person having responsibility for the valuation of fund property, the private or professional fund shall—
 - (a) identify, manage and monitor any potential conflicts of interest that may arise; and
 - (b) disclose to investors in the fund—
 - (i) that the fund's manager or such other person having responsibility for the investment function is the same as the fund's administrator or such other person having responsibility for the valuation function; and
 - (ii) details of how any potential conflicts of interest will be managed.

FINANCIAL STATEMENTS AND AUDIT

10. Preparation and audit of financial statements

- (1) Subject to sub-regulation (2), a private fund and a professional fund shall—
 - (a) prepare financial statements for each financial year that comply with—
 - (i) one of the accounting standards specified with respect to public funds in regulation 17 (1) (a) to (d); or
 - (ii) internationally recognised and generally accepted accounting standards equivalent to the accounting standards referred to in subparagraph (i); and
 - (b) appoint, and at all times have, an auditor for the purposes of auditing its financial statements.
- (2) The Commission may, on written application made by or on behalf of a private or professional fund, exempt the fund from the requirement to appoint an auditor.
- (3) The auditor of a private or professional fund shall—
 - (a) audit the fund's financial statements and prepare his or her report in accordance with⁸²—
 - (i) US Generally Accepted Auditing Standards;
 - (ii) International Standards on Auditing (UK);
 - (iii) International Standards on Auditing;
 - (iv) Hong Kong Standards on Auditing;
 - (v) Canadian Auditing Standards; or
 - (vi) such other recognised international auditing standards as may be approved by the Commission on a case by case basis;
 - (b) certify the fund's compliance with such obligations and matters as may be specified in the Act and these Regulations;
 - (c) provide such certifications or confirmations as may be specified by the Commission in a written notice sent to the fund and the auditor; and
 - (d) carry out such other duties as may be required of the auditor by the Act or these Regulations.
- (4) A private or professional fund shall provide a copy of its audited financial statements to the Commission within 6 months after the financial year end for the financial statements or such extended period not exceeding 15 months as, subject to subsection (5), the Commission may approve in writing.
- (5) The Commission shall not grant an extension under subregulation (4) of more than 9 months unless it is satisfied that a further extension is justified by exceptional circumstances.

11. Notifications

- (1) A private fund and a professional fund shall provide written notice to the Commission in accordance with this regulation of—

- (a) the appointment of a director, authorised representative or auditor;
 - (b) a director, authorised representative or auditor ceasing, for whatever reason, to hold office;
 - (c) any change in the address of the fund's place of business, whether in or outside the Virgin Islands;
 - (d) any material change in the nature and scope of the fund's business, in the case of a fund incorporated, constituted, formed or organised under the laws of a country outside the Virgin Islands;
 - (e) any amendment to its constitutional documents;
 - (f) the issuance of an offering document that was not provided to the Commission with the fund's application for recognition;⁸³
 - (g) the amendment of any offering document previously provided to the Commission, whether with its application or in accordance with paragraph (f); and⁸⁴
 - (h) any amendment to the fund's valuation policy.⁸⁵
- (2) Notification of the matters specified in sub-regulation (1) shall be provided as follows—
- (a) in the case of a notice provided in accordance with subregulation (1) (a), (b) or (c), within 14 days after the date of the occurrence of the matter to be notified;
 - (b) in the case of a notice provided in accordance with subregulation (1) (d), as soon as reasonably practicable after the change;
 - (c) in the case of a notice provided in accordance with sub-regulation (1)(e), (f), (g) or (h), no more than 14 days after the occurrence of the matter in respect of which notice is given.⁸⁶

PART II - PUBLIC FUNDS

REGISTRATION

12. Application for registration of public fund

- (1) An application to the Commission for the registration of a public fund shall be in the approved form and shall specify the following—
- (a) the address of the place of business of the fund in the Virgin Islands;
 - (b) the name and address of the fund's authorised representative;
 - (c) if the fund is a BVI business company, the name and address of the fund's directors;
 - (d) if the fund is a unit trust, the name and address of the trustee;
 - (e) the name and address of any promoters of the fund;
 - (f) the address of any place or places of business that the fund may have outside the Virgin Islands;
 - (g) the name and address of the fund's auditor;

- (h) the name and address of each of the fund's functionaries;
 - (i) the place or places where the fund's financial and other records will be kept; and
 - (j) such other information as may be required by the approved form.
- (2) An application for the registration of a public fund shall be accompanied by the following—
- (a) a copy of the fund's constitutional documents;
 - (b) a copy of the fund's certificate of incorporation, formation or registration or equivalent document, if any;
 - (c) a statement setting out the nature and scope of the business to be carried on by the fund in or from within the Virgin Islands, including the name of any other country where the fund is carrying on or intends to carry on business;
 - (d) if application is made to exempt the fund from the requirement to appoint a custodian, an explanation as to—
 - (i) why it is not considered necessary for a custodian to be appointed; and
 - (ii) the arrangements made, or to be made, to ensure the safe custody of the fund property;
 - (e) a copy of the prospectus issued or proposed to be issued by or on behalf of the fund; and
 - (f) a copy of each functionary agreement.
- (3) The Commission may require any documents submitted under sub-regulation (2) (a) or (b) to be certified in such manner as it considers appropriate.

PROSPECTUS

13. Content of prospectus of public fund

A prospectus issued by a public fund shall—

- (a) state prominently at the head of the first page or on the cover that it is a prospectus prepared in accordance with the Act, these Regulations and the Public Funds Code;
- (b) contain the information specified in the Public Funds Code;
- (c) be accompanied by, or contain reference to, the availability of the financial statements for the last financial year of the fund and the auditor's report on those accounts, if the fund has completed a financial year in operation;
- (d) be accompanied by such other documents as may be specified in the Public Funds Code; and
- (e) contain such other matters as the Commission may require.

OTHER REQUIREMENTS

14. Directors

- (1) A public fund that is a BVI business company shall at all times have at least 2 directors.

- (2) Only an individual shall be appointed as the director of a public fund.
- (3) Where a public fund is in breach of sub-regulation (1), it shall—
 - (a) immediately notify the Commission of that fact in writing; and
 - (b) within 21 days of the breach, submit an application to the Commission for the appointment of one or more new directors pursuant to section 54 of the Act in order to ensure compliance with sub-regulation (1).

15. Unit trust to have a trustee

A public fund that is a unit trust shall at all times have a trustee that is a body corporate.

16. Functionaries of public fund

- (1) Subject to subregulation (2), a public fund shall at all times have—
 - (a) a fund manager;
 - (b) a fund administrator; and
 - (c) a custodian.
- (2) The Commission may, on written application made by or on behalf of a public fund, exempt the fund from the requirement to appoint a custodian.
- (3) An application under subregulation (2) may be made together with the application for registration or at any subsequent time.
- (4) Each functionary of a public fund shall be functionally independent from every other functionary of the fund.

17. Prescribed accounting and audit standards

- (1) The following accounting standards are specified for the purposes of Part IV of the Act in relation to public funds—
 - (a) the International Financial Reporting Standards, promulgated by the International Accounting Standards Board;
 - (b) UK GAAP;
 - (c) US GAAP;
 - (d) Canadian GAAP; or
 - (e) such other recognised international accounting standards as may be approved by the Commission on a case by case basis.
- (2) The auditor of a public fund shall—
 - (a) audit the fund's financial statements and prepare his or her report in accordance with⁸⁷—
 - (i) US Generally Accepted Auditing Standards;
 - (ii) International Standards on Auditing (UK);
 - (iii) International Standards on Auditing;
 - (iv) Hong Kong Standards on Auditing;

- (v) Canadian Auditing Standards; or
- (vi) such other recognised international auditing standards as may be approved by the Commission on a case by case basis;
- (b) certify the fund's compliance with such obligations and matters as may be specified in the Act and these Regulations;
- (c) provide such certifications or confirmations as may be specified by the Commission in a written notice sent to the fund and the auditor; and
- (d) carry out such other duties as may be required of the auditor by the Act or these Regulations.

18. Notifications

(1) A public fund shall provide written notice to the Commission in accordance with this regulation of—

- (a) the appointment of a director, authorised representative or auditor;
- (b) a director, authorised representative or auditor ceasing, for whatever reason, to hold office;
- (c) any change in the address of the fund's place of business, whether in or outside the Virgin Islands;
- (d) any change in the place or places where the fund's financial and other records are kept;
- (e) any material change in the nature and scope of the fund's business, in the case of a fund incorporated, constituted, formed or organised under the laws of a country outside the Virgin Islands,;
- (f) any proposed amendment to its constitutional documents;
- (g) its intention to issue an offering document not provided to the Commission with the funds application for registration; and
- (h) its intention to amend any offering document provided to the Commission with its application or in accordance with paragraph (g).

(2) Notification of the matters specified in subregulation (1) shall be provided as follows—

- (a) in the case of a notice provided in accordance with subregulation (1) (a), (b), (c) or (d), within 14 days after the date of the occurrence of the matter to be notified;
- (b) in the case of a notice provided in accordance with subregulation (1) (e), as soon as reasonably practicable after the change;
- (c) in the case of a notice provided in accordance with subregulation (1) (f), (g) or (h), no less than 21 days prior to the issue of the proposed offering document or the proposed amendment, as the case may be, or such shorter period as the Commission may approve in writing.

19. Public Funds Code

(1) The following matters may be provided for in the Public Funds Code—

- (a) the management, control and administration of public funds, the persons who may be appointed as functionaries of a public fund and the duties of those functionaries;
- (b) the custodial arrangements to be put in place with respect to public funds;
- (c) the reporting of information and the submission of documents to the Commission, including periodic returns, and the verification of the information or documents, and returns to be submitted to the Commission by and in respect of public funds;
- (d) the issue and redemption of fund interests in public funds;
- (e) the rights of investors in public funds;
- (f) conflicts of interests;
- (g) title to, and the transfer of, public fund property;
- (h) segregation of assets;
- (i) the income of a public fund;
- (j) meetings of investors of public funds;
- (k) the retention of records by public funds and the functionaries of public funds;
- (l) requirements and restrictions with respect to—
 - (i) the constitutional documents of a public fund;
 - (ii) investments and borrowing;
 - (iii) pricing and dealing;
 - (iv) the suspension and termination by a public fund of its operation or business;
 - (v) the valuation of assets and liabilities of a public fund; and
 - (vi) payments made, and benefits provided, to the functionaries of a public fund.

PART III - MISCELLANEOUS PROVISIONS

20. Registers

- (1) The Registers maintained by the Commission and the information contained in any document filed may be kept in such manner as the Commission considers fit including, either wholly or partly, by means of a device or facility—
 - (a) that records or stores information magnetically, electronically or by other means; and
 - (b) that permits the information recorded or stored to be inspected and reproduced in legible and usable form.
- (2) The registers required to be maintained under the Act shall—
 - (a) specify the following information with respect to each fund—

- (i) the address of the place of business and address for service in the Virgin Islands of the person who applied for registration or recognition ("the applicant");
 - (ii) the applicant's authorised representative;
 - (iii) the address of the place of business that the applicant may have outside the Virgin Islands;
 - (iv) the date of registration or recognition of the fund;
 - (v) the status of the registration or recognition, if cancelled, and the date of cancellation;
 - (vi) whether fees payable by the fund for the current year have been paid and the date on which they were paid; and
 - (vii) such other information as the Commission considers to be appropriate; and
- (b) be open to public inspection.

21. Transitional provisions

The transitional provisions specified in the Schedule shall have effect.

SCHEDULE

[Regulation 21]

TRANSITIONAL PROVISIONS

1. Interpretation

In this Schedule—

- “commencement date” means the date the Act is brought into force;
- “existing private fund” means a mutual fund that, immediately before the commencement date, was recognised as a private fund under the former Act;
- “existing professional fund” means a mutual fund that, immediately before the commencement date, was recognised as a professional fund under the former Act;
- “existing public fund” means a mutual fund that, immediately before the commencement date, was registered as a public fund under the former Act;
- “first transition date” means 31st December, 2010⁸⁸;
- “former Act” means the Mutual Funds Act, 1996 repealed under the Act; ⁸⁹
- “second transition date” means the date the Public Funds Code comes into effect; and⁹⁰
- “transitioning mutual fund” means a person who, immediately prior to the coming into force of “the Mutual Funds (Amendment) Regulations, 2019”, was recognised as a private or professional fund or registered as a public fund under the Act. ⁹¹

2. Private and Professional Funds

The following provisions of these Regulations shall not take effect until the first transition date with respect to an existing private or professional fund:

- (a) regulation 6;
- (b) regulation 7 (1) and (4); and
- (c) regulation 9.

3. Financial statements and audit re private and professional funds

- (1) For the purposes of this regulation, “current financial year”, in relation to an existing private or professional fund, means the financial year of the fund that commenced before, and ends after, the commencement date.
- (2) Regulation 10 (1) and (4) do not have effect with respect to the current financial year of an existing private or professional fund, or any financial statements prepared in respect of the current financial year.
- (3) Regulation 10 (3) does not have effect in relation to the auditor of an existing private or professional fund appointed in respect of the current financial year.

4. Public funds

The following provisions of these Regulations shall not take effect until the first transition date with respect to an existing public fund:

- (a) regulation 14;
- (b) regulation 16 (1) and (4); and
- (b) subject to paragraph 6 (2), regulation 17.

5. Prospectus of public fund

Regulation 13 shall not take effect until the second transition date.

6. Audit of financial statements re public funds

(1) For the purposes of this regulation, “current financial year”, in relation to an existing public fund, means the financial year of the fund that commenced before, and ends after, the commencement date.

(2) Regulation 17 (2) does not have effect in relation to the auditor of an existing public fund appointed in respect of the current financial year.

8. Effective Date⁹²

The provisions of the Mutual Funds (Amendment) Regulations, 2019 shall take effect in relation to a transitioning mutual fund on 1st July 2020.

VIRGIN ISLANDS

MUTUAL FUNDS (FOREIGN FUNDS) REGULATIONS

REVISED EDITION 2020 (AS AMENDED)

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014, and updated with amendments by Conyers

(S.I. 81/2019)

Section 62

[Commencement: 31 December 2019]

PRELIMINARY PROVISIONS

1. Citation

These Regulations may be cited as the Mutual Funds (Foreign Funds) Regulations.

2. Interpretation

(1) In these Regulations, unless the context otherwise requires—

“Act” means the Securities and Investment Business Act;

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

“regulatory status”, in relation to a recognised foreign fund, means the type of authorisation granted to a recognised foreign fund by a Regulatory Authority in the jurisdiction where the recognised foreign fund is constituted; and

“Regulatory Authority” means an authority that is responsible for the authorisation and supervision of a foreign fund in the jurisdiction in which the recognised foreign fund is constituted;

3. Fund administration services

For the purposes of the definition of “fund administrator” in section 40 (1) of the Act, “fund administration services” includes the following activities—

- (a) acting as registrar or transfer agent with respect to mutual funds; and
- (b) providing accounting services for, or with respect to, mutual funds, excluding the provision of audit and related services.

PART I - RECOGNISED FOREIGN FUNDS

APPLICATION FOR RECOGNITION

4. Application for recognition as foreign fund

(1) An application to the Commission for the recognition of a foreign fund shall be in the approved form and shall specify the following—

- (a) the address of the fund's place of business in the Virgin Islands;
 - (b) the regulatory status of the fund;
 - (c) the name and address of the fund's Regulatory Authority;
 - (d) the name and address of the fund's authorised representative;
 - (e) the name, address and details of each of the fund's directors;
 - (f) if the fund is a unit trust, the name, address and details of the trustee;
 - (g) if the fund is a limited partnership, the name, address and details of the general partners;
 - (h) the name, address and details of each of the fund's functionaries;
 - (i) the name and address of the fund's auditor;
 - (j) the place or places where the fund's financial and other records will be kept;
 - (k) the name and address of persons in the Virgin Islands that will be responsible for promoting and selling shares in the fund; and
 - (l) such other information as may be required by the approved form.
- (2) An application under sub-regulation (1) shall be accompanied by the following—
- (a) a copy of the fund's constitutional documents;
 - (b) a copy of the fund's certificate of incorporation, formation or registration or equivalent document, if any;
 - (c) evidence of the fund's regulatory status;
 - (d) a copy of the fund's issued or proposed prospectus; and
 - (e) a copy of the fund's valuation policy.
- (3) The Commission may require any documents submitted under sub-regulation (2) (a) and (b) to be certified in such manner as it considers appropriate.

PROSPECTUS

5. Prospectus

- (1) For the purposes of this section, a prospectus issued by a recognised foreign fund shall comply with the requirements of the Public Funds Code, as if the recognised foreign fund was registered as a public fund under the Act.
- (2) A prospectus issued by a recognised foreign fund shall—
- (a) state prominently at the head of the first page or on the cover, that it is prepared in accordance with the Act, these Regulations and the Public Funds Code;
 - (b) be accompanied by, or contain reference to, the availability of financial statements for the last financial year of the fund and the auditor's report on those accounts, if the fund has completed a financial year in operation;
 - (c) be accompanied by such other documents as may be prescribed in the Public Funds Code; and

- (d) contain such other matters as the Commission may require.
- (3) Subject to sub-regulations (4) and (5), a recognised foreign fund shall not issue a prospectus or amended prospectus unless it has given the Commission at least 7 days prior notification of the intended issuance.
- (4) A notification under sub-regulation (3) shall include submission of the copy of the prospectus or amended prospectus to be issued by the recognised foreign fund.
- (5) The Commission may agree to accept a shorter notification period than that specified in sub-regulation (3).

OBLIGATIONS ON RECOGNISED FOREIGN FUNDS

6. Directors

- (1) A recognised foreign fund shall at all times have not less than 2 directors, at least one of whom shall be an individual.
- (2) Where a recognised foreign fund is in breach of sub-regulation (1), it shall notify the Commission of that fact within 7 days after the breach occurred.
- (3) Subject to sub-regulation (4), no person shall be appointed as a director of a recognised foreign fund unless at least 7 days prior notification of the proposed appointment has been given to the Commission.
- (4) The Commission may agree to accept a shorter period of notice than that specified in sub-regulation (3).

7. Functions of recognised foreign funds

- (1) Subject to sub-regulation (2), a recognised foreign fund shall at all times have—
 - (a) a fund manager;
 - (b) a fund administrator; and
 - (c) a custodian.
- (2) The Commission may, on written application made by or on behalf of a recognised foreign fund, exempt the fund from the requirement to appoint a custodian.
- (3) An application under sub-regulation (2) may be made together with the application for recognition or at any subsequent time.
- (4) The custodian of a recognised foreign fund shall—
 - (a) be a person who is functionally independent from the fund manager and the fund administrator; or
 - (b) where the custodian is the same person as the fund manager or fund administrator, be a company having systems and controls that ensure that the persons fulfilling the custodial function are functionally independent from the persons fulfilling the fund management or fund administration functions.
- (5) Subject to sub-regulation (6), no person shall be appointed as a functionary of a recognised foreign fund unless at least 7 days prior notification of the proposed appointment has been given to the Commission.

(6) The Commission may agree to accept a shorter period of notice than that specified in sub-regulation (5).

8. Functionary ceasing to hold office

(1) A recognised foreign fund shall give written notice to the Commission within 7 days, or such other period as the Commission may specify, after a functionary of the fund—

- (a) resigns;
- (b) has his or her appointment terminated; or
- (c) otherwise ceases to act as a functionary of the fund.

(2) The notice provided under sub-regulation (1) shall include a statement of the reason for the person ceasing to act as functionary of the fund and a written notice shall be deemed not to be provided under that sub-regulation if it does not include such a statement.

(3) Where a functionary of a recognised foreign fund ceases to hold office on any of the grounds specified in sub-regulation (1), the fund does not contravene regulation 7 (1) if another person is appointed to act as functionary within 14 days of the original functionary ceasing to act.

9. Valuation fund property

(1) A recognised foreign fund shall maintain a clear and comprehensive policy for the valuation of fund property with procedures that are sufficient to ensure that the valuation policy is effectively implemented.

(2) A recognised foreign fund shall ensure that its administrator or such other person having responsibility for the valuation of fund property, values fund property in accordance with the valuation policy.

(3) The valuation policy and procedures of a recognised foreign fund shall—

- (a) be appropriate for the nature, size, complexity, structure and diversity of the fund and fund property;
- (b) be consistent with the provisions concerning valuation in its constitutional documents and prospectus;
- (c) require valuations to be undertaken on at least an annual basis;
- (d) include procedures for preparing reports on the valuation of fund property; and
- (e) specify the mechanisms in place for disseminating valuation information and reports to investors.

(4) Subject to sub-regulation (5), a recognised foreign fund shall ensure that the persons controlling the fund's manager, or such other person having responsibility for the investment function, are independent from the persons controlling the fund's administrator, or such other person having responsibility for the valuation process.

(5) Where a recognised foreign fund determines that the fund's manager, or such other person having responsibility for the investment function must have an involvement in the valuation of fund property, the recognised foreign fund shall—

- (a) identify, manage and monitor any potential conflicts of interest that may arise; and
- (b) disclose to investors in the fund—

- (i) that the fund's manager or such other person having responsibility for the investment function has an involvement in the valuation of fund property; and
- (ii) details of how any potential conflicts of interest will be managed.

FINANCIAL STATEMENTS AND AUDIT

10. Preparation and audit of financial statements

- (1) A recognised foreign fund shall prepare financial statements that comply with—
 - (a) the International Financial Reporting Standards, promulgated by the International Accounting Standards Board;
 - (b) UK GAAP;
 - (c) US GAAP;
 - (d) Canadian GAAP; or
 - (e) such other internationally recognised and generally accepted accounting standards equivalent to the accounting standards referred to in sub-paragraphs (a) to (d).
- (2) A recognised foreign fund shall appoint, and at all times have, an auditor for the purposes of auditing its financial statements.
- (3) Subject to sub-regulation (4), no person shall be appointed as an auditor of a recognised foreign fund unless at least 7 days prior notification of the proposed appointment has been given to the Commission.
- (4) The Commission may agree to accept a shorter period of notice than that specified in sub-regulation (3).
- (5) The auditor of a recognised foreign fund shall—
 - (a) audit the fund's financial statements and prepare his or her report in accordance with—
 - (i) US Generally Accepted Auditing Standards;
 - (ii) International Standards on Auditing (UK);
 - (iii) International Standards on Auditing;
 - (iv) Hong Kong Standards on Auditing;
 - (v) Canadian Auditing Standards; or
 - (vi) such other recognised international auditing standards as may be approved by the Commission on a case by case basis;
 - (b) certify the fund's compliance with such obligations and matters as may be specified in the Act and these Regulations;
 - (c) provide such certifications or confirmations as may be specified by the Commission in a written notice sent to the fund and the auditor; and

- (d) carry out such other duties as may be required of the auditor by the Act or these Regulations.
- (6) A recognised foreign fund shall provide a copy of its audited financial statements to the Commission within 6 months after the financial year end to which the financial statements relate or, subject to sub-regulation (7), such extended period not exceeding, in aggregate, 15 months as the Commission may approve in writing.
- (7) The Commission shall not grant an extension under sub-regulation (6) of more than 9 months unless it is satisfied that a further extension is justified by exceptional circumstances.

OTHER REQUIREMENTS

11. Status with Regulatory Authority

Where a recognised foreign fund ceases to be regulated by its Regulatory Authority, it shall, within 5 days after the occurrence—

- (a) provide written notification to the Commission, of the reason it is no longer regulated by its Regulatory Authority; and
- (b) cease to offer shares of the fund in the Virgin Islands.

12. Notifications

(1) A recognised foreign fund shall provide written notice to the Commission in accordance with this regulation of—

- (a) the appointment of an authorised representative or auditor;
- (b) a director, authorised representative or auditor ceasing, for whatever reason, to hold office;
- (c) any change in the address of the fund's place of business, whether in or outside the Virgin Islands;
- (d) any change in the place or places where the fund's financial and other records are kept;
- (e) any proposed amendment to its constitutional documents;
- (f) any proposed amendment to its valuation policy; and
- (g) any enforcement action against the fund by its Regulatory Authority or any other regulator outside the Virgin Islands.

(2) Notification of the matters specified in sub-regulation (1) shall be provided as follows—

- (a) in the case of a notice provided in accordance with sub-regulation (1) (a), (b), (c) or (d), within 14 days after the date of the occurrence of the matter to be notified, or such shorter period as the Commission may approve in writing;
- (b) in the case of a notice provided in accordance with sub-regulation (1) (e) or (f), no less than 7 days prior to the issue of the proposed constitutional document, or the proposed valuation policy, as the case may be, or such shorter period as the Commission may approve in writing; and

- (c) in the case of a notice provided in accordance with sub-regulation (1) (g), within 5 days after the occurrence of the matter to be notified.

PART II - MISCELLANEOUS PROVISIONS

13. Register

(1) The Register maintained by the Commission and the information contained in any document filed may be kept in such manner as the Commission considers fit including, either wholly or partly, by means of a device or facility—

- (a) that records or stores information magnetically, electronically or by other means; and
- (b) that permits the information recorded or stored to be inspected and reproduced in legible and usable form.

(2) The register required to be maintained under the Act shall—

- (a) specify the following information with respect to each fund—
 - (i) the address of the place of business and address for service in the Virgin Islands of the person who applied for recognition (“the applicant”);
 - (ii) the applicant’s authorised representative;
 - (iii) the address of the place of business that the applicant may have outside the Virgin Islands;
 - (iv) the date of recognition of the fund;
 - (v) the status of the recognition, if cancelled, and the date of cancellation;
 - (vi) whether fees payable by the fund for the current year have been paid and the date on which they were paid; and
 - (vii) such other information as the Commission considers to be appropriate.

14. Transitional provisions

The transitional provisions specified in the Schedule shall have effect.

SCHEDULE

[Regulation 14]

TRANSITIONAL PROVISIONS

1. Interpretation

In this Schedule “existing foreign fund” means a mutual fund that, immediately before the coming into force of these Regulations, was recognised as a recognised foreign fund under the Act.

2. Effective Date

The provisions of these Regulations shall take effect in relation to an existing foreign fund on 1st July 2020.

VIRGIN ISLANDS

PRIVATE INVESTMENT FUNDS REGULATIONS

REVISED EDITION 2020 (AS AMENDED)

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014, and updated with amendments by Conyers

(S.I. 80/2019)

Section 63A

[Commencement 31 December 2019]

1. Citation

These Regulations may be cited as the Private Investment Funds Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“Act” means the Securities and Investment Business Act;

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

“fund property”, in relation to a private investment fund, means—

- (a) where the fund is a BVI business company or a partnership, the assets of the fund; and
- (b) where the fund is a unit trust, the assets subject to the trust deed that constitutes the fund;

“offering document” or “term sheet” means a document that contains an invitation or offer to investors or potential investors to purchase or subscribe for fund interests in a private investment fund, and includes an amended offering document or term sheet.

APPLICATION FOR RECOGNITION

3. Application for recognition as a private investment fund

(1) An application to the Commission for the recognition of a private investment fund shall be in the approved form and shall specify the following—

- (a) the address of the fund’s place of business in the Virgin Islands;
- (b) the name and address of each of the fund’s directors;
- (c) the name and address of the fund’s authorised representative;
- (d) if the fund is a unit trust, the name and address of the trustee;
- (e) if the fund is a limited partnership, the name and address of the general partners;

- (f) the address of any place or places of business that the fund may have outside the Virgin Islands;
 - (g) the name and address of each appointed person; and
 - (h) such other information as may be required by the approved form.
- (2) An application under sub-regulation (1) shall be accompanied by the following—
- (a) a copy of the fund's constitutional documents;
 - (b) a copy of the fund's certificate of incorporation, formation, registration or equivalent document;
 - (c) if the private investment fund has issued, or intends to issue an offering document or a term sheet, a copy of the offering or term sheet, or the proposed offering document or term sheet; and
 - (d) a copy of the fund's valuation policy.
- (3) The Commission may require any documents submitted under sub-regulation (2) (a) and (b) to be certified in such manner as it considers appropriate.

4. Matters required to be prescribed

- (1) For the purposes of the definition of "professional investor" in section 63A of the Act, the specified sum is \$1,000,000.
- (2) For the purposes of section 63F(2)(b)(iii) of the Act, the minimum initial investment of each investor, other than an exempted investor or, in a private investment fund that is suitable for professional investors, is \$100,000 or its equivalent in another currency.

5. Directors

- (1) A private investment fund shall at all times have not less than 2 directors, at least one of whom shall be an individual.
- (2) Where a private investment fund is in breach of sub-regulation (1), it shall immediately notify the Commission of that fact within 7 days after the breach occurred.

6. Appointed persons of private investment funds

- (1) A private investment fund shall at all times have a person (hereafter referred to as the "appointed person") responsible for undertaking—
- (a) the management of fund property;
 - (b) the valuation of fund property; and
 - (c) the safekeeping of fund property, including the segregation of fund property.
- (2) Subject to sub-regulations (3) and (4), an appointed person under sub-regulation (1) may be—
- (a) a person licensed by the Commission or a regulatory authority in a recognised jurisdiction to perform the specified functions;
 - (b) an independent third party with experience in performing the specified functions; or
 - (c) a director, partner or trustee of the private investment fund.

(3) Subject to sub-regulation (4), no person shall be appointed as an appointed person of a private investment fund unless the fund has provided the Commission with the proposed appointment at least 7 days prior to the appointment.

(4) The Commission may agree to accept a shorter period of notice than that specified in sub-regulation (3).

7. Appointed person ceasing to hold office

(1) A private investment fund shall give notice to the Commission within 7 days, or such other period as the Commission may specify, after an appointed person of the fund—

- (a) resigns;
- (b) has his or her appointment terminated; or
- (c) otherwise ceases to act as an appointed person to the fund.

(2) The notice provided under sub-regulation (1) shall include a statement of the reason for the appointed person ceasing to act as such, and a written notice shall be deemed not to be provided under that sub-regulation if it does not include such a statement.

(3) Where an appointed person of a private investment fund ceases to hold office on any of the grounds specified in sub-regulation (1), the fund does not contravene regulation 6 (1) if another person is appointed to act as an appointed person within 7 days of the original appointed person ceasing to hold office.

8. Offering documents or term sheet

(1) Subject to sub-regulation (2), an offer or an invitation to an investor or a potential investor to purchase or subscribe for fund interests in a private investment, shall be made within an offering document or a term sheet.

(2) Where a private investment fund has not issued or does not intend to issue an offering document or a term sheet, it shall provide to the Commission, the reason for not issuing the offering document or term sheet including, in particular, how relevant information concerning the fund and any invitation or offer will be provided to investors or potential investors.

(3) An offering document or a term sheet shall clearly indicate that the fund is recognised by the Commission as a private investment fund and shall contain the following—

- (a) an indication as to whether—
 - (i) the fund is suitable for private investors only and that the fund is limited to 50 investors, or any invitation to subscribe for fund interests may be made on a private basis only;
 - (ii) the fund is only suitable for professional investors, as defined in the Act and the minimum investment of \$100,000 (or such larger sum as may apply with respect to the fund) is required;
- (b) the investment objective of the fund;
- (c) a written statement that investors do not have the right to redeem or withdraw fund interests on demand;
- (d) the names and addresses of the appointed persons responsible for the management, valuation and safekeeping of fund property; and

- (e) any fees to be paid by the fund.

VALUATION, FINANCIAL STATEMENTS AND AUDIT

9. Valuation of fund property

- (1) A private investment fund shall maintain a clear and comprehensive policy for the valuation of fund property with procedures that are sufficient to ensure that the valuation policy is effectively implemented.
- (2) A private investment fund shall ensure that the appointed person values fund property in accordance with the valuation policy.
- (3) The valuation policy and procedures of a private investment fund shall—
 - (a) be appropriate for the nature, size, complexity, structure and diversity of the fund and fund property;
 - (b) be consistent with the provisions concerning valuation contained in its constitutional documents and offering document or term sheet;
 - (c) require valuations to be undertaken at least on an annual basis;
 - (d) include procedures for preparing reports on the valuation of fund property; and
 - (e) specify the mechanisms in place for disseminating valuation information and reports to investors.
- (4) Subject to sub-regulation (5), a private investment fund shall ensure that the appointed person responsible for the fund's management function, is independent from the appointed person responsible for the valuation process.
- (5) Where a private investment fund determines that the appointed person responsible for the fund's management function must be the same person as the appointed person responsible for the valuation of fund property, the private investment fund shall—
 - (a) identify, manage and monitor any potential conflicts of interest that may arise; and
 - (b) disclose to investors in the fund—
 - (i) that the appointed person responsible for the fund's management function is also the appointed person responsible for the valuation of fund property; and
 - (ii) details of how any potential conflicts of interest will be managed.

10. Preparation and audit of financial statements

- (1) A private investment fund shall prepare financial statements that comply with—
 - (a) the International Financial Reporting Standards, promulgated by the International Accounting Standards Board;
 - (b) UK GAAP;
 - (c) US GAAP;
 - (d) Canadian GAAP; or

- (e) such other internationally recognised and generally accepted accounting standards equivalent to the accounting standards referred to in sub-paragraphs (a) to (d).
- (2) The financial statements of a private investment fund shall—
- (a) be audited by an auditor, who prepares his or her report in accordance with—
 - (i) US Generally Accepted Auditing Standards;
 - (ii) International Standards on Auditing (UK);
 - (iii) International Standards on Auditing;
 - (iv) Hong Kong Standards on Auditing;
 - (v) Canadian Auditing Standards; or
 - (vi) such other recognised international auditing standards as may be approved by the Commission on a case by case basis;
 - (b) certify the fund's compliance with such obligations and matters as may be specified in the Act and these Regulations;
 - (c) provide such certifications or confirmations as may be specified by the Commission in a written notice sent to the fund and the auditor; and
 - (d) carry out such other duties as may be required of the auditor by the Act or these Regulations.
- (3) A private investment fund shall provide a copy of its audited financial statements to the Commission within 6 months after the financial year end to which the financial statements relate or, subject to sub-regulation (4), such extended period not exceeding, in aggregate, 15 months as the Commission may approve in writing.
- (4) The Commission shall not grant an extension under sub-regulation (3) of more than 9 months unless it is satisfied that a further extension is justified by exceptional circumstances.

11. Notifications

- (1) A private investment fund shall provide written notice to the Commission, in accordance with these Regulations, of—
- (a) the appointment of a director, authorised representative or auditor;
 - (b) a director, authorised representative or auditor ceasing, for whatever reason, to hold office;
 - (c) any change in the address of the fund's place of business, whether in or outside the Virgin Islands;
 - (d) any material change in the nature and scope of the fund's business, in the case of a fund incorporated, constituted, formed or organised under the laws of a country outside the Virgin Islands;
 - (e) any amendment to its constitutional documents;
 - (f) the issuance of an offering document or a term sheet that was not provided to the Commission with the fund's application for recognition;

- (g) the amendment of any offering document or term sheet previously provided to the Commission, whether with its application or in accordance with paragraph (f); and
 - (h) any amendment to the fund's valuation policy.
- (2) Notification of the matters specified in sub-regulation (1) shall be provided within 14 days after the occurrence of the matter in respect of which notice is given.

MISCELLANEOUS PROVISIONS

12. Registers

- (1) The Registers maintained by the Commission and the information contained in any document filed may be kept and maintained in such manner as the Commission considers fit including, either wholly or partly, by means of a device or facility—
- (a) that records or stores information magnetically, electronically or by other means; and
 - (b) that permits the information recorded or stored to be inspected and reproduced in legible and usable form.
- (2) The registers required to be maintained under the Act shall—
- (a) specify the following information with respect to each fund—
 - (i) the address of the place of business and address for service in the Virgin Islands of the person who applied for recognition ("the applicant");
 - (ii) the applicant's authorised representative;
 - (iii) the address of the place of business that the applicant may have outside the Virgin Islands;
 - (iv) the date of recognition of the fund;
 - (v) the status of the recognition, if cancelled, and the date of cancellation;
 - (vi) whether fees payable by the fund for the current year have been paid and the date on which they were paid; and
 - (vii) such other information as the Commission considers to be appropriate; and
 - (b) be open to public inspection.

VIRGIN ISLANDS

INVESTMENT BUSINESS (APPROVED MANAGERS) REGULATIONS

REVISED EDITION 2020 (AS AMENDED)

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014, and updated with amendments by Conyers

(S.I.s 54/2012 and 88/2013)

Section 40C(1) and 62

[Commencement: 10 December 2012]

1. Citation

These Regulations may be cited as the Investment Business (Approved Managers) Regulations.

2. Interpretation

(1) In these Regulations, unless the context otherwise requires—

“Act” means the Securities and Investment Business Act;

“applicant” means a person who has applied to the Commission to be an approved investment manager;

“approved investment manager” means a person who is approved as such by the Commission under regulation 7;

“authorised representative” means a person who has been certified as such by the Commission under section 64 of the Act;

“closed-ended fund” bears the meaning provided in the guidelines issued under regulation 9 (3);

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

“legal practitioner” means a person who has been admitted to practice as a legal practitioner under Part IV of the Eastern Caribbean Supreme Court Act;

“relevant business” means any type of investment business referred to in regulation 9 which may be carried on by an approved investment manager; and

“prescribed” means prescribed by the Commission.

(2) Nothing contained in these Regulations shall be construed as preventing a person from applying to be licensed as an investment manager or investment adviser under the Act instead of being approved as an investment manager under these Regulations.

(3) Any reference in these Regulations to an applicant, approved investment manager or any other person being fit and proper shall be construed in accordance with the fitness and propriety criteria established in Schedule 1A of the Regulatory Code.

3. Application of these Regulations

(1) The provisions of these Regulations apply to a person who—

(a) is a BVI business company; or

- (b) is a limited partnership registered under the Partnership Act; and
- (c) submits an application under regulation 4 to be approved as an investment manager; and
- (d) is approved by the Commission under regulation 7 (1).⁹³

(2) Save as may be otherwise provided in these Regulations, where a person is approved as an investment manager under regulation 7, the provisions of section 4 (1) of the Act and the Regulatory Code shall not apply in his or her case.

4. Application for approval as an investment manager

(1) A person who wishes to be considered for approval as an investment manager may submit an application to the Commission in the prescribed form.

(2) An application under sub-regulation (1) must be submitted to the Commission at least 7 days prior to the intended date for the commencement of relevant business, unless the Commission accepts in writing a shorter period.

(3) Subject to subregulation (4), where an application is made pursuant to subregulation (1) within the period specified in subregulation (2), the person to whom the application relates may commence and carry on relevant business for a period of up to 30 days from the date of submission of the application.

(4) The Commission may, either on its own volition or on the application of an applicant in the prescribed form, extend the period specified in subregulation (3) for an additional period of up to 30 days.

(5) A person who commences and carries on relevant business in accordance with sub-regulation (3) is deemed to be approved as an investment manager for the period in which he or she carries on relevant business in reliance on sub-regulation (3) and, where applicable, subregulation (4).

(6) If the Commission does not grant approval to an application made under subregulation (1) within the period specified in sub-regulation (3) or, where an extension has been granted under subregulation (4), within the extended period, the person carrying on relevant business as an investment manager shall cease carrying on relevant business upon the expiry of the specified period or extended period, as the case may be.

(7) During the period in which a person carries on relevant business as an investment manager in accordance with this regulation, he or she does not commit an offence or a breach and shall not be liable to any enforcement action.

5. Required information

(1) An application for approval as an investment manager under regulation 4 shall be signed by a director or general partner of the applicant, accompanied by the following—

- (a) a copy of the applicant's constitutional documents;
- (b) the details of each director or general partner and senior officer of, and each person who owns or holds an interest⁹⁴ in, the applicant;
- (c) a written declaration by the applicant that each director or general partner and senior officer of, and each person who owns or holds a significant interest in, the applicant is fit and proper in accordance with Schedule 1A of the Regulatory Code;
- (d) the number and details of the funds that the applicant intends to act for upon commencement of relevant business;
- (e) the date on which the applicant intends to commence relevant business;

- (f) a copy of the investment advisory or investment management agreement between the applicant and each person that the applicant intends to act for upon commencement of relevant business;
 - (g) a written confirmation as to which individual will be carrying out the day-to-day investment business functions of the applicant;
 - (h) a written confirmation as to whether or not the applicant has delegated or intends to delegate any of its relevant business functions;
 - (i) a written confirmation from the applicant's legal practitioner that the legal practitioner has agreed to act for the applicant; and
 - (j) a written declaration by the applicant's authorised representative or legal practitioner that the application for approval as an investment manager is complete and meets the application requirements of these Regulations.
- (2) For the purposes of—
- (a) subregulation (1) (b), the required details of each director or general partner, senior officer and ⁹⁵shareholder shall be in the prescribed form;
 - (b) subregulation (1) (c) and (j), the written declaration shall be in accordance with the prescribed form;
 - (c) subregulation (1) (d), the details of the funds shall comprise the name, address and place of incorporation or registration of each of the funds;
 - (d) subregulation (1) (g) and (h), the written confirmation shall be in the prescribed form; and
 - (e) subregulation (1) (i), the written confirmation shall be in the form of a letter addressed to the Commission.
- (3) Where in relation to sub-regulation (1) (g) the applicant has delegated or intends to delegate any of its relevant business functions, he or she shall—
- (a) outline the functions that have been delegated or that he or she intends to delegate;
 - (b) indicate the person to whom the functions have been delegated or are intended to be delegated; and
 - (c) provide a copy of the agreement relating to the delegation.
- (4) Where an application does not comply with the requirements of this regulation or is not accompanied by the requisite fee required under regulation 6, the application shall be considered incomplete.
- (5) An application that is considered incomplete by virtue of subregulation (4) may be denied by the Commission.

6. Fees

- (1) Every application for approval as an investment manager shall be accompanied by such fee as may be prescribed in accordance with section 62 of the Financial Services Commission Act.
- (2) The continued approval of an approved investment manager may, subject to compliance with regulation 16 (1), be renewed annually upon payment of the requisite fee ("the renewal fee").
- (3) Where an approved investment manager fails to pay the renewal fee referred to in sub-regulation (2) after the renewal has become due and payable, the approved investment manager shall be liable to

the penalty prescribed for late payment of fee under Schedule 2 of the Financial Services (Administrative Penalties) Regulations as if the approved investment manager were a licensee.

(4) Where an approved investment manager becomes liable to the maximum penalty prescribed in Schedule 2 of the Financial Services (Administrative Penalties) Regulations, he or she shall—

- (a) cease to function as an approved investment manager under regulation 8 (1); and
- (b) not carry on relevant business as an approved investment manager,

if, within 30 days after he or she has become liable to the maximum penalty, he or she fails to pay the renewal fee and the applicable maximum penalty.

(5) The processes and procedures outlined in the Financial Services (Administrative Penalties) Regulations in relation to the payment of penalty for late payment of the renewal fee shall not apply in relation to an approved investment manager.

7. Decision by the Commission

(1) Where the Commission, upon—

- (a) receipt of an application under regulation 4; and
- (b) being satisfied that—
 - (i) the required information under regulation 5 has been provided;
 - (ii) the required fee payable pursuant to regulation 6 has been paid;
 - (iii) the applicant is fit and proper and will, upon approval, be in compliance with these Regulations; and
 - (iv) approval of the applicant is not against the public interest,

it may approve the applicant as an approved investment manager.

(2) If the Commission approves an applicant as an approved investment manager under subregulation (1), it shall—

- (a) register the applicant in the register of approved investment managers maintained under regulation 18; and
- (b) issue the applicant with a certificate of approval as an approved investment manager in the approved form.

(3) If the Commission, in dealing with an application, forms the view that—

- (a) the applicant is not fit and proper or, if approved, will not be in compliance with these Regulations;
- (b) the application is incomplete in a material particular; or
- (c) it is not in the public interest to approve the application,

it may deny the application for approval by issuing a notice of such denial to the applicant.

(4) Where an application for approval is denied under subregulation (3), the Commission shall, in conveying its decision, provide the applicant with the Commission's reason for the decision.

(5) Where an applicant is denied approval under sub-regulation (3), he or she shall, if he or she has been carrying on relevant business pursuant to regulation 4 (3), cease carrying on such relevant business immediately.

(6) For the purposes of subregulation (3) (b), the question as to whether or not an application is incomplete in a material particular shall be determined by the Commission.

8. Effect of approval

(1) An approved investment manager shall—

- (a) be treated as if he or she were a licensee for the purposes of the Financial Services Commission Act; and
- (b) be liable to the powers exercisable by the Commission under that Act in relation to licensees.

(2) Where an applicant is approved by the Commission as an approved investment manager, he or she may carry out any of the relevant business outlined in regulation 9.

9. Functions that may be performed

(1) An approved investment manager may carry out any of the following investment business functions—

- (a) act as an investment adviser or investment manager to a private fund or professional fund;
- (b) act as an investment adviser or investment manager to a closed- ended fund that is incorporated as a company, formed as a partnership or organised as a trust, under the laws of the Virgin Islands or any recognised jurisdiction⁹⁶ and has the characteristics of a private or professional fund;
- (c) act as an investment adviser or investment manager to a person who is affiliated to a fund structure falling within paragraphs (a) or (b);
- (ca) act as an investment adviser or investment manager to any fund that is incorporated as a company, formed as a partnership or organised as a trust, under the laws of a recognised jurisdiction and has equivalent characteristics to a private or professional fund;⁹⁷
- (d) act as an investment adviser or investment manager to such other person as the Commission may approve on a case by case basis upon application; and
- (e) act as an investment manager or investment adviser to a person that—
 - (i) is incorporated as a company, formed as a partnership or organised as a trust, outside the Virgin Islands in a non-recognised jurisdiction⁹⁸;
 - (ii) has equivalent characteristics to a private fund, professional fund or a closed-ended fund; and
 - (iii) invests all or a substantial part of its assets in one or more fund structures falling within paragraph (a) or (b).

(1A) For the purposes of sub-regulation (1)(b) and (ca), a jurisdiction is a recognised jurisdiction if it is listed in the Securities and Investment Business (Recognised Jurisdictions) Notice, and sub-regulation (1)(e)(i) shall in that regard be construed accordingly.⁹⁹

(2) In determining, for the purposes of sub-regulation (1) (e) (iii), what constitutes a substantial part of a fund's assets in a fund falling within sub-regulation (1) (a) or (b), account shall be taken of whether the aggregate of the fund's investment in the funds falling within sub-regulation (1) (a) or (b) amounts to more than 50% of its total assets.

(3) The Commission, acting in accordance with section 41A of the Financial Services Commission Act, and after liaising with the Securities and Investment Business Advisory Committee, may issue guidelines to—

- (a) determine funds that may qualify to be treated as closed-ended funds;
- (b) determine the characteristics of a private or professional fund referred to in sub-regulation (1) (b);
- (c) determine a person who is affiliated to a fund structure referred to in sub-regulation (1) (c);
- (d) determine the equivalent characteristics of a person referred to in sub-regulation (1)(ca) and (e)(ii);¹⁰⁰
- (e) determine a non-Virgin Islands incorporated fund which is equivalent to a private fund or professional fund referred to in regulation 10 (3) (b); and
- (f) provide or prescribe such other matter as is required to be provided or prescribed in guidelines.

10. Restrictions in relation to regulation 9

(1) For the purposes of regulation 9 (1), an approved investment manager is not, unless otherwise required by the Commission, restricted as to the number of persons he or she may act for.

(2) An approved investment manager shall not, subject to sub-regulation (3), carry on any other business except the relevant business outlined in regulation 9 (1).

(3) No person shall, unless he or she holds a licence under the Act or is otherwise approved by the Commission upon written application under these Regulations, act as an approved investment manager—

- (a) to a professional investor that does not fall within the scope of regulation 9 (1); or
- (b) to a non-Virgin Islands incorporated fund which is equivalent to a private fund or professional fund, unless such fund falls under regulation 9 (1).

11. Restrictions generally

(1) Where an approved investment manager ceases to qualify as such under these Regulations, he or she shall—

- (a) not take on any new relevant business; and
- (b) notify the Commission immediately that he or she is no longer qualified to act as an approved investment manager.

(2) Without prejudice to regulations 4 (6), 6 (4) and 17 (1) (b), an approved investment manager who ceases to qualify as such under these Regulations—

- (a) has 3 months from the date of disqualification within which to cease carrying on relevant business; and
- (b) shall no longer be treated as a licensee as provided in regulation 8 (1) after the expiry of the period specified in paragraph (a) or, if granted an extension under sub-regulation (4), within the specified extended period.

(3) A person who ceases to qualify as an approved investment manager may apply to the Commission to be licensed to carry on investment business under Part I of the Act.

(4) Where the Commission considers it appropriate to do so having regard to the business of the approved investment manager and such other matters as are considered relevant, the Commission may

grant the approved investment manager a period of extension of not more than 3 months from the date of expiry of the initial 3 months to apply for and obtain a licence as mentioned in sub-regulation (3).

(5) Sub-regulation (2) (b) is without prejudice to any enforcement action that the Commission may take against an approved investment manager, whether in relation to a period before or after ceasing to act as an approved investment manager.

12. Restrictions in relation to assets under management

(1) Where an approved investment manager has—

- (a) in aggregate, assets under management exceeding \$400,000,000 or its equivalence in any other currency; or
- (b) in relation to a closed-ended fund, such other amount as may be prescribed in the guidelines issued under regulation 9 (3),

he or she shall, within 7 days of exceeding that amount or the amount prescribed in relation to the closed-ended fund, notify the Commission in writing of that fact.

(2) Where an investment manager manages both an open-ended fund and a closed-ended fund, the aggregate assets under management in relation to the open-ended fund and the amount prescribed for the closed-ended fund shall be segregated and treated separately for the purposes of subregulation (1).

(3) An approved investment manager who exceeds the amount prescribed in, or pursuant to, subregulation (1) shall cease to qualify as an approved investment manager unless, within 3 months of the date he or she ceased to qualify as an approved investment manager—

- (a) he or she no longer exceeds the amount prescribed in subregulation (1);
- (b) he or she submits an application to be licensed to carry on investment business under Part I of the Act; or
- (c) the Commission, having regard to any risk that may be associated with the approved investment manager or any of the persons for which he or she acts, approves in writing that he or she may continue to function as an approved investment manager.

(4) An approved investment manager who ceases to qualify as such by virtue of subregulation (3) and to whom paragraph (a), (b) or (c) of that sub-regulation does not apply may, within the period specified in that subregulation, continue to carry on relevant business but shall not take on any new relevant business.

(5) The Commission, acting in accordance with section 41A of the Financial Services Commission Act and after consultation with the Securities and Investment Business Advisory Committee, may issue guidelines in relation to subregulation (1) to—

- (a) determine the procedure for assessing assets under management; and
- (b) establish the types of asset that may constitute assets under management.

13. Ongoing obligations

(1) An approved investment manager shall at all times have—

- (a) at least 2 directors, one of whom shall be an individual; and
- (b) an authorised representative.

(2) An approved investment manager shall, within 14 days of the change of any information submitted pursuant to regulation 5, notify the Commission in writing of the change, providing details of the change

and a written declaration in the prescribed form as to whether or not the change complies with the requirements of these Regulations.

(3) In addition to notifying the Commission of any change under subregulation (2), an approved investment manager shall notify the Commission of any matter in relation to the approved investment manager or in the approved investment manager's conduct of a relevant business, which has or is likely to have a material impact or a significant regulatory impact with respect to the approved investment manager or the relevant business.

14. Requirement re submission of financial statements

(1) Subject to subregulation (2), an approved investment manager is required to prepare and submit financial statements in accordance with the Act and shall, for that purpose, be treated as if he or she were a relevant licensee under Part IV of the Act.

(2) Sections 71 (1) (b), 75, 76, 77, 78 and 79 (2) of the Act are disapplied with respect to an approved investment manager, and the Regulatory Code and paragraph 2 (1) (e) of Schedule 5 of the Financial Services (Miscellaneous Exemptions) Regulations are modified accordingly.

(3) The definition of "financial statements" in section 69 of the Act shall be construed to apply to the use of that term in subregulation (1).

15. Requirement re compliance officer, etc.

An approved investment manager is exempt from the requirement to appoint a compliance officer and establish and maintain a compliance procedures manual under section 34 Financial Services Commission Act, and paragraph 2 (1) (b) of Schedule 1 of the Financial Services (Miscellaneous Exemptions) Regulations is modified accordingly.

16. Filing annual returns

(1) An approved investment manager shall, no later than the 31st day of January of each year, file with the Commission a return in the prescribed form—

- (a) stating that he or she is not in breach of the requirements of these Regulations that entitle him or her to continue as an approved investment manager;
- (b) confirming that each director and senior officer of, and shareholder with a significant interest in, the approved investment manager is fit and proper; and
- (c) providing, as at the 31st day of December of the preceding year, details of—
 - (i) the persons for which he or she provides services;
 - (ii) the assets under management of each person for which he or she acts;
 - (iii) the number of investors in each person for which he or she acts; and
 - (iv) any significant complaints received by the approved investment manager.

(2) Where the Commission is required or considers it necessary to comply with any reporting obligation, whether under an enactment or otherwise, it may require an investment manager to provide the Commission with such further information as the Commission may consider fit.

(3) Any information required by the Commission under sub-regulation (2) shall be in such form and provided within such period as the Commission may determine.

(4) For the purposes of sub-regulation (1) (c) (iv), what constitutes a significant complaint shall be construed in accordance with section 69B of the Regulatory Code.

17. Public interest

(1) Where the Commission considers it to be in the public interest to do so, it may at any time, by written notice, require an approved investment manager to—

- (a) apply for and obtain a licence to carry on investment business under Part I of the Act; or
- (b) cease performing any or all of the relevant business outlined in regulation 9.

(2) An approved investment manager—

- (a) has, in the case of a notice under subregulation (1) (a), 3 months from the date of the notice to apply for a licence to carry on investment business under Part I of the Act; and
- (b) shall, in the case of a notice under subregulation (1) (b), cease carrying on the relevant business outlined in the notice immediately and shall—
 - (i) no longer be treated as a licensee as provided in regulation 8 (1); and
 - (ii) cease to act as an approved investment manager immediately and not take on any new relevant business.

(3) Where, in the case of a notice under sub-regulation (1) (a), the Commission considers it appropriate to do so having regard to the business of the approved investment manager and such other matters as are considered relevant, the Commission may grant the approved investment manager a period of extension of not more than 3 months from the date of expiry of the initial 3 month period specified in subregulation (2) (a) to apply for and obtain a licence to carry on investment business under Part I of the Act.

(4) Where an approved investment manager to whom a notice has been issued under sub-regulation (1) (a) fails to apply for a licence within the period specified under sub-regulation (2) or, if granted an extension, within the specified extended period under sub-regulation (3), he or she shall—

- (a) no longer be treated as a licensee as provided in regulation 8 (1); and
- (b) cease to act as an approved investment manager immediately and not carry on any relevant business.

(5) Subregulation (4) (a) is without prejudice to any enforcement action that the Commission may take against an approved investment manager, whether in relation to a period before or after ceasing to act as an approved investment manager.

18. Register of approved investment managers

(1) The Commission shall keep and maintain a register of approved investment managers under these Regulations.

(2) The register kept and maintained under sub-regulation (1)—

- (a) may be in such form and published in such manner and for such period as the Commission considers fit; and
- (b) shall be open to the public for inspection, and any person may request and obtain an extract from the register.

VIRGIN ISLANDS

INVESTMENT BUSINESS (REGISTERS) REGULATIONS

REVISED EDITION 2020 (AS AMENDED)

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014, and updated with amendments by Conyers

(S.I. 85/2014)

Section 21

[Commencement: 3 November 2014]

1. Citation

These Regulations may be cited as the Investment Business (Registers) Regulations.

2. Contents of registers maintained under the Act

For the purposes of—

- (a) section 99 (1) (a) of the Securities and Investment Business Act (hereinafter referred to as “the Act”), the Register of Investment Business Licensees shall contain the following information—
 - (i) the address of the place of business and address for service in the Virgin Islands of the licensee;
 - (ii) the address of the place of business that the licensee may have outside the Virgin Islands;
 - (iii) the full name and address of the licensee’s authorised representative;
 - (iv) the type and category of licence granted to the licensee, and the date on which it was granted;
 - (v) the current status of the licensee, including the date of cancellation, suspension or revocation of licence, if licence has been cancelled, suspended or revoked; and
 - (vi) whether fees payable for the current year have been paid and the date on which they were paid.
- (b) section 99 (1) (e) of the Act, the Register of Certified Authorised Representatives shall contain the following information—
 - (i) the address of the place of business and address for service in the Virgin Islands of the certified authorised representative;
 - (ii) the address of the place of business that the certified authorised representative may have outside the Virgin Islands;
 - (iii) the date on which certification was granted to act as a certified authorised representative;

- (iv) the current status of the certified authorised representative, including the date on which certification was cancelled, suspended or revoked, if certification has been cancelled, suspended or revoked; and
- (v) whether fees payable for the current year have been paid and the date on which they were paid.

3. Contents of register maintained under S.I. No. 54 of 2012

The Register required to be maintained in respect of an approved investment manager under Regulation 18 of the Investment Business (Approved Managers) Regulations shall contain the following information—

- (a) the address of the place of business and address for service in the Virgin Islands of the approved investment manager;
- (b) the address of the place of business that the approved investment manager may have outside the Virgin Islands;
- (c) the full name and address of the approved investment manager's authorised representative;
- (d) the date on which approval to act as an approved investment manager was granted;
- (e) the current status of the approved investment manager, including the date on which approval was cancelled, suspended or revoked, if approval has been cancelled, suspended or revoked; and
- (f) whether fees payable for the current year have been paid and the date on which they were paid.

VIRGIN ISLANDS

**SECURITIES AND INVESTMENT BUSINESS
(INCUBATOR AND APPROVED FUNDS)
REGULATIONS**

REVISED EDITION 2020 (AS AMENDED)

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014, and updated with amendments by Conyers

(S.I.s 35/2015 and 83/2019)

Sections 40C(1) and 62A

[Commencement: 1 June 2015]

1. Citation

These Regulations may be cited as the Securities and Investment Business (Incubator and Approved Funds) Regulations.

2. Interpretation

(1) In these Regulations, unless the context otherwise requires—

“Act” means the Securities and Investment Business Act;

“applicant” means a person who has applied to the Commission to be approved as an incubator fund or approved fund;

“approved fund” means a fund that is deemed as such under regulation 5 (1) (b) and satisfies the requirements of regulation 11 (1) and (2);

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

“fund property”, in relation to an incubator fund or approved fund, means the assets of the fund;¹⁰¹

“incubator fund” means a fund that is deemed as such under regulation 5 (1) (a) and satisfies the requirements of regulation 10 (1) and (2);

“offering document” means a document that contains an invitation or offer to investors or potential investors to purchase or subscribe for fund interests in an incubator fund or approved fund, and includes an amended offering document and a term sheet as may be prescribed;

“prescribed” means prescribed by the Commission;

“private fund” has the meaning assigned under section 40 (1) of the Act;

“professional fund” has the meaning assigned under section 40 (1) of the Act; and

“sophisticated private investor” means a person who is invited to invest in an incubator fund and the amount of his or her initial investment is not less than \$20,000.

(2) Nothing contained in these Regulations shall be construed as preventing a mutual fund from applying to be recognised as a private fund or professional fund under the Act, but a mutual fund shall not be recognised as a private fund or professional fund while it is approved as an incubator fund or approved fund under these Regulations.

3. Application as an incubator fund or approved fund

(1) A person who wishes to be considered for approval as an incubator fund or approved fund may submit an application to the Commission in the prescribed form.

(2) For purposes of subregulation (1), an applicant shall, in submitting an application, provide the following information—

- (a) the constitutional documents specifying whether the applicant intends to be an incubator fund or approved fund;
- (b) a written description of the investment strategy of the proposed incubator fund or approved fund;
- (c) a written warning which the incubator fund or approved fund will issue to investors or potential investors as provided in regulation 4; and
- (d) such other information as may be required in the prescribed form.

(3) For the purposes of this regulation, an application is not complete if—

- (a) it does not satisfy all the requirements of this regulation; and
- (b) the application is not accompanied by the fee required pursuant to regulation 7.

4. Investment warning

(1) No offer or invitation shall be made to an investor or potential investor to purchase or subscribe for fund interests in an incubator fund or approved fund, unless the investor or potential investor is provided with a written warning in accordance with this regulation.

(2) Where an incubator fund or approved fund—

- (a) issues an offering document, the written warning shall be included in a prominent place in the offering document; or
- (b) does not issue an offering document, the written warning shall be provided to each investor or potential investor as a separate document.

(3) The written warning required to be provided to an investor or potential investor shall clearly indicate that the incubator fund or approved fund, as the case may be, has been established as such and that—

- (a) in the case of an incubator fund—
 - (i) the fund is suitable for sophisticated private investors only;
 - (ii) the total number of investors in the fund is limited to a maximum of 20; and
 - (iii) the fund can only have investments not exceeding \$20,000,000 in net assets or its equivalence in any other currency;
- (b) in the case of an approved fund—
 - (i) the total number of investors in the fund is limited to a maximum of 20; and

- (ii) the fund can only have investments not exceeding \$100,000,000 in net assets or its equivalence in any other currency;
- (c) the incubator fund or approved fund, as the case may be, is not subject to supervision by the Commission and that requirements considered necessary for the protection of investors that apply to public funds do not apply to an incubator fund or approved fund;
- (d) an investor in an incubator fund or approved fund is solely responsible for determining whether the fund is suitable for his or her investment needs;
- (e) by reason of the above, investment in an incubator fund or approved fund may present a greater risk to an investor than investment in a public fund; and
- (f) in the case of an incubator fund, the fund is limited to an approved period of 2 years only (with a possible extension for an additional 12 months upon application to the Commission pursuant to regulation 13 (3)) and may thereafter, unless it decides to terminate its business as such fund, apply to the Commission to be recognised as a private fund or professional fund or to be approved as an approved fund.

4A. Valuation of fund property¹⁰²

- (1) An incubator fund and approved fund shall maintain a clear and comprehensive policy for the valuation of fund property with procedures that are sufficient to ensure that the valuation policy is effectively implemented.
- (2) An approved fund and incubator fund shall ensure that fund property is valued in accordance with the valuation policy.
- (3) The valuation policy and procedures of an incubator fund and approved fund shall—
 - (a) be appropriate for the nature, size, complexity, structure and diversity of the fund and fund property;
 - (b) be consistent with the provisions concerning valuation in its constitutional documents and offering document;
 - (c) require valuations to be undertaken at least on an annual basis;
 - (d) include procedures for preparing reports on the valuation of fund property; and
 - (e) specify the mechanisms in place for disseminating valuation information and reports to investors.
- (4) Subject to sub-regulation (5), an incubator fund and approved fund shall ensure that the persons controlling the fund's investment function, are independent from the persons controlling the fund's the valuation process.
- (5) Where an incubator fund or approved fund determines that the person responsible for the fund's investment function must have an involvement in the valuation of fund property, the incubator fund or approved fund shall—
 - (a) identify, manage and monitor any potential conflicts of interest that may arise; and
 - (b) disclose to investors in the fund—

- (i) that the person responsible for the fund's investment function has an involvement in the valuation of fund property; and
- (ii) details of how any potential conflicts of interest will be managed.

5. Deemed approval of an incubator fund and approved fund

(1) Subject to this regulation and regulation 7, an applicant that submits a complete application as required under regulation 3—

- (a) shall, in the case of an application for an incubator fund, be deemed to be an incubator fund;
- (b) shall, in the case of an application for an approved fund, be deemed to be an approved fund; and
- (c) may, subject to compliance with any advice given by the Commission under subregulation (2), commence business after a period of 2 business days from the date of receipt of the application by the Commission.

(2) Where the Commission receives an application under regulation 3 which it considers not to be complete, it shall, within a period of 2 business days after the receipt of the application, advise the applicant of that fact and outline the requirements that need to be satisfied to make the application complete.

(3) Subject to regulation 6, where the Commission does not receive a complete application within 7 days or, if an extension has been granted pursuant to regulation 6, within the period of extension, after advising the applicant under subregulation (2), the application shall be considered abandoned and no further action may be taken in respect thereof.

(4) For the purpose of subregulation (1) (c), an application is received by the Commission if it is properly addressed to the Commission and if—

- (a) sent by post, it is received in the ordinary course of post;
- (b) delivered directly to the Commission, when it is physically received by an officer of the Commission, whether or not receipt of the application has been signed or stamped; and
- (c) sent by electronic means, when the application is shown to have been sent electronically to the correct address.

(5) Where a fund is deemed to be an incubator fund or approved fund under subregulation (1), the Commission shall issue a certificate evidencing the status of the fund upon payment of the fee prescribed in accordance with section 62 of the Financial Services Commission Act, 2001.

(6) For the purposes of subregulations (1) (c) and (2), “business days” means any day other than a Saturday, Sunday or public holiday in the Virgin Islands.

6. Power to extend period of completion of application

The Commission may, on the written request of an applicant, extend the period specified in regulation 5 (3) for an additional period not exceeding 7 days.

7. Fees

- (1) Every application for the approval of an incubator fund or approved fund shall be accompanied by such fees as may be prescribed in accordance with section 62 of the Financial Services Commission Act.
- (2) The continued approval of an incubator fund or approved fund may, subject to compliance with regulations 8 to 11 and 13, be renewed upon payment of the fee prescribed in accordance with section 62 of the Financial Services Commission Act.
- (3) Where an incubator fund or approved fund fails to pay its renewal fee referred to in subregulation (2) after the renewal has become due and payable, the incubator fund or approved fund, as the case may be, shall be liable to the penalty of \$50 for each day that the renewal fee remains unpaid, up to maximum of \$2,000.¹⁰³ *(Amended by S.I. 83/2019, with effect from 1 April, 2020)*

8. Obligation to report change of information or circumstance

- (1) Where, in relation to an incubator fund or approved fund, any information provided under regulation 3 changes, the fund shall, within 14 days of the change occurring, notify the Commission in writing of that fact.
- (2) A notification under subregulation (1) shall provide details of the change and shall be accompanied by a written declaration in the prescribed form as to whether or not the change complies with the requirements of these Regulations.
- (3) In addition to notifying the Commission of any change under subregulation (1), an incubator fund or approved fund, as the case may be, shall notify the Commission of any matter in relation to the affairs (including the conduct of business) of the incubator fund or approved fund which has or is likely to have a material impact with respect to the incubator fund or approved fund.

9. Obligations of incubator fund and approved fund

- (1) An incubator fund and approved fund shall at all times—
 - (a) have an authorised representative in the Virgin Islands;¹⁰⁴
 - (b) have no less than 2 directors, at least one of whom shall be an individual; and¹⁰⁵
 - (c) have arrangements in place for the safekeeping of fund property, which include provisions for the appropriate segregation of fund property.¹⁰⁶
- (2) In addition to the requirements of subregulation (1), an approved fund shall at all times have an administrator.
- (3) Where the number of directors of an incubator fund or approved fund falls below 2, the incubator fund or approved fund, as the case may be, shall—
 - (a) immediately notify the Commission of that fact in writing; and
 - (b) take necessary steps to bring the number of directors to the requirement of subregulation (1) (c) within a period of 21 days from the date when that requirement was not complied with.
- (4) Where the authorised representative of an incubator fund or approved fund ceases to represent the incubator fund or approved fund, as the case may be, the incubator fund or approved fund shall immediately notify the Commission in writing of that fact and take necessary

steps to replace the authorised representative within a period of 21 days from the date the authorised representative ceased to represent the incubator fund or approved fund.

(5) Where there is a change in the administrator of an approved fund, the approved fund shall immediately notify the Commission in writing of that change.

10. Restrictions in relation to investments: incubator fund

(1) Investment in an incubator fund is restricted to sophisticated private investors only and the fund shall not have investments that exceed \$20,000,000 in net assets or its equivalence in any other currency.

(2) The total number of investors in an incubator fund at any one time shall not exceed 20.

(3) Where the amount of the investments or the total number of investors exceeds the threshold prescribed in subregulation (1) or (2) respectively over a period of two consecutive months, the incubator fund shall, within 7 days of the end of the second month—

- (a) notify the Commission in writing of that fact outlining the reasons therefor; and
- (b) submit an application to the Commission for the conversion and recognition of the fund as—
 - (i) a private fund or professional fund in accordance with the provisions of the Act and the Mutual Funds Regulations; or
 - (ii) an approved fund in accordance with the provisions of these Regulations, unless if, at the time of notification, the incubator fund no longer exceeds the amount of the investments or the total number of investors; or
- (c) commence the process of voluntary liquidation of the fund under the BVI Business Companies Act or take necessary steps to amend its constitutional documents so as to cease to be a mutual fund as defined in section 40 (1) of the Act and to remove any reference to it being an incubator fund.

(4) Where an incubator fund amends its constitutional documents under subregulation (3) (c), it shall cease to function as an incubator fund on the date of the filing of the amended constitutional documents or, if there is an effective date in relation to the filing, on the date the filing becomes effective.

11. Restrictions in relation to investments: approved fund

(1) An approved fund shall not have investments that exceed \$100,000,000 in net assets or its equivalence in any other currency.

(2) The total number of investors in an approved fund at any one time shall not exceed 20.

(3) Where the amount of the investments or the total number of investors exceeds what is prescribed in subregulation (1) or (2) respectively over a period of two consecutive months, the approved fund shall, within 7 days of the end of the second month—

- (a) notify the Commission in writing of that fact outlining the reasons therefor; and
- (b) submit an application to the Commission for the conversion and recognition of the fund as a private fund or professional fund in accordance with the provisions of the Act and the Mutual Funds Regulations, unless if, at the time of notification, the approved fund no longer exceeds the amount of the investments or the total number of investors; or

- (c) commence the process of voluntary liquidation of the fund under the BVI Business Companies Act or take necessary steps to amend its constitutional documents so as to cease to be a mutual fund as defined in section 40 (1) of the Act and to remove any reference to it being an approved fund.
- (4) Where an approved fund amends its constitutional documents under subregulation (3) (c), it shall cease to function as an approved fund on the date of the filing of the amended constitutional documents or, if there is an effective date in relation to the filing, on the date the filing becomes effective.

12. Forced conversion or liquidation

- (1) Where an incubator fund or approved fund exceeds the amount of investments or the total number of investors contrary to regulation 10 or 11, the Commission may direct—
- (a) in the case of the incubator fund, that the fund convert into a private fund or professional fund or into an approved fund;
 - (b) in the case of the approved fund, that the fund convert into a private fund or professional fund; or
 - (c) the incubator fund or approved fund, as the case may be, to—
 - (i) commence the process of voluntary liquidation of the fund in accordance with the provisions of the BVI Business Companies Act; or
 - (ii) take necessary steps to amend its constitutional documents so as to cease to be a mutual fund as defined in section 40 (1) of the Act and to remove any reference to it being an incubator fund or approved fund.
- (2) Where the Commission considers it to be in the public interest, it may, in relation to an incubator fund or approved fund, issue any of the directions referred to in subregulation (1).
- (3) Where an incubator fund or approved fund amends its constitutional documents under subregulation (1) (c), it shall immediately cease to function as an incubator fund or approved fund, as the case may be, on the date of the filing of the amended constitutional documents or, if there is an effective date in relation to the filing, on the date the filing becomes effective.

13. Validity period of an incubator fund and approved fund

- (1) Subject to regulations 7, 10 (3) (b) and (c) and 12, the period of validity of an incubator fund is 2 years.
- (2) Subject to regulations 7, 11 (3) (b) and (c) and 12, the validity period for an approved fund is unlimited.
- (3) An incubator fund may, at least 1 month prior to the end of its period of validity, (or such shorter period as the Commission may approve) submit a written application to the Commission requesting an extension for an additional period not exceeding 12 months.
- (4) Where the Commission receives an application under subregulation (3), it may grant the request for extension if it is satisfied that—
- (a) the incubator fund's investments or total number of investors do not exceed the specified threshold and the fund has complied with all of its obligations under these Regulations; and
 - (b) it is not against the public interest to grant the extension.

14. Conversion of incubator fund

- (1) Subject to regulation 15, an incubator fund may at least 2 months before the expiry of its period of validity referred to in regulation 13 (1) (or such shorter period as the Commission may approve) submit an application to the Commission to convert into and be recognised as a private fund or professional fund or be approved as an approved fund.
- (2) An application under subregulation (1) shall—
 - (a) in relation to recognition as a private fund or professional fund, be made in accordance with the provisions of the Act and the Mutual Funds Regulations; and
 - (b) in relation to approval as an approved fund, be made in accordance with the provisions of these Regulations.
- (3) Where an incubator fund converts to an approved fund, the sophisticated private investors in the incubator fund shall, upon conversion of the fund into an approved fund, be treated like any other investor in the approved fund.
- (4) Where an incubator fund intends to cease carrying on business as a mutual fund, it shall give reasonable notice to its investors advising them of its plan to cease carrying on business as a mutual fund and give them an opportunity to redeem their investments.
- (5) Subregulation (4) shall not apply in the case of a liquidation of the incubator fund.

15. Conditions for conversion of an incubator fund

- (1) Where an incubator fund intends to convert into a private fund or professional fund under these Regulations, it shall, at least 2 months prior to the expiry of its period of validity as referred to in regulation 13 (1) (or such shorter period as the Commission may approve), prepare and submit to the Commission an audit of its—
 - (a) current financial position; and
 - (b) compliance with the requirements of these Regulations.
- (2) The audit referred to in subregulation (1) shall be performed by either—
 - (a) a person approved by the Commission under the Act or pursuant to section 56 of the Regulatory Code as an auditor; or
 - (b) a person who, though not an approved auditor as referred to in paragraph (a), is independent of the incubator fund and whose normal duties include the performance of such an independent audit function.
- (3) Where an audit is performed by a person referred to in subregulation (2) (b), the incubator fund shall, in submitting the audit to the Commission, provide a detailed report of the person's academic qualifications and experience outlining how the person's normal duties include the performance of an independent audit function.
- (4) Where the Commission, in reviewing the audit of an incubator fund, considers a person referred to in subregulation (2) (b) not to be sufficiently independent of the incubator fund or not to have the necessary qualifications to perform the audit function, it may require the incubator fund to appoint an approved auditor to perform the required audit function.
- (5) For the avoidance of doubt, the reference to "audit" in subregulation (1) in relation to an incubator fund's—

- (a) financial position, relates to an independent determination of the status of the fund's finances as at the date the audit is carried out and shall not be construed to require the fund to provide audited financial statements; and
- (b) compliance with the requirements of these Regulations, relates to an independent determination of the level of compliance by the fund of its obligations under these Regulations as at the date of the audit.

16. Exemption where incubator fund converts

Where an incubator fund converts into a professional fund under the Act pursuant to regulation 14, the restrictions provided in regulation 5 (1) and (2) of the Mutual Funds Regulations shall not apply in respect of a sophisticated private investor whose investment in the incubator fund on the date of conversion is less than the amounts stipulated in regulation 5 (1) and (2) of those Regulations.

17. Requirement re submission of financial statements

- (1) Subject to subregulation (2), an incubator fund and approved fund are required to prepare and submit financial statements in accordance with the Act and shall, for that purpose, be treated as if each were a relevant licensee under Part IV of the Act.
- (2) Sections 71, 75, 76, 77, 78, and 79 (2) of the Act are disappplied with respect to an incubator fund and approved fund, and the Regulatory Code and paragraph 2 (1) (e) of Schedule 5 of the Financial Services (Miscellaneous Exemptions) Regulations are modified accordingly.
- (3) The reference to "financial statements" in subregulation (1) means a statement of the financial position of the incubator fund or approved fund, as the case may be.

18. Filing returns

- (1) An incubator fund shall—
 - (a) no later than the 31st day of July and 31st day of January of each year, prepare and submit to the Commission a semi-annual report for the periods ending 30th June and 31st December respectively, detailing—
 - (i) the number of investors in the fund;
 - (ii) the total investments in the fund;
 - (iii) the aggregate subscriptions to the fund;
 - (iv) the aggregate redemptions paid to investors;
 - (v) the net asset value of the fund; and
 - (vi) any significant investor complaint received by the fund and how the complaint was dealt with; and
 - (b) no later than the 31st day of January of each year, file with the Commission a return in the prescribed form—
 - (i) stating that it is not in breach of the requirements of these Regulations that entitle it to continue as an incubator fund or approved fund; and
 - (ii) providing such other information as may be required in the prescribed form.

(2) An approved fund shall, no later than the 31st day of January of each year, file a return with the Commission in the prescribed form—

- (a) stating that it is not in breach of the requirements of these Regulations that entitle it to continue as an approved fund;
- (b) outlining any significant investor complaint received by the fund and how the complaint was dealt with;
- (c) providing such other information as may be required in the prescribed form; and
- (d) providing, as at the 31st day of December of the preceding year, details of—
 - (i) the number of investors in the fund;
 - (ii) the total investments in the fund;
 - (iii) the aggregate subscriptions to the fund;
 - (iv) the aggregate redemptions paid to investors; and
 - (v) the net asset value of the fund.

(3) Where the Commission is required or considers it necessary to comply with any reporting obligation, whether under an enactment or otherwise, it may require an incubator fund or approved fund to provide the Commission with such further information as the Commission may consider fit.

(4) Any information required by the Commission under subregulation (3) shall be in such form and provided within such period as the Commission may determine.

(5) For the purposes of subregulations (1) (a) (vi) and (2) (b), what constitutes a significant investor complaint shall be construed in accordance with section 69B of the Regulatory Code.

19. Register of incubator funds and approved funds

(1) The Commission shall keep and maintain a register of incubator funds and approved funds under these Regulations.

(2) The register kept and maintained under subregulation (1)—

- (a) may be in such form and published in such manner and for such period as the Commission considers fit; and
- (b) shall be open to the public for inspection, and any person may request and obtain an extract from the register.

20. Transitional provisions

The transitional provisions specified in the Schedule shall have effect.¹⁰⁷

SCHEDULE¹⁰⁸

[Regulation 20]

1. Interpretation

In this Schedule “existing incubator fund or approved fund” means a mutual fund that, immediately prior to the coming into force of these Regulations (“Securities and Investment Business

(Incubator and Approved Funds) (Amendment) Regulations, 2019), was an incubator fund or approved fund.

2. Effective Date

Subject to paragraph 3, the provisions of the Mutual Funds (Amendment) Regulations, 2019 shall take effect in relation to an existing incubator fund or approved fund on 1st July 2020.

3. Penalty Fees

The maximum penalty amount prescribed in regulation 4 of these Regulations shall in relation to an existing incubator fund or approved fund, apply with effect from 1st April 2020.

VIRGIN ISLANDS

FINANCIAL SERVICES (FEES) REGULATIONS - (Select Provisions)

REVISED EDITION 2020 (AS AMENDED)

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014, and updated with amendments by Conyers

(S.I.s 60/2010, 88/2010, 90/2014, 34/2015, 50/2016, 12/2017, 16/2018, 17/2018, 45/2018, 85/2019, 68/2020, and 5/2023)

Section 62

[Commencement: 1 January 2011]

1. Citation

These Regulations may be cited as the Financial Services (Fees) Regulations.

2. Fees Schedule

The fees specified in the Schedule shall be paid to the Commission and shall not be refundable.

2A. Annual Fees^{109 110 111}

The fees payable on an annual basis shall become due and payable, in respect of—

- (a) the Banks and Trust Companies Act, 1990, Company Management Act, 1990 and Financing and Money Services Act, 2009, no later than 31st January of each year;
- (b) the Insurance Act, 2008, no later than 28th February of each year; and
- (c) the Securities and Investment Business Act, 2010, no later than 31st March of each year.

3. Revocation

[OMITTED]

FINANCIAL SERVICES (FEES) REGULATIONS – SCHEDULE 112 113 114 115 116 117 118

(b) Regulatory Legislation Fees		
(v) Securities and Investment Business Act, Revised Edition 2020		
Section of Enactment	Nature of Fee	Fee (US\$)
5	Licence fee for an Investment Business licence:	
	Category 1 – Dealing in Investments	
	Sub-category A: Dealing as Agent	
	(a) Initial licence fee	3,300
	(b) Annual renewal of licence fee	3,300
	Sub-category B: Dealing as Principal	
	(a) Initial licence fee	3,300
	(b) Annual renewal of licence fee	3,300
	Category 2 Arranging Deals in Investments	
	(a) Initial licence fee	3,300
	(b) Annual renewal of licence fee	3,300
	Category 3 – Investment Management	
	Sub-category A: Managing Segregated Portfolios (excluding mutual funds)	
	(a) Initial licence fee	1,800
	(b) Annual renewal of licence fee	1,800
	Sub-category B: Managing Mutual Funds	
	(a) Initial licence fee	1,800
	(b) Annual renewal of licence fee	1,800
	Sub-category C: Managing Pension Schemes	
	(a) Initial licence fee	1,800
	(b) Annual renewal of licence fee	1,800
	Sub-category D: Managing Insurance Products	
	(a) Initial licence fee	1,800
	(b) Annual renewal of licence fee	1,800
	Sub-category E: Managing Other Types of Investment	
	(a) Initial licence fee	1,800

(b) Regulatory Legislation Fees		
(v) Securities and Investment Business Act, Revised Edition 2020		
Section of Enactment	Nature of Fee	Fee (US\$)
	(b) Annual renewal of licence fee	1,800
	Category 4 – Investment Advice	
	Sub-category A: Investment Advice (excluding mutual funds)	
	(a) Initial licence fee	1,800
	(b) Annual renewal of licence fee	1,800
	Sub-category B: Investment Advice (mutual funds)	
	(a) Initial licence fee	1,800
	(b) Annual renewal of licence fee	1,800
	Category 5 – Custody of Investments	
	Subcategory A: Custody of Investments (excluding mutual funds)	
	(a) Initial licence fee	4,500
	(b) Annual renewal of licence fee	4,500
	Sub-category B: Custody of Investments (mutual funds)	
	(a) Initial licence fee	4,500
	(b) Annual renewal of licence fee	4,500
	Category 6 – Administration of Investments	
	Sub-category A: Administration of Investments (excluding mutual funds)	
	(a) Initial licence fee	1,800
	(b) Annual renewal of licence fee	1,800
	Sub-category B: Administration of Investments (mutual funds)	
	(a) Initial licence fee	1,800
	(b) Annual renewal of licence fee	1,800
	Category 7 – Operating an Investment Exchange	
	(a) Initial licence fee	10,000
	(b) Annual renewal of licence fee	10,000
6(1)	Application for an Investment Business licence	
	Category 1 – Dealing in Investments	
	Sub-category A: Dealing as Agent	2,200
	Sub-category B: Dealing as Principal	2,200

(b) Regulatory Legislation Fees		
(v) Securities and Investment Business Act, Revised Edition 2020		
Section of Enactment	Nature of Fee	Fee (US\$)
	Category 2 – Arranging Deals in Investments	2,200
	Category 3 – Investment Management	
	Sub-category A: Managing Segregated Portfolios (excluding mutual funds)	1,200
	Sub-category B: Managing Mutual Funds	1,200
	Sub-category C: Managing Pension Schemes	1,200
	Sub-category D: Managing Insurance Products	1,200
	Sub-category E: Managing Other Types of Investments	1,200
	Category 4 – Investment Advice	
	Sub-category A: Investment Advice (excluding mutual funds)	1,200
	Sub-category B: Investment Advice (mutual funds)	1,200
	Category 5 – Custody of Investments	
	Subcategory A: Custody of Investments (excluding mutual funds)	2,200
	Sub-category B: Custody of Investments (mutual funds)	2,200
	Category 6 – Administration of Investments	
	Sub-category A: Administration of Investments (excluding mutual funds)	1,200
	Sub-category B: Administration of Investments (mutual funds)	1,200
	Category 7 – Operation of an Investment Exchange	3,000
10(1)	Application for approval of a director or senior officer	200
10(2)	Approval of a director or senior officer	300
11(2)	Approval of a person, to directly or indirectly, acquire a significant interest in a licensee	800
11(3)	Approval of a licensee	
	(a) to cause, permit or acquiesce in the sale, transfer, charge or other disposition of a significant interest in a licensee	800
	(b) to issue or allot any shares or cause, permit or acquiesce in any other reorganisation of its share capital that results in	
	(i) a person acquiring a significant interest in the licensee; or	800
	(ii) a person who already owns or holds a significant interest in the licensee, increasing or decreasing the size of his or her interest	800
11(4)	Application for approval of	

(b) Regulatory Legislation Fees		
(v) Securities and Investment Business Act, Revised Edition 2020		
Section of Enactment	Nature of Fee	Fee (US\$)
	(a) a person to, directly or indirectly, acquire a significant interest in a licensee	500
	(b) a licensee to cause, permit or acquiesce in the sale, transfer, charge or other disposition of a significant interest in the licensee	500
	(c) a licensee to issue or allot any shares or cause, permit or acquiesce in any other reorganisation of its share capital that results in	
	(i) a person acquiring a significant interest in the licensee; or	500
	(ii) a person who already owns or holds a significant interest in the licensee, increasing or decreasing the size of his or her interest	500
12	Approval	
	(a) to open, maintain or carry on business through a branch or representative or contact office outside the Virgin Islands	1,200
	(b) to incorporate, form or acquire a subsidiary	1,200
14(2)	(a) Application to change the corporate name or name under which a licensee carries on business	300
	(b) Approval to change the corporate name or name under which a licensee carries on business	1,200
28(1)	Application for the registration of a prospectus (public issue)	300
28(2)	Registration of	
	(a) a prospectus (public issue)	600
	(b) a supplementary prospectus (public issue)	300
29(1)	Application for the registration of a supplementary prospectus	300
45(1)	Application for the registration of a public fund	1,200
45(2)	(a) Registration of a public fund	1,800
	(b) Annual renewal fee for the registration of a public fund	1,800
49(1)	Application for the registration of a prospectus (public fund)	300
49(3)	Registration of	
	(a) a prospectus (public fund)	600
	(b) an amended prospectus (public fund)	300
51(1)	Application for the registration of an amended prospectus (public fund)	300
54(1)	Application, in respect of a public fund, for approval as	

(b) Regulatory Legislation Fees		
(v) Securities and Investment Business Act, Revised Edition 2020		
Section of Enactment	Nature of Fee	Fee (US\$)
	(a) director, or	200
	(b) functionary	200
54(2)	Application, in respect of a public fund, for approval as	
	(a) director, or	300
	(b) functionary	300
55(1)	Application for the recognition of a mutual fund as a private or professional fund	850
55(2)	(a) Recognition of a mutual fund as a private or professional fund	1,200
	(b) Annual renewal fee for recognition of a mutual fund as a private or professional fund	1,200
57(1)	Application for recognition of a foreign fund	1,000
57(2)	(a) Recognition of a foreign fund	2,000
	(b) Annual renewal fee for recognition of a foreign fund	2,000
63F(1)	Application for recognition of a private investment fund	850
63F(2)	(a) Recognition of a private investment fund	1,200
	(b) Annual renewal for recognition as a private investment fund	1,200
64(1)	Application for certification to act as an authorised representative	1,200
64(2)	Approval of certification to act as an authorised representative	
	(a) Initial approval	1,800
	(b) Annual renewal fee	1,800
68(4)	(a) Application to extend financial year end	300
	(b) Approval of extension of financial year end	600
73(1)	Application for extension of time for submission of financial statements and reports	900
75	(a) Application for approval of an auditor	200
	(b) Approval of appointment of an auditor	300

(b) Regulatory Legislation Fees		
(vi) Investment Business (Approved Managers) Regulations, Revised Edition 2020		
Section of Enactment	Nature of Fee	Fee (US\$)
6(1)	Application for approval as an investment manager	1,200
6(2)	Annual renewal of approval to act as an investment manager	1,800
7(1)	Approval to act as an investment manager	1,800

(b) Regulatory Legislation Fees		
(vii) Securities and Investment Business (Incubator and Approved Funds) Regulations, Revised Edition 2020		
Section of Enactment	Nature of Fee	Fee (US\$)
5(5)	Certificate evidencing status of an incubator fund or approved fund	200
7(1)	Application for approval of	
	(a) an incubator fund	1,800
	(b) an approved fund	1,800
7(2)	Annual renewal of approval of	
	(a) an incubator fund	1,200
	(b) an approved fund	1,200

(b) Regulatory Legislation Fees		
(viii) Mutual Funds Regulations, Revised Edition 2020		
Section of Enactment	Nature of Fee	Fee (US\$)
7(2)	Application by a private or professional fund to be exempted from appointing a custodian or fund manager	600
10(2)	Application by a private or professional fund to be exempted from appointing an auditor	600
10(4)	Approval of extension for the provision of copy of audited financial statements by a private or professional fund	600
16(2)	Application by a public fund to be exempted from appointing a custodian	600

(b) Regulatory Legislation Fees		
(ix) Private Investment Funds Regulations, Revised Edition 2020		
Section of Enactment	Nature of Fee	Fee (US\$)
10(3)	Approval of extension for the provision of copy of audited financial statements by a private investment fund	600

(b) Regulatory Legislation Fees		
(x) Mutual Funds (Foreign Funds) Regulations, Revised Edition 2020		
Section of Enactment	Nature of Fee	Fee (US\$)
5(3)	Prior notification of issuance of a prospectus or amended prospectus	300

VIRGIN ISLANDS

FINANCIAL SERVICES (MISCELLANEOUS EXEMPTIONS) REGULATIONS

REVISED EDITION 2020 (AS AMENDED)

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014, and updated with amendments by Conyers

(S.I.s 87/2010 and 84/2019)

Sections 40C and 62

[Commencement: 1 February 2010 ... Schedule 1 and 2

31 March 2010 ... Schedule 3

31 December 2010... Schedules 4 and 5]

1. Short title

These Regulations may be cited as the Financial Services (Miscellaneous Exemptions) Regulations.

2. Exemptions

The exemptions specified in the Schedules shall have effect with respect to the enactments outlined in the Schedules.

SCHEDULE 1 - EXEMPTIONS APPLICABLE TO THE FINANCIAL SERVICES COMMISSION ACT

[Regulation 2]

1. Compliance officer

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

- (a) captive insurers and credit life insurers;
- (b) private funds;
- (c) professional funds;
- (d) public funds;
- (e) recognised foreign funds;
- (ea) private investment funds; ¹¹⁹
- (eb) incubator funds; ¹²⁰
- (ec) approved funds; ¹²¹
- (f) Class I, Class II or restricted Class II trust licensee, or investment business licensee, without a physical presence in the Virgin Islands that
 - (i) is regulated in the jurisdiction where its business is conducted; or
 - (ii) is part of a group of companies that is subject to regulatory supervision;
- (g) Class III trust licensee or restricted Class III trust licensee with three or less employees; and
- (h) company management licensee with three or less employees.

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

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

2. Further exemptions

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

- (a) domestic insurers that are incorporated outside the Virgin Islands;
- (b) investment business licensees; and
- (c) restricted Class II trust licensees that are not subject to regulation in another jurisdiction and are being administered in the Virgin Islands by a Class I trust licensee that is physically located in the Virgin Islands.

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

(3) In considering an application under subparagraph (2), the Commission shall have regard to the following matters—

- (a) in the case of subparagraph (1) (a) or (c), that the licensee meets the qualification outlined in the sub-paragraph;
- (b) the nature and scope of the licensee's business are such that they justify an exemption of the licensee;
- (c) whether the licensee is part of a group that has a group compliance officer that supervises the licensee for compliance in accordance with the Financial Services Commission Act, Regulatory Code and any applicable financial services legislation and any guidelines issued by the Commission;
- (d) the complexity and structure of the licensee's business does not justify the appointment of a compliance officer or having the licensee's compliance officer based in the Virgin Islands;
- (e) whether the licensee has outlined how it would carry out its compliance function to the satisfaction of the Commission; and
- (f) requiring the licensee to have a compliance officer or for such compliance officer to be based in the Virgin Islands will or is likely to cause practical problems and may not necessarily advance the purpose of ensuring compliance with the regulatory requirements of the Virgin Islands.

(4) An application under subparagraph (2) shall be accompanied by a nonrefundable fee of \$100 or such higher amount as may be prescribed under or pursuant to the Financial Services Commission Act or a regulatory legislation.

3. Exemption not a bar to compliance

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

4. Temporary absence of compliance officer

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

(2) For the purposes of subparagraph (1), a compliance officer is considered to be temporarily absent from office if the period of absence does not exceed 8 weeks (taken consecutively or otherwise) or 15% of the compliance officer's time in a consecutive twelve month period.

(3) Notwithstanding subparagraphs (1) and (2), where a compliance officer is temporarily absent from office for a period longer than 5 days, the licensee shall appoint a competent individual from within the licensee to perform the duties of the compliance officer.

SCHEDULE 2 - EXEMPTIONS APPLICABLE TO THE INSURANCE ACT

[Regulation 2]

1. Insurance intermediaries

- (1) A Lloyd's registered broker, cover holder, member or syndicate is not required to be approved under section 40 (1) (a) of the Insurance Act—
- (a) if the Lloyd's registered broker, cover holder, member or syndicate places a part or the whole of the insurance business in the Lloyd's market or with a BVI insurer; and
 - (b) provided that the Lloyd's registered broker, cover holder, member or syndicate can only accept or solicit insurance business from the Virgin Islands through an insurance broker (as defined in section 2 (1) of the Insurance Act).

2. Credit life companies

- (1) Subject to subparagraphs (2) and (3), a licensee that is licensed to carry on the business of credit life insurance is exempted from complying with section 61 of the Insurance Act, relating to the requirement to appoint an auditor.
- (2) Where the Commission forms the opinion that—
- (a) having regard to the nature, size and complexity of a credit life insurance company, the company should appoint an auditor;
 - (b) having regard to the compliance history of a credit life insurance company, prudence dictates the need for the appointment of an auditor;
 - (c) it is in the best interest of the policy holders of the credit life insurance company that the company should appoint an auditor; or
 - (d) it is in the public interest that the credit life insurance company should appoint an auditor,
- the Commission may in writing direct the credit life insurance company to appoint an auditor approved by the Commission and, in such a case, the exemption provided in subparagraph (1) shall not apply.
- (3) The Commission may require a credit life insurance company that is not required to appoint an auditor under section 61 of the Insurance Act to provide unaudited financial statements in such form, with such detail and within such time frame as the Commission may prescribe in writing.

SCHEDULE 3 - EXEMPTIONS APPLICABLE TO THE FINANCING AND MONEY SERVICES ACT

[Regulation 2]

1. Money services business.
 - (1) Subject to subparagraph (2), a BVI business company that is not based in the Virgin Islands or that does not carry on in the Virgin Islands the business of currency exchange services or the issuance, sale or redemption of money orders or traveller's cheques, is exempted from the requirement to be licensed by virtue of section 7 (2) of the Financing and Money Services Act.
 - (2) The exemption in subparagraph (1) applies only if the BVI business company is based, and carries on the business of currency exchange services or the issuance, sale or redemption of money orders or traveller's cheques, in a recognized jurisdiction.
 - (3) For the purposes of subparagraph (2), the term "recognized jurisdiction" refers to a jurisdiction listed in Schedule 2 of the Anti-money Laundering and Terrorist Financing Code of Practice, provided that that jurisdiction regulates the business of currency exchange services or the issuance, sale or redemption of money orders or traveller's cheques.
 - (4) An exemption under this paragraph is without prejudice to any exemption granted under any regulatory legislation with respect to the carrying on of the business of currency exchange services.

SCHEDULE 4 - EXEMPTIONS APPLICABLE TO THE SECURITIES AND INVESTMENT BUSINESS ACT

[Regulation 2]

1. Engaging in incidental business activity

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

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

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

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

- (a) forms a minor component of the licensee's business and is a reasonable consequence of that business;
- (b) forms a significant component of the licensee's business but is a reasonable consequence of the kind of business that the licensee is licensed to carry out and the licensee has the relevant expertise to engage in that kind of activity; or
- (c) is one that the licensee could reasonably be expected to engage in and it would be unreasonable or would cause practical difficulty or unnecessary cost if a separate licence were to be required for the activity and the licensee has the relevant expertise to engage in that kind of activity.

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

SCHEDULE 5 - MISCELLANEOUS EXEMPTIONS – REGULATORY LEGISLATION

[Regulation 2]

1. Transfer of shares

(1) Where a licensee that is required to seek the approval of the Commission for the transfer of shares by virtue of—

- (a) section 14 of the Banks and Trust Companies Act;
- (b) section 13 of the Company Management Act;
- (c) sections 21 and 22 of the Insurance Act;
- (d) section 14 of the Financing and Money Services Act; or
- (e) section 11 of the Securities and Investment Business Act;

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

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

(3) For the purposes of this paragraph—

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

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

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

2. Exemptions re financial statements

(1) Where a licensee that is required to seek the approval of the Commission for the transfer of shares by virtue of—

- (a) sections 17B and 17C of the Banks and Trust Companies Act;
- (b) sections 17B and 17C of the Company Management Act;
- (c) sections 56 and 57 of the Insurance Act;
- (d) sections 22 and 23 of the Financing and Money Services Act; or
- (e) sections 70 and 71 of the Securities and Investment Business Act;

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

(2) Where a licensee referred to in subparagraph (1) has conducted a business activity in respect of its licence for any particular year but forms the view that it has good reason for it not to be required to prepare and submit audited financial statements in respect of that year, the Commission may, upon receipt of a written application from the licensee at least three months

before the audited financial statements are due and upon satisfying itself that there is good reason not to require the licensee to prepare and submit audited financial statements, exempt the licensee from preparing and submitting audited financial statements for that year.

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

(3A) Where a private investment fund is required to prepare audited financial statements pursuant to regulation 10 of the Private Investment Funds Regulations, 2019, the Commission may, upon receipt of a written application submitted by or on behalf of the private investment fund, exempt the private investment fund from providing audited financial statements.¹²²

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

- (a) the nature, scope and size of the business activity carried out for the year concerned;
- (b) the cost associated with carrying out an audit of the financial statements outweighs the benefit to be derived from such an exercise;
- (c) whether it is in the interest of the shareholders and other interested parties that an audit of the financial statements should be carried out;
- (d) whether the creditors of the licensee, if any, had requested an audit of the licensee or an audit of the licensee's financial statements;
- (e) whether the licensee has in the past 5 years been the subject of any query or legal proceedings relating to dishonesty or the management of its finances;
- (f) the number of times the licensee has sought exemption from preparing and submitting audited financial statements and whether a pattern has developed which the Commission should be concerned about;
- (g) whether the reason advanced by the licensee for the application for exemption is a reasonable one having regard to all the circumstances; and
- (h) whether it is in the public interest that the licensee should prepare and submit audited financial statements.

(5) An application for exemption under sub-paragraph (2), (3) or (3A) shall contain the reason for the application.¹²³

(6) Where an application for exemption under sub-paragraph (2), (3) or (3A) is not granted by the Commission, the person to whom the application relates shall¹²⁴—

- (a) in the case of a private or professional fund, comply with the requirements of regulation 10 of the Mutual Funds Regulations;
- (b) in the case of a private investment fund, comply with the requirements of regulation 10 of the Private Investment Funds Regulations, 2019; and
- (c) in the case of a licensee, comply with the requirement to prepare and submit audited financial statements in accordance with the applicable regulatory legislation and the Regulatory Code.

VIRGIN ISLANDS

SECURITIES AND INVESTMENT BUSINESS (RECOGNISED JURISDICTIONS) NOTICE

REVISED EDITION 2020 (AS AMENDED)

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014, and updated with amendments by Conyers

(S.I.s 29/2010 and 83/2010)

Section 40(4)

[Commencement: 17 May 2010]

1. Citation

This Notice may be cited as the Securities and Investment Business (Recognised Jurisdictions) Notice.

2. Recognised Jurisdiction

For the purposes of the application of the Securities and Investment Business Act, and paragraph 3, the jurisdictions listed in the Schedule are recognised by the Financial Services Commission.

3. Recognition and acceptance of functionaries

(1) The Commission may, subject to the Securities and Investment Business Act, recognise and accept any functionary of a fund that is established and located in a jurisdiction listed in the Schedule.

(2) Where a functionary of a fund is not established and located in a jurisdiction listed in the Schedule, the Commission may recognise and accept the functionary, if satisfied, upon application, that the functionary's jurisdiction of establishment and location has a system for the effective regulation of investment business, including funds.

SCHEDULE - RECOGNISED JURISDICTIONS

Argentina	France	Mexico
Australia	Germany	Netherlands
Bahamas	Gibraltar	New Zealand
Bermuda	Greece	Norway
Belgium	Guernsey	Panama
Brazil	Hong Kong	Portugal
Canada	Ireland	Singapore
Cayman Islands	Isle of Man	Spain

Chile	Italy	South Africa
China	Japan	Sweden
Curacao ¹²⁵	Jersey	Switzerland
Denmark	Luxembourg	United Kingdom
Finland	Malta	United States of America

VIRGIN ISLANDS

PUBLIC FUNDS CODE**REVISED EDITION 2020 (AS AMENDED)**

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014, and updated with amendments by Conyers

(S.I. 90/2010 and 26/2020)

Section 63

[Commencement: 31 March 2011]

PRELIMINARY PROVISIONS**1. Citation**

This Code may be cited as the Public Funds Code.

EXPLANATORY NOTES**Introduction**

- (i) *Part III of the Securities and Investment Business Act [referred to in the Explanatory Notes as “SIBA”] establishes a mutual funds regime for the Virgin Islands [referred to in the Explanatory Notes as “the BVI”]. SIBA is supported by the Mutual Funds Regulations [referred to in the Explanatory Notes as the “MFR”]. Part 2 of the MFR, which applies to public funds, covers a number of key matters, including—*
 - (a) *the registration of public funds;*
 - (b) *prospectus requirements;*
 - (c) *certain requirements concerning directors and key functionaries;*
 - (d) *accounting and audit standards; and*
 - (e) *notification requirements.*
- (ii) *However, international standards relating to public funds cover other matters, many of which are technical, complex and detailed and not well suited to incorporation in either primary legislation, or regulations. Furthermore, it is important that the regulatory framework for public funds is able to readily evolve as international standards change and the funds sector in the BVI develops and matures. It is impracticable and undesirable for primary legislation to be changed frequently and, for these reasons, SIBA enables the Commission to issue a Public Funds Code [referred to in the Explanatory Notes as “the Code”], containing more detailed requirements that support the general framework for public funds established by SIBA and the MFR.*
- (iii) *SIBA [in section 63(1)(b)] enables the MFR to specify matters that may be contained in the Public Funds Code. Regulation 18 of the MFR provides that a number of matters relating to public funds may be contained in the Code, including the following—*
 - (a) *the management, control and administration of public funds, the persons who may be appointed as the functionary of a mutual fund and the duties of functionaries;*
 - (b) *custodial arrangements;*
 - (c) *the issue and redemption of fund interests;*
 - (d) *the rights of investors;*

- (e) *income of public funds;*
 - (f) *investments and borrowing;*
 - (g) *pricing and dealing;*
 - (h) *the suspension and termination by a mutual fund of its operation or business;*
 - (i) *the valuation of assets and liabilities; and*
 - (j) *record keeping.*
- (iv) *Not all of these matters are covered by the Code.*

Status of the Public Funds Code

- (v) *As the Public Funds Code is made by the Commission under powers given to it under SIBA, it has the status of delegated or subsidiary legislation. As subsidiary legislation, the Code has the status of “law” in the BVI. A requirement in the Code—*
- (a) *must therefore be complied with by every person to whom it applies;*
 - (b) *has effect as law and therefore has the same legal force as if it had been contained in SIBA or the MFR; and*
 - (c) *is enforceable by the Commission [see “Enforcement of the Code” below].*
- (vi) *As far as possible, the Code is to be interpreted purposively. The purposive approach to interpretation requires legislation to be interpreted in accordance with the purpose or objectives of the legislation. Public funds and their functionaries should be prepared, therefore, to look beyond the literal meaning of the text, especially if this seems to be contrary to the intended purpose.*

Enforcement of the Code

- (vii) *A public fund is a licensee within the meaning of the Financial Services Commission Act[referred to in the Explanatory Notes as “the FSC Act”]. The FSC Act gives the Commission power to take enforcement action against a licensee if the licensee has contravened, or is in contravention of any regulatory legislation. SIBA and its subsidiary legislation [including the Public Funds Code] fall within the definition of “regulatory legislation”. The Public Funds Code is therefore enforceable under the FSC Act.*
- (viii) *Where the Commission is entitled to take enforcement action against a public fund, the FSC Act provides the Commission with a range of enforcement powers. These include issuing a directive, requiring a public fund to appoint a qualified person to advise it, undertaking an investigation into a public fund’s business and imposing administrative penalties on the fund. Any contravention of the Code will also be taken into account by the Commission in assessing whether a public fund is “fit and proper” to continue to be registered as a public fund.*

Status of the Explanatory Notes

- (ix) *With the objective of making the Code as user friendly as possible, the Code is supplemented by Explanatory Notes which are set out immediately following the paragraphs of the Code to which they apply. As specified in section 3 of the Code, the Explanatory Notes are not part of the Code and do not, therefore, have the force of law. Nevertheless, the Explanatory Notes should be read together with the Code as they are used, for example, to set out—*
- (a) *important background or explanatory information;*
 - (b) *the factors that the Commission will take into account in considering whether or not a requirement in the Code, SIBA or the MFR has been complied with; and*
 - (c) *guidance on how the Commission expects public funds and their functionaries to ensure compliance with the Code.*
- (x) *To distinguish them from the Code, the Explanatory Notes are indented and printed in italics.*

Amendment of Code

- (xi) *The Commission may, with the approval of the Board of Commissioners, amend the Code [SIBA s. 63(2)]. Where the Code is amended, public funds to whom the additional or modified requirements apply will usually be given a reasonable period of time within which to comply with the new or modified requirements.*

Commencement

- (xii) *The Commission recognises that elements of the Code are new. Although most public funds should already be broadly compliant, it is important that public funds, their functionaries and advisors have sufficient time to bring public funds into full compliance. In relation to existing public funds that were given a transition period of up to 31 December, 2010 to comply with matters relative to prospectuses and invitations to the public to subscribe for or purchase fund interests (sections 46 and 50 (3) of SIBA), this period has been extended to 30 June, 2011 by virtue of the Securities and Investment Business (Amendment of Schedule 8) (No. 2) Order, 2010. However, the Code will apply to all public funds registered on or after 31 March, 2011.*

2. Definitions

The following definitions apply for the purposes of this Code—

“Act” means the Securities and Investment Business Act;

“asset” includes a financial instrument;

“board”, in relation to a BVI business company, means—

- (a) the board of directors, committee of management, council or other governing authority of the company; or
- (b) if the company has only one director, that director;

“Code” means the Public Funds Code;

“FSC Act” means the Financial Services Commission Act;

“fund” means a public fund;

“fund property”, in relation to a public fund, means—

- (a) where the fund is a BVI business company, the assets of the fund; and
- (b) where the fund is a unit trust, the assets subject to the trust deed that constitutes the fund;

“governing body” means—

- (a) in the case of a company, the board; and
- (b) in the case of a unit trust, the trustee;

“hard-to-value asset” means an asset for which there is no readily available market price;

“NAV” or “net asset value” means the value of the fund property, including accrued interest, dividends and other receivables, less the value of the total liabilities of the fund, including accrued expenses, accrued fees and other payables;

“NAV function” means the function of calculating the NAV of a fund, in accordance with the valuation policy;

“procedures” includes systems and controls;

“Regulations” means the Mutual Fund Regulations;

“valuation function” means the valuation of the fund property in accordance with the valuation policy; and

“valuation policy”, in relation to a public fund, means the policy for the valuation of the fund property established and maintained in accordance with section 15 and, where more than one such policy is established and maintained, includes all those policies.

3. General interpretative provisions

(1) The Explanatory Notes provided under any sections of this Code do not represent legal interpretations of the sections concerned, but are provided merely to serve as a guide and to afford clarity in better understanding the sections and the overall requirements of, or obligations under, the Act, the Regulations and this Code.

(2) Notwithstanding subsection (1), a court or the Commission may, in dealing with any matter under or in relation to this Code, have regard to the Explanatory Notes provided in this Code.

EXPLANATORY NOTES

Definitions

- (i) *As the Code has the status of subsidiary legislation made under SIBA, any terms defined in SIBA have the same meaning in the Code, unless the Code expressly provides otherwise, in which case the specific definition in the Code prevails. The definitions in SIBA are not generally repeated in the Code although, where it is considered helpful, the definitions are referred to in the Explanatory Notes.*
- (ii) *A number of terms, defined in SIBA, are particularly important for the Code, for example, “public fund”, “BVI business company”, “director”, “fund manager” and “fund administrator”. These are not repeated in the Code.*

Director and Board

- (iii) *The definition of “board” in the Code is substantively the same as the definition in the BVI Business Companies Act.*
In effect, the board is the directors of the company acting together. The definition provides, as the BVI Business Companies Act does, that if the company only has one director, “board” means that director. This is necessary in order to ensure that obligations imposed by this Code on the governing body of a public fund are imposed on the director, should the fund for any reason have a single director. However, the MFR provide that a public fund must at all times have at least two directors. The definition of “board” should not, therefore, be taken as permitting a public fund to have a single director. A fund with a single director would be in breach of the MFR and subject to enforcement action by the Commission.

IOSCO

- (iv) *The terms “IOSCO” and “IOSCO Objectives and Principles” are used in the Explanatory Notes, but not the Code itself.*
“IOSCO” is the acronym for the International Organization of Securities Commissions, which is the body responsible for setting international standards with respect to investment business and securities. The BVI Government and the Commission are committed to implementing the standards set by IOSCO as far as relevant and applicable to public funds.
- (v) *The term “IOSCO Objectives and Principles” is used to refer to the Objectives and Principles of Securities Regulation issued by IOSCO. These represent the core internationally agreed*

standards for the regulation of the securities industry, including public issuers, mutual funds and market intermediaries.

4. Application of the Code

- (1) Subject to subsection (2), this Code applies to—
 - (a) a public fund; and
 - (b) such other persons as the Code may, in respect of any particular provisions, expressly provide.
- (2) This Code does not apply to a public fund—
 - (a) to the extent that the Code expressly provides otherwise;
 - (b) in respect of any provisions where, from the context, it is clearly intended that the provisions are not intended to apply to the public fund concerned or are intended to apply to public funds of a different category or type than that of the public fund concerned; or
 - (c) to the extent specified in any notice issued by the Commission with respect to the public fund under section 40C of the FSC Act.
- (3) In the case of a public fund that is a unit trust, any requirement or obligation imposed on the fund shall, where the context permits, be construed as a requirement or obligation imposed on the trustee.
- (4) If the application of the Code to a public fund or any other person results in a conflict with a provision in the Act or the Regulations, that provision of the Act or Regulations prevails.

EXPLANATORY NOTES

Direction to Disapply the Code

- (i) *The Commission may, on the application of, or with the consent of, a public fund direct that specified provisions in the Code do not apply to the fund or that specific provisions apply to the fund subject to specified modifications [s. 63(5) of SIBA].*
 - (ii) *The Commission is unlikely to direct that the Code should be disapplied or modified with respect to a public fund unless the fund can demonstrate that a strict application of the Code would produce an anomalous result.*
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PART I - PRINCIPLES FOR BUSINESS

5. High level principles

A public fund shall at all times carry on business in accordance with the following four principles—

1. Integrity
A public fund shall conduct its business with integrity.
2. Management and Control
A public fund shall take reasonable care to organise and control its affairs effectively taking into account the nature, scale, complexity and diversity of its business and the risks that it faces.
3. Investors' Interests

A public fund shall have due regard for the interests of its investors and treat them fairly; in addition, a public fund shall make appropriate arrangements to protect the fund property and take all reasonable steps to identify and manage conflicts of interest.

4. Relationship with Commission

A public fund shall deal with the Commission in an open and cooperative manner.

EXPLANATORY NOTES

Introduction

- (i) *The objective of this Part is to establish a set of high level Principles for the conduct by public funds of their businesses.*
- (ii) *The Commission understands that public funds are essentially vehicles that are managed, administered and operated by independent functionaries. However, a public fund that is a company is a separate legal entity that is registered by the Commission under SIBA in its own right. A public fund is treated as a licensee for the purposes of the FSC Act.*
- (iii) *Although the functionaries may act on behalf of a public fund, they are appointed by the fund which must ensure that the functionaries appointed are able to operate the fund satisfactorily and that conflicts of interest are properly handled. While a public fund will not usually have employees or senior management, a public fund that is a BVI business company must have a board of directors that has duties and responsibilities that are separate from the fund's functionaries. Ultimately, the board of a public fund has responsibility for the operation of the fund.*
- (iv) *A public fund that is a unit trust is not a legal entity. In the case of a unit trust, section 4(3) of the Code therefore provides that any requirement or obligation imposed on the fund shall, where the context permits, be construed as a requirement or obligation imposed on the trustee. These Principles apply to the trustee, not in relation to the trustee's own business, but in relation to the obligations imposed upon the fund.*
- (v) *In the circumstances, the Commission considers that a public fund should be subject to certain high level principles of business. These are adapted from the high level principles that apply to licensees under the Regulatory Code. Obviously, these must be interpreted sensibly, taking full account of the fact that the fund is operated by functionaries.*

Responsibility of public fund with Respect to Principles

- (vi) *The Code is designed to give practical effect to the Principles. However, it is not possible for the Code to be exhaustive. In areas where the Code is not specific or where it does not cover a particular situation, public funds should apply the Principles appropriately. Furthermore, it remains the responsibility of a public fund to ensure that it carries on its business in accordance with the Principles. Depending upon the nature, scale, complexity and diversity of a public fund's business, it may be necessary for public funds to adopt higher standards than provided for in the Code in order to ensure compliance with the Principles. In such a case, a public fund that is in compliance with all the detailed requirements of the Code may nevertheless be in breach of the Principles and therefore liable to enforcement action.*
- (vii) *There are no specific provisions in the Code relating to Principle 1 (Integrity). The Commission considers this Principle to be fundamental to all activities of a public fund and any failure to comply with the Principle would be regarded by the Commission as an extremely serious breach of the Code.*
- (viii) *Principle 2 (Management and Control) requires a public fund to take reasonable care to organise and control its affairs effectively. It should be appreciated that the inclusion of a reasonableness test is not intended to import a lower standard. However, it is intended to ensure that where, for example, a public fund fails to prevent an unforeseen risk, it will not be in breach of the Principle.*

The Code imposes certain specific corporate governance and other obligations on a public fund. These are intended to amplify Principle 2.

- (ix) *Principle 3 relates to the protection of investors' interests. Its provisions include a requirement that a public fund shall have due regard for the interests of its investors and treat them fairly. The Commission understands that investors accept that an investment in a public fund carries some risk. Depending upon the objectives of the fund, the risk may be high or low. Furthermore, the Code contains a number of requirements concerning disclosure of risk, particularly in the fund's prospectus. The requirement to "have due regard for the interests of investors" should be interpreted taking full account of the objectives of the fund and the provisions of its prospectus and constituting documents. For example, the Commission does not consider that this provision requires public funds to avoid properly disclosed risks. Indeed, to do so may not be in the best interests of investors.*

This Principle is not, therefore, intended to impose requirements that would interfere with the investment strategy of a public fund, where that strategy is in accordance with the disclosed objectives of the fund. The Principle is, however, intended to impose an obligation to have proper regard for investors' interests, given those investment objectives.

PART II - OPERATION OF PUBLIC FUNDS

PROSPECTUS

6. Prospectus

- (1) A prospectus issued by a public fund shall—
- (a) not contain any matter that—
 - (i) is unfairly prejudicial to investors generally or to any class of investors;
 - (ii) conflicts with the Act, the Regulations or this Code; and
 - (b) contain the information and matters specified in Schedule 1.
- (2) A public fund shall supply a copy of the most recent prospectus to any investor who requests it.

EXPLANATORY NOTES

- (i) *Section 6(1)(a)(i) provides that the prospectus should not contain any matter that is unfairly prejudicial to investors generally or to any class of investors.*
- (ii) *The Commission understands that in many cases there are valid reasons for different classes of investors to be treated differently. Where this is fully disclosed, the Commission does not consider that, on its own, this constitutes unfair prejudice. However if, for example, the prospectus permits the rights of investors to be materially changed without their consent, the Commission considers that this may be unfairly prejudicial to investors. In construing this provision it may be necessary to consider the type of investor involved. For example, the unfair prejudice threshold may be lower for a small investor with limited experience than for a large experienced investor.*

CORPORATE GOVERNANCE

7. Corporate governance

- (1) A public fund shall—

- (a) take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities between its governing body and functionaries so that—
 - (i) it is clear who has which of those responsibilities; and
 - (ii) the business and affairs of the fund can be adequately monitored and controlled by the governing body; and
 - (b) establish and maintain such procedures as are appropriate for the nature, size, complexity, structure and diversity of the fund and the fund property.
- (2) A public fund shall ensure that its procedures are regularly reviewed and updated as required.

8. Directors of public fund

A public fund that is a BVI business company shall have an adequate number of directors who—

- (a) are capable of exercising independent judgment;
- (b) have sufficient knowledge, skills, experience and understanding of the fund's business to ensure that the governing body is able to fulfil its responsibilities; and
- (c) have sufficient time and commitment to undertake their duties diligently.

9. Responsibilities of governing body

(1) The governing body of a public fund has ultimate responsibility for the business and affairs of the fund and for ensuring its effective organisation.

(2) Without limiting subsection (1), the governing body of a public fund has the following responsibilities—

- (a) ensuring that the policies and procedures required by this Code are established and maintained by the fund;
- (b) approving and periodically reviewing the significant policies of the fund;
- (c) ensuring that—
 - (i) appropriate and effective procedures are established, maintained and implemented for giving effect to the policies of the fund, which shall include internal controls and procedures with respect to risk management; and
 - (ii) the public fund complies with its obligations under the Act, the Regulations and this Code;
- (d) monitoring the financial condition of the fund; and
- (e) such other responsibilities as are specified in this Code.

POLICIES AND PROCEDURES

10. Establishment of policies and procedures

(1) A public fund shall—

- (a) establish such policies and procedures, including internal controls, as are appropriate given the nature, size, complexity, structure and diversity of its business and the fund property; and
- (b) ensure that the policies and procedures are fully and clearly documented and communicated, as appropriate, to functionaries and other persons who need to implement them.

(2) Without limiting subsection (1), the policies and procedures of a public fund shall specify the duties and responsibilities of the governing body, including such responsibilities and duties as are imposed on the governing body by this Code.

11. Conflicts of interest

The policies and procedures of a public fund shall include—

- (a) the identification of conflicts of interest, whether arising between the fund and its affiliates, between the fund and its functionaries or their affiliates, the governing body and the fund or the governing body, fund, functionaries or their affiliates and investors, or otherwise; and
- (b) the management of any conflicts of interest identified.

SEGREGATION AND SAFEKEEPING OF FUND PROPERTY

12. Custodial arrangements

(1) Unless a public fund has been exempted by the Commission from the requirement to appoint a custodian under Regulation 16(2) of the Regulations, the fund shall ensure that at all times it has a custodial agreement with its custodian which includes provisions for—

- (a) the appropriate segregation of the fund property; and
- (b) the taking of adequate measures by the custodian to ensure the safekeeping of the fund property.

(2) A public fund referred to in subsection (1) shall ensure that all fund property is transferred into the custody, or taken under the control, of its custodian as soon as reasonably practicable after it is acquired.

(3) A public fund that has been exempted by the Commission from the requirement to appoint a custodian under Regulation 16(2) of the Regulations shall put in place, and ensure that at all times it maintains, adequate arrangements for—

- (a) the segregation of the fund property from the property of other functionaries of the fund; and
- (b) the safekeeping of the fund property.

13. Procedures

(1) A public fund shall—

- (a) establish, maintain and implement procedures, appropriate for the nature, size, complexity, structure and diversity of the fund and the fund property, to ensure compliance with section 12; and
- (b) ensure that the procedures are fully and clearly documented.

(2) The procedures established under subsection (1) shall be approved and reviewed by the governing body on at least an annual basis and the governing body shall make a record of how it has complied with this subsection.

(3) The governing body shall oversee the implementation of the procedures.

14. Issue and redemption of fund interests

(1) A public fund shall—

- (a) establish and maintain—

- (i) a policy for the issue and redemption of fund interests;
 - (ii) procedures that are sufficient to ensure that the policy is effectively implemented; and
- (b) ensure that the issue and redemption policy is fully and clearly documented.
- (2) The issue and redemption policy and procedures shall be—
 - (a) appropriate for the nature, size, complexity, structure and diversity of the fund and the fund property;
 - (b) consistent with the provisions concerning valuation in the constituting documents and the prospectus; and
 - (c) approved and reviewed by the governing body on at least an annual basis.
- (3) Without limiting subsection (1), the issue and redemption policy shall make provision for the following matters—
 - (a) the dealing days and times in the dealing day on which the fund will be available to receive requests for the issue and redemption of fund interests;
 - (b) the procedures for effecting the issue and redemption of fund interests and the settlement of transactions;
 - (c) the steps required to be taken by an investor redeeming fund interests before he or she can receive the proceeds of redemption;
 - (d) the amounts of the following minima (if relevant) for each class of fund interest in the fund—
 - (i) the minimum number of fund interests which any one person may hold;
 - (ii) the minimum value of fund interests which any one person may hold;
 - (iii) the minimum number or value of fund interests which may be the subject of any one transaction of purchase; and
 - (iv) the minimum number of fund interests which may be the subject of any one act of redemption;
 - (e) the circumstances in which the redemption of fund interests may be suspended;
 - (f) where and when the most recent issue and redemption prices will be published; and
 - (g) the investment exchanges, if any, on which fund interests are listed or dealt.

VALUATION AND PRICING

15. Establishment of valuation policy and procedures

- (1) A public fund shall—
 - (a) establish and maintain—
 - (i) a clear and comprehensive policy, or policies, for the valuation of the fund property; and
 - (ii) procedures that are sufficient to ensure that the valuation policy is effectively implemented; and
 - (b) ensure that the valuation policy and procedures are fully and clearly documented.

- (2) The valuation policy and procedures shall—
- (a) be appropriate for the nature, size, complexity, structure and diversity of the fund and the fund property;
 - (b) comply with the requirements of this Part, and in particular section 19;¹²⁶
 - (c) be consistent with the provisions concerning valuation in the constitutional documents and the prospectus; and ¹²⁷
 - (d) contain a requirement that fund property is valued at least on an annual basis. ¹²⁸
- (3) The valuation policy shall be approved and reviewed by the governing body, following consultation with such persons as the governing body considers appropriate—
- (a) at any time when the fund's investment strategy changes or its activities involve a new type of fund property;
 - (b) whenever anything occurs that may affect its validity, relevance or appropriateness; and
 - (c) in any case, on at least an annual basis.
- (4) A public fund shall ensure that its fund property is consistently valued in accordance with the valuation policy.

16. Independence of, and within, valuation process

- (1) The governing body of a public fund shall ensure that—
- (a) the persons controlling the fund's manager, or such other persons having responsibility for the investment function, are independent from the persons controlling the fund's administrator, or such other person having responsibility for the valuation process;
 - (b) where appropriate, there is segregation of responsibilities between those parties concerned with the process of valuing the fund property and calculating the fund's NAV, with the objective of ensuring that there is adequate independence in the application of the valuation policy; and
 - (c) the parties concerned in the valuation process have the appropriate level of experience and competence to properly fulfil their roles.
- (2) Subject to subsection (4), a public fund shall ensure that the valuation and NAV functions are undertaken by the fund administrator or by a third-party valuation service provider, independent of the governing body and the fund's other functionaries, appointed for the purpose.
- (3) For the purposes of subsections (1) and (2), a public fund may consider an affiliate of the manager to be independent of the manager, if it is satisfied that the group structure ensures functional independence.
- (4) Where it considers that the circumstances so require, the governing body may approve the involvement of the manager in the valuation process provided that the manager's involvement is fully disclosed in the prospectus, together with an explanation for the manager's involvement.
- (5) The governing body shall—
- (a) determine whether, given the nature, size, complexity, structure and diversity of the fund and the fund property, it is appropriate for the fund to have a valuation committee; and
 - (b) if it so determines, appoint a valuation committee.
- (6) The valuation committee of a public fund, if appointed, shall have the following responsibilities—
- (a) overseeing the application of the valuation policy;

- (b) reviewing the valuation policy;
- (c) such other responsibilities as are given to it by the governing body; and
- (d) reporting regularly to the governing body on the exercise of its functions.

17. Pricing and price overrides

- (1) Subject to subsection (3), the assets of a fund shall be valued using market prices.
- (2) Wherever practicable, the valuation of an asset shall be checked against a primary and secondary source and the valuation policy shall specify the hierarchy of sources to be used for each asset and the tolerance levels for variances between the sources.
- (3) Hard-to-value assets may be valued using pricing models to determine a fair value, provided that the use of the pricing model has been approved by the governing body.
- (4) Where a pricing model is used—
 - (a) its use shall be justified by appropriate testing; and
 - (b) it must be capable of practical implementation by the parties concerned in the valuation process.
- (5) Where the valuation policy permits price overrides, it shall require an independent review of the price override to be conducted as soon as reasonably practicable and provide for the appropriate reporting of the results of the review.

18. NAV reports

- (1) A public fund shall ensure that it prepares reports of its NAV in accordance with the valuation policy.
- (2) A NAV report shall be—
 - (a) addressed directly to investors of the fund; and
 - (b) published in such a way that the investors have ready access to it.

19. Disclosure to investors

- (1) If the manager has a material role in the valuation of the fund property or the calculation of the NAV, the fund shall make adequate disclosure of the manager's involvement to the investors.
- (2) Subsection (1) applies, even if the administrator or a third-party valuation service provider is appointed.
- (3) The procedures of a public fund shall include arrangements for the provision of information concerning the valuation process to investors on request.
- (4) The procedures specified in subsection (3) shall include—
 - (a) the valuation information that will be made available to investors, without the need for a request;
 - (b) the valuation information that may be requested by investors; and
 - (c) how valuation information will be disseminated to investors, which may include by placement on a website, electronically or otherwise.

EXPLANATORY NOTES

Introduction

- (i) *The requirements in the Code relating to valuation and pricing are designed to implement the requirements of Principle 20 of the IOSCO Objectives and Principles, as amplified by the Methodology. Principle 20 provides that the regulatory framework should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a public fund. The Commission has also drawn on, the following documents in drafting the Code and the Explanatory Notes:*
 - (a) *Principles for the Valuation of Hedge Fund Portfolios, published by IOSCO in November 2007; and*
 - (b) *AIMA's Guide to Sound Practices for Hedge Fund Valuation, published by the Alternative Investment Management Association ("AIMA") in March 2007.*
- (ii) *The governing bodies and functionaries of public funds are strongly recommended to review both these documents and take them into account in developing and implementing appropriate valuation and pricing policies as they provide more detail than can be included in the Explanatory Notes.*
- (iii) *It should be noted that both documents are intended to apply specifically to hedge funds. Although the Commission considers that the same principles should apply to public funds, the valuation and pricing requirements in this Code should be regarded as minimum requirements. Section 15(2) of the Code provides that the valuation policy and procedures must be appropriate to the circumstances of the fund.*

The governing body of a public fund should consider the requirements of the Code to be no more than a base line. The governing body of every public fund should consider whether, given the circumstances of the fund, the requirements in the Code should be exceeded.

Establishment of Valuation Policy

- (iv) *The Code requires the prospectus to include certain information concerning the valuation of the fund property. Although the Commission expects the prospectus to include a reasonably comprehensive overview, it does not expect it to contain the level of detail that will be contained in the valuation policy. This would not be reasonable as it is likely that the detailed valuation policies and procedures will evolve over time, which would necessitate changes to the prospectus. Schedule 1, therefore requires the prospectus to indicate the existence of a valuation policy and provide details of how a copy may be obtained.*
- (v) *Section 15(3) of the Code provides that the valuation policy should be approved by the governing body after consultation with such persons as the governing body considers appropriate. The Commission considers that the investment manager should usually be consulted. Consideration should also be given to consulting with the auditor, particularly if the fund property includes hard-to-value assets.*

Implementation of valuation policy

- (vi) *Section 15(4) requires that fund property is consistently valued in accordance with the valuation policy. This requires that the valuation policy and methodologies should generally be—*
 - (a) *applied to all assets comprised in the fund property that share similar economic characteristics;*
 - (b) *applied across all funds that have the same Manager, taking time zone and trading strategies into account; and*
 - (c) *applied over time unless circumstances arise that suggest that the valuation policy requires updating.*

It is particularly important that valuation sources and rules should, as far as possible, remain consistent over time.

Review of Valuation Policy

- (vii) *It is important that the valuation policy is subject to regular review to ensure that it continues to be appropriate, given the fund's investment strategies. The Code therefore requires the governing body to review the valuation policy when the fund's investment strategy changes or its activities involve a new type of fund property.*
- (viii) *The objective of the review should be to determine whether the existing policies and procedures sufficiently address the new types of strategies or investments.*
- (ix) *Regardless of events or changes, the Code requires that the valuation policy is subject to regular review by the governing body, on at least an annual basis. This is a minimum requirement. The Commission expects that, if the circumstances of a fund require, the valuation policy will be reviewed more frequently.*

Matters that Commission expects to be included in the Valuation Policy

- (x) *The Code does not specify in detail the matters that must be included in the valuation policy. The Commission considers that this should be determined by the governing body of the fund. However, the Commission would normally expect to see the following matters included in the valuation policy—*
 - (a) *the obligations and responsibilities of each person concerned with the valuation of the fund property, clearly apportioning the responsibilities between the governing body, relevant functionaries and other persons in order to ensure compliance with section 16(1)(b) (segregation of responsibilities and independence);*
 - (b) *oversight of the valuation policy, including the persons responsible for oversight and the frequency of oversight;*
 - (c) *the methodologies that will be used for valuing each type of asset comprised in the fund property, which shall include—*
 - (i) *criteria for the selection of inputs and pricing and market data sources;*
 - (ii) *details of any pricing models that are to be used; and*
 - (iii) *the process for the approval of pricing models;*
 - (d) *the appropriate time for closing the books for valuation purposes;*
 - (e) *for each type of hard-to-value asset, a methodology or procedure for arriving at a consistent valuation to be included in the NAV;*
 - (f) *the valuation adjustments (if any) related to the size and liquidity of positions, as appropriate;*
 - (g) *the process for handling and documenting price overrides;*
 - (h) *a requirement that, whenever possible and appropriate, prices should be obtained from independent sources;*
 - (i) *a validation procedure which governs how a single source or non-independent source may be justified;*
 - (j) *the calculation of NAV;*
 - (k) *the frequency with which assets will be valued and NAV calculated;*
 - (l) *how valuations and NAV calculations will be used and when and how they will be published;*
 - (m) *an appropriate level of independent review of each valuation;*
 - (n) *escalation procedures for the management of exceptions;*

- (o) *the process for formulating policies when the fund invests, or trades, in a new type of asset not covered by the valuation policy;*
- (p) *how the valuation of assets will be undertaken in case an instrument falls outside the scope of the existing valuation policies and procedures;*
- (q) *the accounting standards that will be followed; and*
- (r) *the processes for amending the valuation policy.*

Where the governing body determines that the valuation policy will not include one or more of the matters specified in this paragraph, the governing body should ensure that the decision is recorded in writing, together with the reasons for the decision.

- (xi) *The valuation policy should provide for an appropriate level of independent review of each valuation. It is for the governing body to determine what level of review is appropriate. In order to determine this, the governing body will need to consider the risks of inappropriate pricing and valuation. There are certain situations in which the risk is greater. For example—*
 - (a) *prices are only available from a single counterparty or broker source;*
 - (b) *prices supplied by the counterparty who originated an instrument, and in particular where the originator is also financing the Manager's position in the same instrument;*
 - (c) *illiquidity of instruments (e.g., small cap stocks or OTC derivatives or structured products);*
 - (d) *valuations influenced by the Manager;*
 - (e) *valuations influenced by parties related to the Manager; and*
 - (f) *valuations influenced by other entities that may have a financial interest in the fund's performance.*

Where any of the above risks are present, the governing body should factor this into the review procedure for individual valuations.

- (xii) *The Commission recognises that in the case of hard-to-value assets, it may be more difficult to obtain an independent review.*
- (xiii) *The valuation policy should include controls that enable checks to be carried out in relation to values obtained from external sources. These checks should seek to determine the reasonableness of the values and the review of material exceptions¹²⁹.*
- (xiv) *Explanatory Note (x)(n) indicates that the valuation policy should include escalation procedures for the management of exceptions. It is a pre-requisite that the valuation policy sets accepted tolerance levels for differences between price sources, at a position and portfolio level. The escalation procedures should provide for breaches of those tolerance levels, together with situations where the degree of subjectivity in pricing is such that the governing body should periodically undertake reviews.*

Segregation of Responsibilities, Independence and Competence

- (xv) *Independence of those concerned with the valuation function is extremely important, as is independence in the valuation process, and also within any party concerned with the valuation process. Other than in exceptional cases, the Commission therefore considers that valuations should be carried out by the administrator or a third party valuation service provider.*
- (xvi) *However, the Commission recognises that there may be circumstances which justify the manager undertaking part of, or assisting with, the valuation and NAV functions. The governing body should not approve the involvement of the manager unless—*
 - (a) *it is satisfied that there are exceptional reasons that justify the involvement of the manager in the valuation process;*

- (b) *there is adequate disclosure of the manager's role in the valuation process in the prospectus, together with an explanation as to why the involvement of the manager is necessary;*
 - (c) *the fund has adequate procedures in place to manage the conflict of interest; and*
 - (d) *the manager has adequate procedures in place to manage the conflict of interest, that include separation between the management and valuation functions and separate reporting lines.*
- (xvii) *If the governing body appoints a valuation committee, it should ensure that the members of the committee have the authority and experience to provide meaningful oversight of the valuation process and that at least some of its members are independent of the manager.*
- (xviii) *The Code also requires the governing body to be satisfied that the parties concerned in the valuation process have the appropriate level of experience and competence to properly fulfil their roles. Therefore the Commission would expect that where a third party is appointed to perform valuation services, whether an administrator, a third party service provider or, in exceptional circumstances, the manager, the governing body would carry out appropriate due diligence before the appointment and on an ongoing basis.*

Pricing Models/Methodologies

- (xix) *The selection of a methodology to value a particular class of assets directly affects the resulting price. In selecting the methodology to value an asset, account should be taken of the sensitivity of varying methodologies and how specific strategies may determine the relative value of the assets in the portfolio. The selection process for a particular methodology should include an assessment of the different relevant methodologies that are available by appropriately qualified and experienced parties.*
- (xx) *If a model is used to value an asset, the model and the variable inputs should be explained and justified in the valuation policy and procedures. Underlying data, assumptions and limitations of model-based valuations, in addition to the rationale for using them, should be appropriately documented (preferably contemporaneously) to facilitate later review. The valuation policy should specify how the model and its inputs will be checked for appropriateness.*

Price Overrides

- (xxi) *Where, for any reason, the value for an asset determined in accordance with the valuation policy is rejected, the valuation policy must require an independent review to be undertaken. The detail of, and reasons for, each override should be documented contemporaneously with the override including any evidence supporting the case for the proposed override. A price override should not normally be used as an input into the calculation of the fund's formal net asset value until the review has taken place. Such a report, prepared regularly, could be one of the mechanisms by which the independent party satisfies itself that a consistent application of the policies and procedures is taking place.*
- (xxii) *Where overrides have occurred, any other assets in the fund that are related to the overridden instrument should be reviewed to assess whether any additional adjustments are also required. The repeated use of overrides for a particular asset should trigger a review of the policies and procedures.*

Valuation Committee

- (xxiii) *Section 16 (5) and (6) provide for the appointment of a valuation committee. It should be noted that section 16 (5) requires only that the governing body consider whether to appoint a valuation committee, not to actually appoint such a committee.*

NAV Reports

- (xxiv) *Section 18 requires a public fund to prepare NAV reports in accordance with the valuation policy. Whilst some funds may consider it appropriate to provide investors with a detailed NAV report,*

this is not a requirement of the Code. The Commission is content to leave the precise contents of the NAV report to the fund. However, the Commission would expect the NAV report, at a minimum, to include the NAV of the fund, and each class of fund interests, and the NAV per fund interest at the date specified in the report.

Disclosure to Investors

(xxv) *The arrangements for the valuation of the fund property of a public fund must be transparent to investors (section 19). Relevant information that the Commission expects would typically be made available to investors upon request include, but are not necessarily limited to—*

- (a) *a description of the roles, skills and experience of all of the parties that are involved in the valuation process;*
- (b) *a description of the extent to which valuations have been provided by or influenced by the manager;*
- (c) *a description of any material conflicts of interest associated with the parties who are valuing the fund's assets; and*
- (d) *information about the nature and degree of any contracted pricing services.*

DEALING AND MANAGING

20. Dealing and managing by functionaries

A public fund shall take reasonable steps to protect the interests of the fund and in so doing shall have regard to compliance by its functionaries of their obligations with respect to dealing and managing specified in sections 191 to 197 of the Regulatory Code.

RECORD KEEPING

21. Public fund to maintain records

- (1) A public fund shall keep adequate and orderly records which, insofar as not covered by section 59 of the Act, shall include records of its business and operations, including records of all transactions relating to assets that form part of the fund property and all transactions in or relating to fund interests.
- (2) The records kept by a public fund shall be sufficient to enable the Commission to monitor its compliance with its obligations under the Act, the Regulations and this Code.
- (3) A public fund shall—
 - (a) maintain its records so that they can be readily retrieved in the Virgin Islands and, if kept otherwise than in legible form, so that they can be accessed and read at a computer terminal in the Virgin Islands and produced in the Virgin Islands in legible form and in the English language without undue delay; and
 - (b) ensure that its records are kept up to date and that a full audit trail is maintained of all changes to its records.
- (4) A public fund shall not keep any records that it is required to maintain under the BVI Business Companies Act, the Act or this Code outside the Virgin Islands if access to those records will or is likely to be impeded by confidentiality or data protection restrictions.

22. Retention of records

- (1) A public fund shall establish a record retention policy which shall include—

- (a) the period of time for which various types of record will be retained, which shall be no less than the minimum period specified in subsection (2);
- (b) how records are to be securely and safely stored; and
- (c) the process by which stored records can be readily accessed when required by the public fund, the Commission, law enforcement agencies or other persons entitled to access them.

(2) Subject to the BVI Business Companies Act or any other enactment requiring a public fund to retain records for a longer period, a public fund shall retain all records that it is required to maintain under this Code for a period of at least 5 years.

(3) In the case of records relating to transactions with an investor, the 5 year period shall commence on the termination of the public fund's relationship with the investor.

EXPLANATORY NOTES

- (i) *Section 21(3) sets out requirements concerning access to a fund's records in the BVI. The objective of this provision is to ensure that all records of the fund can be made available in the BVI without undue delay to ensure regulatory compliance and, if necessary, by the law enforcement authorities.*
 - (ii) *Given that public funds are not required to have an office in the BVI, there is no requirement for funds to keep their records or even copies of their records in the BVI. However, it is essential that they should be accessible in the BVI without undue delay.*
Where records are maintained in electronic form (which would be the case for most records), this section may be complied with by putting arrangements in place that would enable records either to be accessible from a computer terminal in the BVI or to be transmitted electronically to the BVI on request. This could be via e-mail or some other form of electronic transmission.
 - (iii) *Where records are not held in electronic form, the Commission would expect that scanned copies of the records could be sent to the BVI electronically. Where the records comprise a significant amount of documentation that is not in electronic form, it may be appropriate for the records to be sent by courier.*
 - (iv) *The term "without undue delay" should be construed in the context of the records concerned. Where the records are held in electronic form, but not directly accessible from a computer in the BVI, the Commission would expect them to be made available electronically very quickly. Obviously, in the case of paper records being sent by courier, the Commission accepts that this would take longer.*
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RELATIONSHIP WITH, AND REPORTING TO, THE COMMISSION

23. Significant regulatory impact disclosure

- (1) A public fund shall disclose to the Commission any matter that might reasonably be expected to have a significant regulatory impact.
- (2) Without limiting subsection (1), the following shall be regarded as matters that might reasonably be expected to have a significant regulatory impact—
 - (a) the suspension of valuation, dealing or redemptions;
 - (b) any matter that could impact on the ability of the public fund to continue to carry on business; and

- (c) any incidence of fraud or other criminal activity that is connected with, or may affect, the public fund's business if the fraud or criminal activity is material to the safety, soundness or reputation of the public fund.

(3) In determining whether a disclosure should be made under this section, a public fund shall consider—

- (a) its business and activities that are not subject to supervision by the Commission; and
- (b) the business and activities of its affiliates.

(4) Disclosure under subsection (1) shall be made immediately after the public fund—

- (a) becomes aware of the matter concerned; or
- (b) has reasonable grounds for believing that the matter concerned has occurred or that it may occur in the foreseeable future.

24. Required standard of disclosure

(1) A public fund shall use its best endeavours to ensure that all information and documents that it provides to the Commission are accurate and complete.

(2) If a public fund becomes aware that any information or documentation that it has provided to the Commission is not accurate or complete, the public fund shall—

- (a) immediately on becoming so aware, notify the Commission that it has provided inaccurate or incomplete information; and
- (b) within 7 days, or such shorter period as the Commission may require, provide the Commission with such information or documentation as is required to ensure that subsection (1) is complied with.

25. Certain events and changes to be notified to Commission

(1) Without limiting section 23, a public fund shall notify the Commission in writing of any event specified in Schedule 2, within the time limit specified against the event.

(2) Where the time limit specified in Schedule 2 is “immediate”, the public fund shall notify the Commission—

- (a) immediately after there are reasonable grounds for the public fund believing that the event is likely to occur in the foreseeable future; and
- (b) whether or not paragraph (a) applies, immediately after the public fund knows, or has reasonable grounds for believing, that the event has occurred.

(3) A public fund shall not, without giving the Commission reasonable prior written notice, cause or permit a change in—

- (a) its name or any business name under which it carries on regulated business;
- (b) the address of its principal office or place of business, whether in or outside the Virgin Islands;
- (c) the address of its registered office; or
- (d) its authorised representative.

EXPLANATORY NOTES

Summary of Requirements

- (i) *The fourth principle for business requires a public fund to deal with the Commission in an open and cooperative manner. SIBA, the MFR and the Code set out a number of requirements relevant to this principle. These may be classified as follows—*
 - (a) *all public funds are required to submit documents and returns to the Commission on a regular basis, as required;*
 - (b) *SIBA, the MFR and the Code specify certain events and changes that trigger a requirement to provide information to the Commission (specific event triggered disclosures); and*
 - (c) *section 23 (1) of the Code contains an over-riding requirement to disclose to the Commission any matter that might reasonably be expected to materially affect the Commission’s regulation and supervision of the public fund (significant regulatory impact disclosure).*
- (ii) *It follows that compliance with the fourth principle requires a public fund not just to respond to specific requirements in SIBA, the MFR and the Code, but also to be proactive in supplying the Commission with information.*
- (iii) *Section 24 of the Code provides that a public fund shall use its best endeavours to ensure that all information and documents that it provides to the Commission are accurate and complete. This requirement is in addition to specific offence provisions created by the FSC Act and other regulatory enactments. See, for example, section 53(1) of the FSC Act which provides that a person commits an offence if, with intent to deceive or injure another, or for any purpose of the Act, the person makes any representation or submits any information which he or she knows to be false or does not believe to be true.*

Significant Regulatory Impact Disclosure

- (iv) *A disclosure under section 23 is triggered by any matter that might reasonably be expected to have a significant regulatory impact. Underlying this requirement is an expectation that matters will be disclosed if there is a reasonable prospect that—*
 - (a) *a potential outcome will have a significant regulatory impact, if it occurs; and*
 - (b) *the outcome will occur.*

It is recognised that what might constitute “a significant regulatory impact” is not necessarily capable of exhaustive definition and proper judgment will have to be exercised. Section 23 (2) outlines some broad elements of what the Commission would consider as constituting significant regulatory impact and would therefore be required to be disclosed. These elements do not exclude other essential elements or factors that might arise in relation to the public fund’s affairs and business which prudence dictates should be disclosed as having significant regulatory impact. Where in any case a public fund is not certain as to whether a particular element or factor might constitute a significant regulatory impact, it should make a disclosure.
- (v) *However, the Commission expects every public fund to exercise proper judgment and not to disclose matters that are clearly not of a serious nature. A plethora of disclosures of a minor nature would not assist the Commission in exercising its objectives. In determining whether to make a significant regulatory impact disclosure, a public fund should, therefore, consider both the probability of an outcome occurring and the potential severity of the outcome.*
- (vi) *Where a disclosure has been considered, but not made, the Commission will expect a public fund to be able to demonstrate from its written records that all relevant information and matters have been fully considered and that there are reasonable grounds for the decision not to make a disclosure. The reasons for each decision should, therefore, be properly recorded.*

Event-triggered Disclosures

- (vii) *Section 25 and Schedule 2 together set out requirements for the notification of certain specific events and changes to the Commission. These notifications must always be in writing. However, in cases of urgency, notification may be made to the appropriate member of the Commission's regulatory staff by telephone, or even by a director of the public fund in person, provided that this is followed as soon as possible with a written notification.*
- (viii) *In addition, SIBA and the MFR contain specific requirements for notifying events and changes to the Commission, usually in writing.*
In many cases, failure to comply with a notification requirement in a regulatory enactment is an offence.
- (ix) *Where a notification requirement under SIBA, the MFR or the Code are substantively the same, the Commission does not expect a public fund to submit two separate notices to it.*
- (x) *Section 25(3)(d) provides that a public fund shall not, without giving the Commission reasonable prior written notice, cause or permit a change in its authorised representative. Section 65(4) of SIBA provides (in relation to a public fund) that where the authorised representative of the fund resigns or his or her appointment is terminated or becomes vacant for any reason, the fund does not commit an offence if it appoints another authorised representative within 21 days of the date of the previous authorised representative ceasing to act.*
- (xi) *A public fund should ensure that, in order to ensure compliance with SIBA and the Code, where an authorised representative ceases to act, it gives reasonable prior notice to the Commission of the appointment of a new authorised representative, before the expiry of the 21 day period specified in SIBA.*

DISCLOSURE TO INVESTORS
26. Changes to investor rights

- (1) Where a public fund proposes to make any changes to the rights of investors which the investors are not required to approve, the fund shall give each investor notice of the change.
- (2) Wherever practicable, notice under subsection (1) shall be given prior to the change.

SCHEDULE 1

[Section 6(1)]

INFORMATION TO BE CONTAINED IN PROSPECTUS OF A PUBLIC FUND**The Manager**

1. The following particulars shall be stated in respect of the manager—
 - (a) its name;
 - (b) the nature of its corporate form;
 - (c) the country of its incorporation or formation;
 - (d) if it is a part of a group, general details of the group;
 - (e) the address of the manager's principal place of business;
 - (f) the date of its incorporation;
 - (g) if the duration of its corporate status is limited, when that status will or may cease;
 - (h) the main business of the manager and a brief description of the manager's relevant experience; and
 - (i) whether the manager is licensed to carry on fund management business in the Virgin Islands or, if not, whether the manager is authorised to conduct fund management business elsewhere, and if so the country in which it is authorised and the name of the relevant supervisory body.

The Administrator

2. The following particulars shall be stated in respect of the administrator—
 - (a) its name;
 - (b) the nature of its corporate form;
 - (c) the country of its incorporation;
 - (d) if it is a part of a group, general details of the group;
 - (e) the address of the administrator's principal place of business;
 - (f) the date of its incorporation;
 - (g) if the duration of its corporate status is limited, when that status will or may cease;
 - (h) the main business of the administrator and a brief description of the administrator's experience; and
 - (i) whether the administrator is licensed to carry on fund administration business in the Virgin Islands or, if not, whether the administrator is authorised to conduct fund administration business elsewhere, and if so the country in which it is authorised and the name of the relevant supervisory body.

The Custodian

3. The following particulars shall be stated in respect of the custodian—
 - (a) its name;

- (b) the nature of its corporate form;
- (c) the country of its incorporation;
- (d) if it is a part of a group, general details of the group;
- (e) the address of the custodian's principal place of business;
- (f) a description of the custodian's principal business activity; and
- (g) whether it is authorised to carry on business as a custodian in any country and, if so, the name of the country and the name of the relevant supervisory body.

The Prime Broker

4. The following particulars shall be stated in respect of any prime broker to be employed by the fund—

- (a) its name;
- (b) the nature of its corporate form;
- (c) the country of its incorporation;
- (d) if it is a part of a group, general details of the group;
- (e) the address of the prime broker's principal place of business; and
- (f) whether the prime broker is authorised to carry on business as a prime broker in any country and, if so, the name of the country and the name of the relevant supervisory body.

The Investment Adviser

5. If the manager of the fund or the fund employs the services of an investment adviser to manage any of the fund property or to supply investment advice in relation to the fund, the following particulars shall be stated in respect of the investment adviser—

- (a) its name;
- (b) the nature of its corporate form;
- (c) the country of its incorporation;
- (d) if it is a part of a group, general details of the group;
- (e) the address of the investment adviser's principal place of business;
- (f) the date of its incorporation;
- (g) if the duration of its corporate status is limited, when that status will or may cease;
- (h) the main business of the investment advisor and a brief description of the investment advisor's relevant experience;
- (i) if the investment adviser is licensed to carry on investment advisory business in a country other than the Virgin Islands, that fact and the name of the relevant supervisory body;
- (j) a summary of the agreement between the investment adviser and the manager (other than provisions relating to its remuneration) and, if it has the authority of the manager to make decisions on behalf of the manager, that fact and a description of the matters in relation to which it has authority; and
- (k) if the investment adviser is authorised to deal on behalf of the fund and is an associate of the manager, the relationship by virtue of which it is an associate and the maximum

percentage commission payable to it under the agreement or arrangement in paragraph (j) for any transaction done or which could be done on behalf of the fund.

Other Relevant Persons

6. The name and address of the following shall be stated—
 - (a) the fund's registrar;
 - (b) the fund's transfer agent;
 - (c) the fund's auditor;
 - (d) the fund's legal advisors;
 - (e) the fund's authorised representative; and
 - (f) the fund's promoter.

The Directors

7. The names and relevant qualifications and experience of the directors of the fund shall be stated.

The Constitution and Objectives of the Fund

8. The following shall be stated—
 - (a) the name of the fund;
 - (b) the date on which and the jurisdiction in which the fund was incorporated, formed or registered;
 - (c) whether the vehicle is a company, and if so what type of company, or a unit trust;
 - (d) if the fund is a segregated portfolio company within the meaning of the BVI Business Company Act, a statement to that effect;
 - (e) in the case of a property fund, the maximum extent to which the fund property may be invested in immovables and related assets;
 - (f) the circumstances in which the winding-up of the fund can be decided upon, a description of the procedure to be followed in a winding-up and what the rights of investors will be in a winding-up;
 - (g) the date of the fund's financial year end; and
 - (h) if there are interim accounting periods, what they are.

The Characteristics of Fund Interests in the Fund

9. The following shall be stated—
 - (a) in relation to each available class of fund interest in the fund, the entitlement of the investor to participate in the fund property and the income of the fund, a statement of the nominal value (if any) of each fund interest and, where there is more than one class of fund interest, the names or designations given to each class and characteristics of each class which distinguishes it from the others;
 - (b) the nature of the right represented by the fund interests in the fund; and
 - (c) the voting rights attached to the fund interests or to classes of fund interest, if appropriate, and whether persons other than investors can vote at meetings of investors and who those persons are.

The Characteristics of the Fund

10. The following shall be stated—

- (a) that the fund is a registered public fund;
- (b) if the fund is a feeder fund, the name of the fund into which the fund is to feed;
- (c) if the fund is a fund of funds, that fact;
- (d) if the fund is an umbrella fund, that fact and details of the individual funds constituting the umbrella fund;
- (e) the date on which the fund was established and, if the duration of the fund is not unlimited, when it will or may terminate;
- (f) particulars of the capital structure of the fund;
- (g) sufficient information to enable an investor to ascertain—
 - (i) the objective of the fund; and
 - (ii) the manager's investment policy for achieving that objective;
- (h) if the manager's investment policy does not envisage remaining fully invested at all times, a statement of the manager's policy in that respect;
- (i) the general nature of the portfolio and any intended specialisation (for example, in an economic sector, geographical area or type of investment or other asset);
- (j) a clear and easily understandable explanation of any risks associated with an investment in the fund of which a reasonably prudent investor would want to be aware, including any particular risk factors inherent in the fund's objectives, portfolio or intended portfolio;
- (k) the risks of default or breach associated with the legal structure of the fund, i.e. as a company or as a unit trust;
- (l) a description of the type of asset which may be included in the fund property and any limitations on the extent to which the fund may invest in such asset;
- (m) where the fund's ability to invest in a particular type of asset or to a particular extent is provided by the instrument constituting the fund, that fact;
- (n) a statement of what borrowing powers are exercisable in relation to the fund;
- (o) in the case of a fund which may invest in other public funds, the extent to which the fund property may be invested in the fund interests of public funds which are managed by the manager or by an associate of the manager;
- (p) a statement of any material conflicts of interest, including conflicts of interest between functionaries and the fund, between the functionaries, between the governing body and the fund and between the functionaries, governing body, fund and investors;
- (q) a statement as to the potential risks associated with any conflicts of interest identified in accordance with paragraph (p); and
- (r) how it is proposed that the conflicts of interest identified will be managed.

Valuation of Fund Property and Fund Interests

11. The following shall be stated—

- (a) the person or persons who are responsible for undertaking valuations of the fund property, preparing NAVs and valuing the fund interests, and where the valuations will be undertaken;
- (b) how frequently (in days), and what time or times of day, the fund property and the fund interests will be valued, and a description of any circumstances in which the fund property and the fund interests may be specially valued;
- (c) the basis on which the fund property will be valued, including the methodology and procedures for undertaking the valuation;
- (d) an indication of the circumstances in which a valuation can be suspended;
- (e) the person or persons who have oversight responsibility for the valuation of the fund property and the preparation of NAVs;
- (f) a description of any material conflicts of interest associated with the parties concerned with the valuation process, including whether the fund manager has any role in the valuation of the fund property;
- (g) that full details of the fund's valuation policies are contained in a written valuation policy, indicating how a copy may be obtained; and
- (h) other information concerning the valuation process that is available to investors on request, and how this may be obtained.

Fees

12. The prospectus shall state—

- (a) if the price at which fund interests may be purchased from the fund may include an initial fee charged by the manager, the maximum amount of that fee, expressed either as a fixed amount in the base currency or as a percentage of the net asset value of those fund interests;
- (b) if the manager may charge an annual fee out of the fund property—
 - (i) the maximum amount of that fee, expressed as an annual percentage of the net asset value of the fund; and
 - (ii) if the fund and the manager have agreed that all or part of that fee is to be treated as a capital charge—
 - (A) that fact; and
 - (B) the actual or maximum amount of the fee which may be so treated;
- (c) if the manager may charge a performance or incentive fee out of the fund property—
 - (i) that fact;
 - (ii) the basis of calculation of that fee; and
 - (iii) when and how that fee is to be charged;
- (d) if the manager may charge a fee by way of deduction from the proceeds of redemption—
 - (i) the amount of that fee or, if it is variable, the rate or method of calculating the fee; and
 - (ii) if the amount or rate or method has been changed, that details of any previous amount or rate or method may be obtained from the manager on request;

- (e) where the fund is a unit trust, if the trustee is to be remunerated out of the fund property, that fact that remuneration will be paid out of the fund property and the basis for the remuneration;
- (f) where the fund is a BVI business company, the remuneration and expenses of the directors; and
- (g) the nature of any other payments which may lawfully be made out of the fund property and how their amounts will be determined, including, inter alia, custodian fees, administration fees, registrar and transfer agency fees and fees payable to any investment advisor.

Distribution of Income

13. State the annual distribution date and, if any, the interim distribution dates.

The Issue and Redemption of Fund Interests

14. State—

- (a) the dealing days and times in the dealing day on which the fund will be available to receive requests for the issue and redemption of fund interests;
- (b) the procedures for effecting the issue and redemption of fund interests and the settlement of transactions;
- (c) the steps required to be taken by an investor redeeming fund interests before he or she can receive the proceeds of redemption;
- (d) the amounts of the following minima (if relevant) for each class of fund interest in the fund—
 - (i) the minimum number of fund interests which any one person may hold;
 - (ii) the minimum value of fund interests which any one person may hold;
 - (iii) the minimum number or value of fund interests which may be the subject of any one transaction of purchase; and
 - (iv) the minimum number of fund interests which may be the subject of any one act of redemption;
- (e) the circumstances in which the redemption of fund interests may be suspended;
- (f) where and when the most recent issue and redemption prices will be published; and
- (g) the investment exchanges, if any, on which fund interests are listed or dealt.

General Information

15. State—

- (a) the date when the prospectus was issued and the date of each amendment;
- (b) when annual and half-yearly reports will be published and the address at which these will be available;
- (c) the address at which copies of the constituting documents of the fund, any amending instrument and of the most recent annual and half-yearly reports may be inspected and from which copies of them may be obtained;
- (d) the address at which copies of the prospectus and all material contracts may be obtained; and

- (e) that, if a fund publishes a prospectus or any amendment thereto that contains misrepresentation relating to any of the disclosures required under section 48(1)(b) of the Act, a person who purchased any fund interests pursuant to such prospectus or amendment thereto is deemed to have relied upon the misrepresentation and shall have the rights provided in section 52 of the Act, namely, to exercise a right of action for—

- (i) the rescission of the purchase; or
- (ii) damages,

jointly and severally against the fund and every member of the board of directors or, in the case of a partnership, unit trust or other similar body, every member of the equivalent governing body who, while aware of the misrepresentation, or would have been aware of the misrepresentation had he made reasonable investigation consistent with his or her duties, authorised the signing of or approved the prospectus or amendment thereto and consented to its publication and filing or caused it to be signed or published and filed.

Additional Information

16. State any other material information which—

- (a) investors and their professional advisers would reasonably require, and reasonably expect to find in the fund prospectus, for the purpose of making an informed judgment about the merits of investing in the fund and the extent of the risks accepted by so investing; and
- (b) is within the knowledge of the fund or which the fund would have obtained by the making of reasonable enquiries.

Umbrella Funds

17. (1) State, in the case of an umbrella fund—

- (a) that in no circumstances will a holder who exchanges rights or fund interests in one part of the fund for rights or fund interests in another part of the fund be given a right by law to withdraw from or cancel the transaction; and
- (b) what arrangements there are for charges in the case of an exchange of fund interests in one sub-fund for fund interests in another, including the maximum amount of the charge and the minimum number of exchanges that will be permitted free of charge.

(2) In the application of this Schedule to an umbrella fund, information required shall be stated—

- (a) in relation to each class or sub-fund of the fund where the information for any class or sub-fund of the fund differs from that for any other class or sub-fund; and
- (b) for the fund as a whole, but only where the information is meaningful in relation to the fund as a whole.

SCHEDULE 2

[Section 25]

EVENTS AND CHANGES TO BE NOTIFIED TO THE COMMISSION

	Event	Time Limit for Notification
1.	Application being made to the Court for the appointment of a liquidator or administrator of the public fund under the Insolvency Act	Immediate
2.	A meeting being called to consider the appointment of a liquidator under section 159(2) of the Insolvency Act	Immediate
3.	A proposal being made for a creditors' arrangement under the Insolvency Act	Immediate
4.	The making of, or any proposals for the making of, The making of, or any proposals for the making of, a composition or arrangement with one or more creditors of the public fund other than a creditors' arrangement as referred to in event 3.	Immediate
5.	The striking of the public fund off the register of companies maintained by the Registrar of Corporate Affairs under the BVI Business Companies Act	Immediate
6.	The appointment of a receiver of the public fund or any of its property, whether by a creditor, the Court or otherwise	Immediate
7.	Anything equivalent to events 1 to 6 occurring in a jurisdiction outside the Virgin Islands	Immediate
8.	The bringing of civil proceedings against the public fund where the size of the claim is significant with respect to the fund property or is likely to affect the public fund's reputation	Immediate
9.	The commencement of an investigation with respect to the business or affairs of the public fund by any overseas regulatory authority	Immediate
10.	The taking of any enforcement action against the public fund by a foreign regulatory authority	Immediate
11.	The prosecution or conviction of the public fund, or any of its directors, in or outside the Virgin Islands for any offence (a) relating to financial services; or (b) involving fraud or dishonesty	Immediate
12.	The public fund becomes aware of any fraud committed against it.	Immediate
13.	Any matter that the public fund considers to be material to the fit and properness of any of its directors or functionaries	Immediate
14.	Any significant failure in the public fund's procedures	Immediate

15.	Any material change to investors' rights	Within a reasonable time period prior to the proposed change
16.	Any proposed significant restructuring or reorganisation of the public fund or its regulated business or activities	Within a reasonable time prior to the proposed restructuring or reorganisation taking effect

**BRITISH VIRGIN ISLANDS
FINANCIAL SERVICES COMMISSION**

APPROVED INVESTMENT MANAGERS GUIDELINES

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INTRODUCTION

1. Under the Securities and Investment Business Act, 2010 (“SIBA”) persons wishing to carry out any form of investment business in or from within the Virgin Islands are required to be licensed by the Financial Services Commission (“the Commission”). This includes persons providing investment management or investment advice for mutual funds and other collective investment schemes. Once licensed, persons are required to adhere to the tenets of SIBA, the Regulatory Code and all other applicable financial services legislation. The Commission recognises, however, having regard to risk, nature and complexity of certain business activities, that adherence to these provisions, while required by law, is not always practical nor does it achieve any risk reduction from a regulatory perspective.
2. The Commission, being cognizant of the need to maintain some flexibility in respect of its investment business regime, without compromising proper and effective regulation, has developed a framework through the Investment Business (Approved Managers) Regulations, 2012 (“the Regulations”), which establishes a system that will allow investment managers and advisers who meet the established criteria to provide such services through a simple approval process separate and apart from the licensing regime outlined in SIBA.
3. Persons who qualify as approved investment managers under the Regulations will not be required to obtain a licence under SIBA or be subject to the Regulatory Code. Qualifying as an Approved Investment Manager, however, does not prevent a person from applying for and obtaining a licence under SIBA if they so desire. In order for an application as an Approved Investment Manager to be considered it must be made in written form and submitted to the Commission in accordance with regulation 7(2) of the Regulations.
4. These Guidelines seek to provide guidance on the application process by outlining the requirements for qualifying as an Approved Investment Manager, information that should be submitted when completing the application, the types of services that may be provided by an Approved Investment Manager, determinations with respect to closed-ended funds, the obligations of an Approved Investment Manager including the requirement to file annual returns and other documents specified in the Regulations and other miscellaneous matters. It is essential therefore for applicants to adhere as closely as possible to the guidelines set out herein as the Commission will rely on them in processing applications for approval to act as an Approved Investment Manager.

APPROVAL AS AN APPROVED INVESTMENT MANAGER

1. APPLICATION FOR APPROVAL AS AN APPROVED INVESTMENT MANAGER

1.1 Completing the Application Form

1.1.1 A person wishing to carry out the investment activities of managing investments or providing investment advice, as described in regulation 9 of the Regulations, may apply for approval as an Approved Investment Manager pursuant to the Regulations. Persons seeking such approval must prepare and submit a written application in accordance with **Form IB-A1** of the Schedule to these Guidelines.

1.1.2 In order for an application to be considered complete all relevant sections of **Form IB-A1** must be completed and submitted, along with all necessary supporting documents, to the Commission no less than seven days prior to the intended commencement date of the relevant activities unless the Commission agrees, in writing, to a shorter period.

1.1.3 Every application contains a declaration which must be properly completed by the authorised representative or legal practitioner submitting the application on behalf of applicant.

1.1.4 An application under this section must comply with the requirements of regulation 4 of the Regulations.

1.2 Processing of application

1.2.1 Upon receipt of a completed application, the Commission will endeavour to process such application and communicate its decision to the applicant or its representative within 30 days from submission of the application as specified in regulation 4(3) or, where an extension has been granted pursuant to regulation 4(4), within the period of that extension.

1.3 Payment of Application Fee

1.3.1 Every application filed must be accompanied by the requisite fee applicable in relation to the application. No application shall be processed by the Commission unless the fee payable is received. The fees payable are prescribed in the Financial Services (Securities and Investment Business Fees) (Amendment) Regulations, 2012.

1.4 Application considered properly filed

1.4.1 The Commission will consider an application received to be fully completed when all the required applicable information in respect of the application is provided. However, this does not derogate from any request the Commission may make under paragraph 2.2.1.

1.4.2 Once an application containing all information specified in regulation 5, along with any other additional information that may be requested, has been reviewed and the Commission is satisfied that the application has met the requirements of regulation 7(1)(b), approval to act as an Approved Investment Manager may be granted.

1.5 Payment of Approval Fee

1.5.1 Approval to act as an Approved Investment Manager may only be considered final when the requisite approval fee has been paid to the Commission as prescribed in the Financial Services (Securities and Investment Business Fees) (Amendment) Regulations, 2012.

1.6 Application not considered properly filed

1.6.1 An application that does not contain all of the required applicable information requested in Form IB-A1, or is not accompanied by the requisite fee will be considered incomplete and may be denied by the Commission.

1.6.2 An application for which additional information required to be submitted in accordance with paragraph 2.2.1 is not received will be considered incomplete and may be denied by the Commission.

2. INFORMATION TO BE SUBMITTED WITH AN APPLICATION

2.1 General Information Required

2.1.1 The basic information required to be submitted by persons wishing to be approved as an Approved Manager is specified in regulation 5 and outlined in Form IB-A1. This information includes, but is not limited to:

- the name of the applicant,
- type of entity (whether business company or partnership),
- date of incorporation or registration,
- incorporation/registration number,
- address of the applicant,
- date of commencement of business,
- relevant details of all underlying principals including:
 - Name
 - Address
 - Whether the principal is an individual or corporate shareholder
 - In the case of a corporate shareholder, the name of the individual representing the corporate shareholder
 - Name of the beneficial owner
 - Percentage of shares held
- relevant details of all senior officers and directors or general partners including:
 - Name
 - Address
 - Position held
 - Biography
- the number of persons the applicant intends to act for,
- relevant details of each person the applicant intends to act for including:
 - Name of person
 - Whether it is a new or existing relationship
 - Address of person
 - Place of incorporation or registration
 - Value of current assets if held, or monies intended to be raised for each new person
 - Capacity in which the applicant will act (adviser, manager or adviser and manager)
- details of the persons identified to carry out the entity's day-to-day investment functions,

- an indication of whether any functions will be delegated, and if so, to whom, and
- a declaration of the fitness and propriety of each director or general partner, senior officer and shareholder with an¹³⁰ interest in the applicant.

2.1.2 Where information in relation to an application does not apply in respect of the applicant, this should be stated in the application by putting the words “not applicable” or “n/a” in the appropriate place on the form. However, it should be noted that if, upon consideration of the application, the Commission forms the view that the information is indeed required, the applicant or its local representative (i.e. registered agent, authorised representative or legal practitioner as the case may be) will be notified accordingly.

2.1.3 Where information is required that takes the form of a separate document the document is to be attached to the application and submitted at the same time the application form is submitted.

2.1.4 Where information that is required to be provided as an attachment is not included with the application the applicant or the local representative submitting the application on its behalf will be notified accordingly.

2.2 Additional Information

2.2.1 It should be noted that the Commission, in the exercise of its general powers reserves the right to seek clarification or request additional information on any application submitted for processing. Where such clarification is sought or a request for additional information made, this information must be provided within the thirty days provided to carry on relevant business, or any period of extension granted while the application is being reviewed. It is therefore essential that where, for any reason clarification sought or requested information is not available or cannot be provided, that fact is notified to the Commission as quickly as possible in order to enable the Commission to dispose of the application appropriately.

3. BUSINESS ACTIVITIES/SERVICES TO BE PROVIDED

3.1 Approved Investment Business Functions

3.1.1 Persons seeking approval as an Approved Investment Manager may only carry out the investment business functions outlined in regulation 9. If at any time after being approved as an Approved Investment Manager the scope of activities under which that manager had previously qualified changes, the manager will cease to be considered an Approved Investment Manager in accordance with regulation 11.

3.2 Qualifying to be treated as a Closed-ended Fund

3.2.1 A fund qualifies to be treated as a closed-ended fund in accordance with regulation 9(3)(a) if it either:

- a) collects and pools investor funds for the purpose of collective investment, and is not a mutual fund as defined in section 40 of SIBA; or
- b) is otherwise approved by the Commission in writing, on a case-by-case basis to qualify as a closed-ended fund.

3.3 Closed-ended Funds with Characteristics of Private or Professional Funds

3.3.1 An Approved Investment Manager may act as an investment adviser or investment manager to a closed-ended fund incorporated, formed or organized under the laws of the Virgin Islands where the fund has the following characteristics of a private or professional fund:

- In relation to a private fund, where the fund's constitutional documents specify that
 - a) the fund is not authorised to have more than fifty investors; or

- b) the invitation to subscribe for, or purchase fund interests in the fund must be made on a private basis.
- In relation to a professional fund, where
 - a) the constitutional documents specify that the fund interests of the fund will be issued only to professional investors; and
 - b) the initial investment of each investor, other than an exempt investor, is not less than one hundred thousand dollars, or its equivalent in any other currency.

3.3A Funds Formed in a Recognised Jurisdiction with Characteristics of Private or Professional Funds¹³¹

3.3A.1 An Approved Investment Manager may act as an investment adviser or investment manager to any fund incorporated, formed or organised under the laws of a recognised jurisdiction as defined in Regulation 9 (2A), where the fund has the following characteristics of a private or professional fund:

- In relation to a private fund,
 - a) the fund is not authorised to have more than fifty investors; or
 - b) the invitation to subscribe for, or purchase, fund interests in the fund must be made on a private basis. Private basis considerations include making shares available to specified persons and issuing invitations on the basis of private or business connections.
- In relation to a professional fund,
 - a) the fund interests of the fund will be issued,
 - (i) in the case of the Virgin Islands, only to professional investors; and
 - (ii) in any other case, only to professional investors or similarly qualified investors as accepted or recognised in a recognised jurisdiction as defined in Regulation 9 (2A); and
 - b) the initial investment of each investor, other than an exempt investor, is not less than one hundred thousand dollars, or its equivalent in any other currency.

3.4 Persons Affiliated with Private Funds, Professional Funds or Closed-ended Funds

3.4.1 An Approved Investment Manager may act as an investment adviser or investment manager to a person affiliated with a private, professional or closed-ended fund if the affiliated person has been established or formed by, or on the direction of a fund or its functionaries for the purpose of either making or holding investments for or on behalf of the fund, or all or substantially all of its investors.

3.5 Persons with Equivalent Characteristics

3.5.1 An Approved Investment Manager may act as a manager or adviser to a person that is incorporated as a company, formed as a partnership or organized as a trust, outside of the Virgin Islands in a non-recognised jurisdiction,¹³² and who invests all or a substantial part of its assets in a private or professional fund, or a closed-ended fund as specified in paragraph 3.3. above if the person meets the following criteria:

- In relation to a private fund where the person's constitutional documents specify that:
 - a) the fund is not authorised to have more than fifty investors; or
 - b) the invitation to subscribe for, or purchase fund interests in the fund must be made on a private basis.
- In relation to a professional fund, where

- a) the constitutional documents specify that the fund interests of the fund will be issued only to professional investors; and
- b) the initial investment of each investor, other than an exempt investor, is not less than one hundred thousand dollars, or its equivalent in any other currency.

3.6 Non-Virgin Islands Incorporated Funds Considered Equivalent to Private or Professional Funds

3.6.1 An Approved Investment Manager may only act for a fund incorporated outside of the Virgin Islands if that fund has equivalent characteristics to a private, professional or closed-ended fund and invests all, or substantially all, of its assets in a private or professional fund, or a closed-ended fund with the characteristics of a private or professional fund as specified in paragraph 3.3 above.

4. RESTRICTIONS

4.1 General Restrictions

4.1.1 An Approved Investment Manager who ceases to qualify as such must notify the Commission immediately and cease from taking on any new relevant business.

4.1.2 Where a person ceases to qualify as an Approved Investment Manager he must stop carrying on any existing relevant business within three months from the date on which he ceased to qualify as an Approved Investment Manager.

4.1.3 A person who ceases to qualify as an Approved Investment Manager may apply to the Commission to be licensed to carry on investment business under SIBA.

4.1.4 Where such an application has been made the Commission may, where it considers it appropriate, taking into account the business of the applicant and any other relevant matters, grant the Approved Investment Manager an additional three months from the end of the period specified in paragraph 4.1.2 above to apply for and obtain a license under SIBA.

4.2 Restrictions in Relation to Assets Under Management

4.2.1 Assets under management of an Approved Investment Manager may not exceed, in aggregate, four hundred million dollars or its equivalence in any other currency in relation to private or professional funds. In relation to the assets of one or more closed-ended funds, the assets under management may not exceed one billion dollars.

4.2.2 An Approved Investment Manager whose assets under management exceed the values specified in paragraph 4.2.1 above must notify the Commission of this fact within seven days of exceeding the prescribed amount.

4.2.3 An Approved Manager who exceeds the amounts specified in paragraph 4.2.1 above shall cease to qualify as an Approved Investment Manager unless, within three months of the date on which he ceased to qualify, the Approved Investment Manager no longer exceeds the prescribed amount, or has submitted an application to the Commission to be licensed under SIBA.

4.2.4 The Commission may, having regard to any risk associated with the Approved Investment Manager or any of the persons for whom he acts, grant approval for the Approved Investment Manager to continue to function. Any such approval must be given in writing by the Commission.

5. ASSETS UNDER MANAGEMENT

5.1 Determining Assets Under Management

5.1.1 For the purpose of paragraph 4.2.1 above, assets under management shall be determined:

- a) in relation to any person that is not a closed ended fund, as the net asset value (NAV) of the outstanding assets of the person less liabilities as at the valuation date; and
- b) in relation to a closed-ended fund, as the aggregate amount of capital committed to be invested by the fund's investors.

5.1.2 In determining the net asset value of a person under paragraph 5.1.1(a), the valuation policies and procedures used by that person for determining the net asset value upon which the subscription and redemption price for fund interests is based shall be used. The Approved Investment Manager shall not be required to determine the assets under management in respect of a person under paragraph 5.1.1(a) any more frequently than such person is required to determine its net asset value for the purposes of subscribing and redeeming its own fund interests.

5.2 Calculating Assets Under Management

5.2.1 Where an Approved Investment Manager acts for more than one person and all or a portion of the assets of one person comprise interests in another person for which the Approved Investment Manager acts the value of the interests of the first person shall be disregarded for the purposes of the calculation of the total assets under management of the Approved Investment Manager.

5.2.2 Where a portion of the assets of the first person described in 5.2.1 above falls outside the structure specified in paragraph 5.2.1 above, the portion falling outside the structure should form part of the calculation of the total assets under management.

6 ONGOING OBLIGATIONS

6.1 General Obligations

6.1.1 In order for an Approved Investment Manager to retain his or her classification, there are certain obligations that the Approved Investment Manager must adhere to. Every Approved Investment Manager must, at all times, ensure that it retains an authorised representative. Further, if the Approved Investment Manager is a body corporate it must at all times, ensure that it has appointed at least two directors, one of whom must be an individual director. In the case of an Approved Investment Manager constituted as a limited partnership, such partnership must, at all times, have at least one general partner.

6.1.2 If at any time after being approved, the information provided by an Approved Investment Manager in its application for approval changes, the Approved Investment Manager is required to notify the Commission in writing of the change and provide all relevant details. Such notification must be made within fourteen days of the change and must be accompanied by a written declaration stating whether the change complies with the requirements of the Regulations.

6.1.3 An Approved Investment Manager is also required to notify the Commission of any matter related to the Approved Investment Manager or the Approved Investment Manager's conduct of its relevant business activities which may have a material impact or significant regulatory impact on the Approved Investment Manager or its relevant business.

6.2 Submission of Financial Statements

6.2.1 Financial statements, as defined in section 69 of SIBA, must be submitted to the Commission within six months of the end of the financial year to which they relate and must comply with prescribed accounting standards.

6.2.2 Financial statements must be signed by a director or, in the case of a partnership, a general partner of the Approved Investment Manager and must be accompanied by a director's certificate, a report on the affairs of the Approved Investment Manager made in respect of the relevant financial year and any other documents that may be prescribed by the Regulations. For the purposes of these Guidelines, a director's certificate may be completed by a general partner where the Approved

Investment Manager is established as a partnership and any such certificate shall be construed as a valid certificate. (The directors' certificate form can be found in the Commission's Approved Forms (Amendment) Guidelines).

6.2.3 An Approved Investment Manager is not required to appoint an auditor; however, the Approved Investment Manager must submit financial statements in accordance with regulation 14, and where necessary ensure that the notes to the financial statements give a true and fair view of the matters to which they relate.

6.2.4 The Commission may require an Approved Investment Manager to resubmit or replace any document it considers to be incomplete, inaccurate or not prepared in accordance with the relevant applicable provisions of SIBA.

6.2.5 If an Approved Investment Manager fails to meet the requirements of paragraph 6.2.2 above, the relevant document(s) may be rejected by the Commission.

6.3 Exemption from Submitting Financial Statements

6.3.1 An Approved Investment Manager who has not conducted any business activity during a particular year may apply in writing, to the Commission during the period when the financial statements are due, or any period of extension, for an exemption from preparing and submitting financial statements for that year, in accordance with Schedule 5 of the Financial Services (Miscellaneous Exemptions) Regulations, 2010 as modified by regulation 14 (2).

6.3.2 An Approved Investment Manager who has conducted business during a particular year but forms the view that it has good reason not to be required to submit financial statements in respect of that year may apply, in writing to the Commission, at least three months before the financial statements are due, for an exemption from preparing and submitting financial statements for that year.

6.3.3 The Commission, upon receipt of a written application specified in paragraph 4.3.1 or 4.3.2 above, may grant an Approved Investment Manager an exemption from preparing and submitting financial statements once it can satisfy itself that the Approved Investment Manager has, in respect of paragraph 4.3.1, not conducted any business activity for the year the exemption is being sought or, in respect of paragraph 4.3.2, provided good reason why it should not be required to prepare and submit financial statements for the year in question.

6.4 Filing of Annual Returns

6.4.1 Annual returns must be filed by an Approved Investment Manager no later than 31st January each year in accordance with regulation 16. These returns must be submitted to the Commission and should contain the information specified in the Regulations.

7. RENEWAL OF APPROVAL TO ACT AS AN APPROVED INVESTMENT MANAGER

7.1 Payment of Renewal Fee

7.1.1 The approval to act as an Approved Investment Manager may be renewed upon payment of the requisite renewal fee.

7.1.2 Failure to pay the renewal fee after it becomes due shall result in the Approved Investment Manager being liable to the penalty prescribed for late payment of fee under Schedule 2 of the Financial Services (Administrative Penalties) Regulations, 2006, and shall be subject to any maximum penalty prescribed and further directives issued as specified in regulation 6(4).

SCHEDULE

[Paragraphs 1.1, 1.6 and 2.1]

[OMITTED] – [available on BVIFSC <https://www.bvifsc.vg>]

BRITISH VIRGIN ISLANDS FINANCIAL SERVICES COMMISSION

PRIVATE INVESTMENT FUNDS REGIME GUIDELINES

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INTRODUCTION

(i) In 2019, the Securities and Investment Business Act (“SIBA”) was amended to bring private investment funds (traditionally known as closed ended funds) under the regulatory remit of the Commission. Private investment funds are similar in operation to BVI private and professional funds. Private investment funds however do not offer investors a right to redemption of their interest on demand.

(ii) The regulatory requirements for private investment funds are similar to those imposed on private and professional funds. The regulatory requirements for recognition as private investment funds are set out via provisions in SIBA and the Private Investment Funds Regulations, 2019 (“the PIF Regulations”).

(iii) These Guidelines, which are issued in accordance with section 41A of the Financial Services Commission Act, provide an overview of the Private Investment Funds Regime. The Private Investment Funds Regime Guidelines describe the requirements for recognition as a private investment fund, as well as ongoing obligations to which these funds must adhere. Appendix I of these Guidelines contains the application form for recognition as a private investment fund and Appendix II outlines of the fees applicable.

APPLICATION FOR RECOGNITION AS A PRIVATE INVESTMENT FUND**1. Application Process**

1.1 An entity (“the applicant”) seeking recognition as a private investment fund must complete and submit to the Commission (Director, Investment Business Division) a Private Investment Fund Application Form (Form IB/PIF-1), attached as Schedule I of these Guidelines. The application must be submitted via the applicant’s local representative (i.e. authorised representative, registered agent or legal representative).

1.2 A properly filed application must include:

- i. a completed Form IB/PIF-1, meaning that all sections the form must be completed;
- ii. all supporting documentation, as detailed in paragraph 1.3 below; and
- iii. relevant application fee, as detailed in Appendix II of these Guidelines.

1.3 Copies of the following documentation must be submitted in support of an application for recognition as a private investment fund:

- i. a certificate of incorporation, formation, registration or equivalent document;
- ii. constitutional documents (i.e. Memorandum and Articles of Association, Partnership Agreement, Trust Deed);
- iii. a Register of Directors (if applicant is a company);

- iv. a résumé or biography for each director, general partner, trustee, or underlying individual(s) where director, general partner or trustee is a corporate entity (**see paragraphs 3.2.1 – 3.2.3**);
- v. the Offering Document or Term Sheet; and
- vi. the fund valuation policy.

1.4 Form IB/PIF-1 contains a declaration which must be completed, signed and dated by a director (in the case of company), general partner (in the case of a limited partnership) or trustee (in the case of a unit trust) of the applicant. Where the general partner or trustee is a corporate entity, a representative of the corporate entity may complete, sign and date the declaration.

1.5 The application form also necessitates details of the contact person in relation to the application. This person must be affiliated with a local representative of the Applicant (i.e. authorised representative, registered agent or legal representative).

1.6 Notwithstanding the filing of a complete application, the Commission may require additional information or clarification to complete its assessment, based on the information presented in the application and/or the circumstances of an applicant.

1.7 Where an application for recognition as a private investment fund has been approved, the fund will be issued a Certificate of Recognition as a Private Investment Fund, which will remain valid until cancelled or revoked by the Commission.

1.8 Where an application for recognition as a private investment fund has been denied, this decision will be notified to the applicant.

2. Transitional Provisions

A transitional period for private investment funds is in place from 31st December 2019 to 1st July 2020. Entities operating as private investment funds within the transitional period must make an application for recognition before or by 1st July 2020. After the transitional period has expired, the requirements of the Act will be fully enforced and any fund operating as a private investment fund that has not sought recognition as a private investment fund by 1st July 2020, will be considered to be conducting unauthorised financial services business and will be subject to enforcement action.

REQUIREMENTS OF PRIVATE INVESTMENT FUNDS

3. A private investment fund is subject to a number of initial and ongoing requirements as are detailed below.

3.1 Requirement to Appoint an Authorised Representative

3.1.1 A private investment fund must appoint and at all times retain an Authorised Representative, certified by the Commission in accordance with section 64 of SIBA. The Authorised Representative's role is to act as a liaison between the fund and the Commission.

3.1.2 Where a private investment fund changes its Authorised Representative, it must notify the Commission within **14 days** of this change.

3.2 Requirements in relation to Directors, General Partner or Trustee

Depending on the constitution type of a private investment fund, the entity will have directors, a general partner or a trustee. The requirements in relation to directors, general partners and trustees are detailed below:

Directors

3.2.1 Where a private investment fund is a company, it must have a minimum of **2 appointed directors**, one of whom must be an individual. A company's application for recognition as a private investment fund, must be accompanied by the following, in relation to its directors:

- i. a copy of the applicant's Register of Directors;
- ii. a résumé or biography of each director; and
- iii. where the applicant has corporate directors:
 - a copy of the Registers of Directors of each corporate director; and
 - résumé or biography of each underlying individual director of any corporate director.

General Partners

3.2.2 Where a private investment fund is a limited partnership, it must provide details of its general partner within its application for recognition, which includes:

- i. a copy of the applicant's partnership agreement, which includes the name(s) and address(es) of the general partner(s);
- ii. a résumé or biography of the applicant's general partner(s); and
- iii. where the general partner(s) of the applicant is (are) a corporate entity(ies), a résumé/ biography of the underlying individual(s) responsible for the general partner(s).

Trustees

3.2.3 Where a private investment fund is a unit trust, it must provide details of its trustee by submitting the following:

- i. a copy of the fund's trust deed;
- ii. a biography of the trustee; and
- iii. where the trustee is a corporate entity, the names and biographies of key personnel within the trustee.

3.2.4 The private investment fund must notify the Commission, where there are any changes to its directors, general partners or trustee within **14 days** of the change.

3.3 Requirement to have Appointed Persons

3.3.1 In accordance with regulation 6 of the PIF Regulations, private investment funds are required to maintain 3 appointed persons, responsible for the management, valuation and safekeeping (including segregation) of the fund's assets respectively.

3.3.2 An appointed person may be the private investment fund's director, general partner or trustee, an independent third party with relevant experience in performing the relevant function, or an entity licensed by the Commission or any other regulatory authority as an investment manager, administrator or custodian respectively.

3.3.3 When making a decision on the appointed person responsible for the safekeeping of fund property, a private investment fund must give due consideration to the Fund Safekeeping Arrangements Guidelines. The fund should ensure that this appointed person has adequate arrangements in place for the segregation of the private investment fund's assets from its or any other assets it may have or hold.

3.3.4 Ideally, the appointed person responsible for undertaking the management of fund property should not be the same person as the appointed person responsible for the valuation of fund property.

Where the private investment fund considers that these functions should be carried out by a single appointed person, the fund must:

- identify, manage and monitor any potential conflicts of interest that may arise from such an arrangement; and
- disclose this arrangement to its investors, along with details of how any conflicts will be managed.

3.3.5 Where any of the 3 appointed persons ceases to act for the fund, the private investment fund must notify the Commission of this fact and provide an explanation as to why the appointed person no longer undertakes the function. This notification must be provided within **7 days** after the appointed person ceases to act for the private investment fund.

3.3.6 Where an appointed person ceases to act as an appointed person, a private investment fund must notify the Commission of the proposed replacement it intends to appoint to perform the relevant function. This notification must be provided within **7 days** after the previous appointed person ceased to act on behalf of the fund.

3.4 Requirement to Prepare and Submit Financial Statements

3.4.1 Private investment funds are required to prepare financial statements for each financial year in accordance with one of the accounting standard outlined below:

- the International Financial Reporting Standards;
- UK Generally Accepted Accounting Principles;
- US Generally Accepted Accounting Principles;
- Canadian Generally Accepted Accounting Principles; or
- any other internationally recognised and generally accepted accounting standards equivalent to those listed.

3.4.2 The financial statements of a private investment fund must be audited by an auditor in accordance with one of the following standards:

- US Generally Accepted Auditing Standards;
- International Standards on Auditing (UK);
- International Standards on Auditing;
- Hong Kong Standards on Auditing; or
- Canadian Auditing Standards.

3.4.3 Regulation 10 (2) of the Regulations includes a provision that allows an auditor to audit a private investment fund's financial statements in accordance with another internationally recognised auditing standard that may be approved by the Commission on a case by case basis. This approval is based on an application process that is only considered in exceptional circumstances. Information on this process can be found in Part IV of the Fund Financials Guidelines.

3.4.4 Audited financial statements must be submitted **within 6 months** after the private investment fund's financial year end, unless granted an exemption from the requirement for a particular financial year or an extension of time to submit the financial statements for a particular year. The Parts I and III of the Fund Financial Guidelines describe the circumstances under which the Commission may consider an application for an exemption or extension accordingly, and detail the information that must be submitted with such applications.

3.5 Requirement for Offering Document or Term Sheet

3.5.1 Where a private investment fund intends to make an offer or invitation to an investor or potential investor, the invitation must be contained in an Offering Document or Term Sheet. The Offering Document

or Term Sheet should also serve to inform investors or potential investors of pertinent information that relates to making an investment in the fund.

3.5.2 The Commission understands that there are circumstances where it may not be necessary or feasible for a private investment fund to issue an Offering Document or Term Sheet. In such an instance, the fund must indicate in section 9.2 of the Form IB IB/PIF-1:

- i. the reason why the fund does not intend to issue an offering document or term sheet; and
- ii. how pertinent information in relation to investments in the fund will be communicated to investors or potential investors, in the absence of an offering document or term sheet.

3.5.3 A private investment fund must notify the Commission the Commission of any changes in its Offering Document or Term Sheet, within **7 days** after the issuance of an amended or new Offering Document or Term Sheet.

3.6 Valuation Policy

3.6.1 A private investment fund is required to maintain a valuation policy. The requirements of the valuation policy are detailed under regulation 9 of the Regulations. The appointed person responsible for the valuation of fund property must value the private investment fund's assets in accordance with the valuation policy.

3.6.2 A private investment fund must notify the Commission of any amendments to its valuation policy within **7 days** of the amendment.

3.7. Other Notifications

3.7.1 A private investment fund must notify the Commission of the following, within seven 7 days of their occurrence:

- i. any changes in the fund's place of business (inside or outside the Virgin Islands);
- ii. any material changes in the nature and scope of the fund's business (where the fund is incorporated, constituted or formed outside of the Virgin Islands); and
- iii. any amendment to the fund's constitutional documents.

3.8 Fees

3.8.1 Once granted recognition, private investment fund is subject to initial and ongoing fees, as detailed in Schedule II.

APPENDIX I – [OMITTED]

The forms to these Guidelines have not been included and are available from your Conyers contact upon request, or by visiting the BVI FSC website: <https://www.bvifsc.vg/library/guidance>.

APPENDIX II – FEES

The table below details the application, recognition and annual fees applicable to private investment funds:

Description	Fees
Application for recognition as a private investment fund	\$700
Recognition of a private investment fund on or before June 30th	\$1000
Recognition of a private investment fund after June 30th	\$500
Annual renewal for recognition as a private investment fund	\$1000

BRITISH VIRGIN ISLANDS FINANCIAL SERVICES COMMISSION

FUND SAFEKEEPING ARRANGEMENTS GUIDELINES

[Approved by the Board of Commissioners – 30 December, 2019]

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INTRODUCTION

(i) The ability of a fund to ensure the protection and security of fund property is core to fund's operations and the preservation of investor interests. It is on this basis that regulation 6 (1) of the Private Investment Funds Regulations, 2019 requires a private investment fund to have at all times, an appointed person responsible for the safekeeping of the fund's assets. In addition, regulation 9(1)(c) of the Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015 requires incubator funds and approved funds to have appropriate arrangements in place for the safekeeping of fund property.

(ii) These Guidelines are issued in accordance with section 41A of the Financial Services Commission Act and serve to inform on the types of arrangements that the Commission considers appropriate for the safekeeping of fund property and the ultimate security of fund assets.

SAFEKEEPING ARRANGEMENTS

1. The safekeeping arrangements that a private investment fund, incubator fund or approved fund must have in place are dependent on the type of assets that the fund may hold. The paragraphs below detail the types of arrangements the Commission considers appropriate for a private investment fund, incubator fund or approved fund based on the particular asset type of the fund. A private investment fund, incubator fund or approved fund is required at the time of authorisation and at all times to be in a position to demonstrate that safekeeping arrangements are in place. Where safe keeping arrangements have ceased or are altered, the fund is required to notify the Commission of such changes.

1.1 Investments in Financial Instruments

Where a fund invests in financial instruments such as stocks, bonds, futures, contracts for difference, options, etc., the fund should maintain appropriate safekeeping arrangements with an appropriately licensed and/or qualified person with expertise in dealing in such assets. Customarily this person can be a traditional custodian. A fund may also establish such an arrangement with a prime broker that establishes custodial arrangements for the transactions being undertaken on behalf of the funds.

1.2 Investments in Tangible Assets

Where a fund invests in tangible assets such as land, real estate, equipment, private equity, etc., a traditional custodian or prime broker is not required. A fund however must ensure that it appoints a person that has the responsibility of ensuring that documentation with respect to the fund's ownership of such assets is maintained and safeguarded. A fund must ensure that such person has sufficient expertise and resources to carry out the function.

1.3 Investments in Other Funds

Where a fund operates as a feeder fund in a master/feeder fund structure or operates in a fund of funds structure and places all its investments in another fund or in a number of funds, the fund must ensure

that a person is responsible for ensuring that the underlying fund or funds have appropriate custodial or safekeeping arrangements in place in relation to the underlying fund assets and understand these arrangements. This person would also have responsibility for monitoring of investments in and redemptions from the underlying funds.

BRITISH VIRGIN ISLANDS FINANCIAL SERVICES COMMISSION

FUND FINANCIALS GUIDELINES

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INTRODUCTION

(i) The Commission requires that mutual funds and private investment funds, prepare and submit financial statements to the Commission. Financial statements aid the Commission in understanding the financial capabilities of a mutual fund or private investment fund. Submitted financial statements form part of the Commission's ongoing assessment of a fund's financial soundness and serves as one of the key indicators that a fund may be in financial distress, which may negatively affect its investors. The requirements of funds that relate to the preparation and submission of financial statements are as follows:

- section 75 of the Securities and Investment Business Act ("SIBA") requires public funds to prepare and submit financial statements, within 6 months after the fund's financial year end;
- regulations 10 of the Mutual Funds Regulations ("the MF Regulations") and the Private Investment Funds Regulations, 2019 ("the PIF Regulations") require private and professional funds and private investment funds respectively to prepare and submit financial statements, within 6 months after the fund's financial year end; and
- Regulation 17 of the Securities and Investment Business (Incubator and Approved Funds) Regulations, 2015 requires incubator and approved funds to submit financial statements within 6 months after the fund's financial year end.

(ii) In addition, public funds, private and professional funds are required by SIBA and the Mutual Funds Regulations respectively to have an auditor appointed at all times.

(iii) While noting that the preparation of financial statements are core to the assessment of a fund's financial health, the Commission recognises that there are certain circumstances where it may be impractical or unfeasible for a fund to have its financial statements audited, have its financial statements prepared and submitted within the specified timeframe or to maintain an auditor. On this basis, the Financial Services (Miscellaneous Exemptions) Regulations ("the Miscellaneous Exemptions Regulations"), allow funds to apply to the Commission for a grant of an exemption from the requirement to prepare and submit financial statements. The MF Regulations in addition, allows for private and professional funds to seek exemptions from the requirement to appoint an auditor. SIBA, the MF Regulations and the PIF Regulations also permit the Commission to grant public funds, incubator and approved funds, private and professional funds and private investment funds an extension of time to submit financial statements.

(iv) SIBA, the MF Regulations and the PIF Regulations establish the auditing standards against which an auditor must prepare its audit report. Notwithstanding, these legislation allow the Commission to approve an auditing standard on a case by case basis.

(v) These Guidelines are issued in accordance with section 41A of the Financial Services Commission Act and elaborate on applications for fund exemptions and extensions as it relates to the preparation and submission of financial statements, the appointment of an auditor and the approval of

an auditing standard. These Guidelines encompass considerations in relation to private, professional, public funds, private investment, incubator and approved funds. These Fund Financials Guidelines detail the circumstances under which the Commission may consider granting an exemption from the requirement to prepare and submit financial statements, an exemption from the requirement to appoint an auditor, an extension of time for the preparation and submission of audited financial statements and approval of new auditing standards. The Guidelines also stipulate the information required when making relevant applications. An Appendix to the Guidelines also outlines the applicable fees payable when submitting an application for an exemption or an extension.

INTERPRETATION

1. For the purpose of these Guidelines,

“good regulatory standing” means:

- (i) the fund’s regulatory fees and fees at the Registry of Corporate Affairs, prudential returns (where applicable) and any other filing and reporting requirement in respect of the fund are up to date;
- (ii) all of the fund’s directors and functionaries requiring approval or notification are so approved or notified; and
- (iii) there are no outstanding regulatory or enforcement concerns with respect to the fund that have not been addressed by the Commission and the fund;

“mutual fund” means a public fund registered or a private or professional fund recognised under the Securities and Investment Business Act or an incubator fund or approved fund under the Securities and Investment Business (Incubator and Approved Funds) Regulations; and

“relevant financial year” means the specific financial year for which a fund is:

- (i) seeking an exemption from preparing and submitting financial statements; or
- (ii) seeking an extension of time for preparing and submitting financial statements.

PART I - EMPTION FROM SUBMITTING AUDITED FINANCIAL STATEMENTS

2. This Part applies to all mutual funds and private investment funds that are seeking exemptions from the requirement to prepare and submit financial statements for a relevant financial year.

APPLICATION FOR AN EXEMPTION

2.1 A mutual fund or a private investment fund that wishes to be exempted from the requirement to prepare and submit financial statements for a relevant financial year must make an application in writing to the Commission.

2.2 The legislative basis for the submission and consideration of such applications are contained within the Miscellaneous Exemptions Regulations under the following:

- i. paragraphs 2 (1) and 2 (2) of Schedule 5 of the Miscellaneous Exemptions Regulations, in relation to a public fund;
- ii. paragraph 2 (3) of Schedule 5 of the Miscellaneous Exemptions Regulations, in relation to private and professional funds and incubator and approved funds; and

- iii. paragraph 2 (3A) of Schedule 5 of the Miscellaneous Exemptions Regulations, in relation to private investment funds.

2.3 In order for an application to be considered, it must:

- i. be submitted to the Commission (Director, Investment Business Division) within the relevant timeframe specified in paragraph 2.4;
- ii. contain the information detailed under paragraphs 2.7 and 2.8 (where relevant); and
- iii. be accompanied by the relevant application fee as detailed in the Appendix.

TIMEFRAMES FOR SUBMITTING APPLICATIONS FOR EXEMPTIONS

2.4 Table 1 below details the timeframes in which a public fund, private and professional fund, incubator fund and approved fund and private investment fund must submit its application, based on the particular circumstance of the fund:

Table 1

FUND TYPE	CIRCUMSTANCE	TIMEFRAME
Public Fund	Never Commenced Business	Within 6 months after the relevant financial year end
Public Fund	Conducted business within the financial year	Within 3 months after the relevant financial year end
Private Fund Professional Fund Private Investment Fund Incubator Fund Approved Fund	All circumstances	Within 6 months after the relevant financial year end

2.5 Where a fund submits its application after the relevant timeframe, the application will not be considered. The fund will be required to submit its financial statements within 6 months of the relevant financial year end, or will be considered to be in breach of its requirements and subject to enforcement action.

CONSIDERATIONS FOR EXEMPTIONS

2.6 The Commission may consider a fund's application for an exemption from the requirement to prepare and submit financial statements under the following circumstances, taking into account the nature, size, type and complexity of the fund's business:

- 2.6.1 The fund never commenced or has not conducted any business during the relevant financial year;
- 2.6.2 The fund has limited business activities (generally has a NAV of less than \$US1 million) with a small number of investors (generally less than 30 investors);

- 2.6.3 The fund is a feeder fund that invests all of its assets into a master fund, where the audits are prepared and consolidated through the master fund;
- 2.6.4 The fund has no assets or liabilities and all investors have been redeemed and/or is closed to new investors;
- 2.6.5 The fund was approved to commence liquidation during the relevant financial year;
- 2.6.6 The fund was in voluntary liquidation or insolvent liquidation during the relevant financial year;
- 2.6.7 The fund suspended or was in the process of suspending its NAV calculations during the relevant financial year; or
- 2.6.8 The fund wishes to change its financial year end.

GENERAL INFORMATION

2.7 An application for an exemption from the requirement to prepare and submit audited financial statements must contain the following information:

- 2.7.1 The relevant financial year for which the fund is seeking an exemption;
- 2.7.2 The rationale for the fund's application for an exemption;
- 2.7.3 A copy of the fund's unaudited financial statements for the relevant financial year (where it has conducted business);
- 2.7.4 Confirmation that the fund is in good regulatory standing;
- 2.7.5 Evidence that investors were made aware of the fund's decision to seek the exemption, as well as their consent (where a fund has investors); and
- 2.7.6 Details of the circumstances of the fund, as at the end of the relevant financial year (i.e. total assets, total # of investors, NAV and NAV per share).

ADDITIONAL INFORMATION

2.8 An application for an exemption from the requirement to prepare and submit financial statements must contain the additional information detailed below, where the particular circumstances apply to a fund:

- 2.8.1 Where a fund has not commenced business; the date on which the fund anticipates it will commence business;
- 2.8.2 Where a fund has no assets or liabilities, is inactive and/or closed to new investors; an indication of the fund's intended way forward, including relevant timeframes and confirmation as to whether the fund intends to surrender its authorisation; or
- 2.8.3 Where a fund suspended or was in the process of suspending the calculation of its NAV within the relevant financial year:
 - i. a copy of the board resolution authorising the suspension of the NAV calculations;
 - ii. confirmation as to whether or otherwise investors have been notified of the suspension of NAV calculations and investor redemptions, and if so, evidence of such notification;
 - iii. confirmation as to whether or otherwise there are any legal actions pending in relation to the fund, and if so, details of such actions; and

- iv. an indication as to when the fund anticipates that NAV calculations will resume.

PART II - EXEMPTION FROM THE REQUIREMENT TO APPOINT AN AUDITOR

- 3. This Part applies only to private and professional funds that wish to seek an exemption from the requirement to appoint an auditor.

APPLICATION FOR AN EXEMPTION FROM THE REQUIREMENT TO APPOINT AN AUDITOR

- 3.1 A private or professional fund must at all times have an appointed auditor. Regulation 10(2) of the Mutual Funds Regulations however permits the Commission to grant an exemption to a private or professional fund from the requirement to appoint an auditor.
- 3.2 A private or professional fund that wishes to be exempted from the requirement to appoint an auditor must make an application in writing to the Commission. The application may be made at any time during the tenure of the private or professional fund and must be accompanied by the relevant application fee as detailed in the Appendix.

CONSIDERATIONS FOR EXEMPTIONS

- 3.3 The Commission may consider a private or professional fund's application for an exemption from the requirement to appoint an auditor under the following circumstances, taking into account the nature, size, type and complexity of the fund's business:
 - 3.3.1 The fund has never commenced business;
 - 3.3.2 The fund has limited business activities (generally has an NAV of less than \$US1 million) with a small number of investors (generally less than 30 investors);
 - 3.3.3 The fund had no assets or liabilities and all investors have been redeemed and/or is closed to new investors;
 - 3.3.4 The fund has ceased conducting regulated business (evidence of cessation of business includes redemption of all its investors, sale of assets, board resolution indicating that the fund has ceased business including the date when this was done) and intends to cancel its Certificate of Recognition within a 3 month period (such intention should be communicated via a board resolution);
 - 3.3.5 The fund has been approved to commence voluntary liquidation during the relevant financial year;
 - 3.3.6 The fund was in voluntary or insolvent liquidation during the relevant financial year; or
 - 3.3.7 The fund has suspended or is in the process of suspending NAV calculations.

GENERAL INFORMATION

- 3.4 An application for an exemption from the requirement to appoint an auditor must contain the following information:
 - 3.4.1 the rationale for the fund's application for an exemption;
 - 3.4.2 evidence that investors were made aware of the fund's decision to seek the exemption, as well as their consent (where the fund has investors);
 - 3.4.3 a copy of the fund's latest unaudited financial statements (where it has conducted business); and

- 3.4.4 details of the current circumstances of the fund (i.e. total assets, total investors, latest NAV and NAV per share).

ADDITIONAL INFORMATION

3.5 An application for an exemption from the requirement to appoint an auditor must contain the additional information detailed below, where the particular circumstances apply to a particular private or professional fund:

- 3.5.1 Where a fund has not commenced business; the date on which the fund anticipates it will commence business;
- 3.5.2 Where a fund has no assets or liabilities, is inactive and/or closed to new investors; an indication of the fund's intended way forward, including relevant timeframes and confirmation as to whether the fund intends to cancel its Certificate of Recognition;
- 3.5.3 Where a fund suspended the calculation of its NAV within the relevant year:
 - i. a copy of the board resolution authorising the suspension of the NAV calculations;
 - ii. confirmation as to whether or otherwise investors have been notified of suspension of redemptions, and if so, evidence of such notification;
 - iii. confirmation as to whether or otherwise there are any legal actions pending in relation to the fund, and if so, details of such legal actions; and
 - iv. the date that the fund anticipates that the calculation of NAV will resume.

CONDITIONAL APPROVAL

3.6 Where the Commission grants an exemption from the requirement to appoint an auditor, the exemption is only valid where the circumstances disclosed continue to exist. Where the circumstances deviate from those disclosed to the Commission in its application, a private or professional fund must immediately notify the Commission and put measures in place to comply with the requirement to appoint an auditor.

PART III - EXTENSION OF TIME FOR SUBMISSION OF FINANCIAL STATEMENTS

4. This Part applies to all mutual funds and private investment funds that require an extension of time to prepare and submit financial statements.

APPLICATION FOR AN EXTENSION

4.1 A mutual fund or a private investment fund that has a reasonable explanation as to why it cannot submit its financial statements within 6 months after a relevant financial year end, may submit an application for an extension of the time to prepare and submit audited financial statements.

4.2 The legislative basis that allows for such extensions are as follows:

- i. regulation 10(4) of the Mutual Funds Regulations, in relation to private and professional funds;
- ii. section 73 of the Securities and Investment Business Act, in relation to public funds, incubator and approved funds; and
- iii. regulation 10(3) of the Private Investment Funds Regulations, in relation to private investment funds.

4.3 In order for an application for an extension to be considered it must be submitted to the Commission (Director, Investment Business Division) within 6 months after the fund's relevant financial year end, contain the information detailed under paragraphs 4.5 and 4.6 and be accompanied by the relevant application fee as detailed in the Appendix.

CONSIDERATIONS FOR EXTENSIONS

4.4 The Commission may consider a fund's application for an extension of time to prepare and submit financial statements under the following circumstances, taking into account the nature, size, type and complexity of the fund's business:

- 4.4.1 The fund operates in a fund of funds structure and the auditor of the fund must await the finalisation of the audited accounts of the underlying funds in order to finalise the fund's audit;
- 4.4.2 The fund's auditor encounters accounting difficulties (e.g. errors in accounting calculations, difficulties in accessing information from third parties) which result in a delay in the completion of the auditor's work to opine on the financial statements;
- 4.4.3 There was a change in the fund's auditor or administrator during the relevant financial year which results in a delay in the completion of the fund's audit;
- 4.4.4 The fund's auditor requires additional time for the completion of the fund's audit;
- 4.4.5 the fund's current audit is delayed due to a failure to complete previous years' audits; or
- 4.4.6 the fund has suspended its NAV calculation and redemptions due to issues with its broker (e.g. bankruptcy).

GENERAL INFORMATION

4.5 An application for an extension of time to submit financial statements must contain the following information:

- 4.5.1 The relevant financial year for which the fund is seeking an extension;
- 4.5.2 The rationale for the fund's application for an extension submitted by the fund's auditor;
- 4.5.3 An indication of the anticipated timeframe for completion and submission of the audited financial statements; and
- 4.5.4 Details of the circumstances of the fund, as at the end of the relevant financial year (i.e. total assets, total # of investors, NAV and NAV per share).

ADDITIONAL INFORMATION

4.6 An application for an extension of time to prepare and submit audited financial statements must contain the additional information detailed below, where the particular circumstances apply to a specific public, private, professional or private investment fund:

- 4.6.1 Where the fund operates in a fund and fund structure and its auditor is awaiting information from the underlying funds:
 - i. details of the investments of the underlying fund(s);
 - ii. confirmation as to whether the investments/assets of the underlying fund(s) are illiquid; and

- iii. an indication as to whether the auditor is awaiting the completion of the audit of underlying fund(s) or verifications of the fund's valuation as required under the auditor's auditing standard;
- 4.6.2 Where the fund's auditor encountered difficulties in gathering information or there was a change in the fund's auditor or administrator:
 - i. an elaboration from the auditor on the particular issue;
 - ii. an indication as to whether the fund's assets are illiquid; and
 - iii. an indication as to whether the auditor is awaiting further verifications of valuations required by the auditor's auditing standard; or
- 4.6.3 Where a fund suspended the calculation of its NAV and redemptions due to issues with its broker:
 - i. an indication as to whether the fund's assets are frozen, at the time of application;
 - ii. the percentage of the fund's assets that were exposed due to the broker's issues;
 - iii. confirmation as to whether the fund asset exposure is likely to affect the continued operation of the fund;
 - iv. confirmation as to whether the fund intends to appoint a new broker;
 - v. an explanation as to how the fund intends to recover its assets;
 - vi. confirmation as to whether any investor complaints had been filed as a result of the suspension of NAV calculations and investor redemptions, and if so, an explanation as to how the complaints have been handled; and
 - vii. a copy of the fund's schedule of investments.

MAXIMUM EXTENSION TIME

4.7 Table 2 below details the maximum amount of extended time (in addition to the 6 month period for which funds are allowed to submit financial statements) a fund can be granted to prepare and submit financial statements for a relevant financial year, by type of fund:

Table 2

Fund Type	Maximum Extension Time
Public Fund	6 months
Private Fund	9 months
Professional Fund	
Private Investment Fund	

PART IV - APPROVAL OF AUDITING STANDARDS ON A CASE BY CASE BASIS

5. This Part applies to all funds whose auditor wishes to audit the funds' financial statements against a standard that has not been accepted under the Mutual Funds Regulations or the Private Investment Funds Regulation, 2019.

AUDITING STANDARDS

5.1 Pursuant to the Mutual Funds Regulations and the Private Investment Funds Regulation, 2019, the auditor of a fund must audit a fund's financial statements in accordance with the following standards:

- 5.1.1 US Generally Accepted Auditing Standards;
- 5.1.2 International Standards on Auditing (UK);
- 5.1.3 International Standards on Auditing;
- 5.1.4 Hong Kong Standards on Auditing; and
- 5.1.4 Canadian Auditing Standards.

5.2 The Regulations further allow a fund's financial statements to be audited in accordance with such other auditing standards as may be approved by the Commission on a case-by-case basis. Where a fund's auditor wishes to prepare the fund's audit report in accordance with a standard that has not been specified in the Regulations, the fund must submit an application to the Commission for the approval of the auditing standard. Such application will only be considered on an exceptional basis, where the fund has set out a compelling case as to why the auditing standard should be approved.

APPLICATION FOR CONSIDERATION OF AUDITING STANDARDS

5.3 An application for consideration of an audit standard must contain the following information:

- 5.3.1 the name of the auditing standard;
- 5.3.2 the name of the body that issued the auditing standard;
- 5.3.3 a copy of the auditing standards;
- 5.3.4 the auditor's assessment as to how the auditing standards are equivalent to one of the auditing standards that have already been accepted by the Commission; and
- 5.3.5 a case that sets out the reason why the Commission should consider the auditing standard for approval.

5.4 The Commission will only grant approval of an auditing standard where it is satisfied that the auditing standard is equivalent to the standards that the Commission has already accepted and it acknowledges that it would be difficult for the fund to use one of the standards already approved. Where the Commission has considered and approved the auditing standard in relation to a particular fund, the auditing standard will be considered as an approved auditing standard under the Regulations.

APPENDIX - FEES

Table 3 below details the fees applicable for seeking an exemption from the requirement to submit financial statements, an exemption from the requirement to appoint an auditor and an extension of time for preparing and submitting audited financial statements.

Table 3

DESCRIPTION	FUND TYPE	FEES
Application for exemption from preparing and submitting financial statements	Public Funds	\$250
	Private Funds	
	Professional Funds	

	Incubator Funds Approved Funds Private Investment Funds	
Exemption from preparing and submitting financial statements for any given year	Public Funds Private Funds Professional Funds Incubator Funds Approved Funds Private Investment Funds	\$500
Application to be exempted from appointing an auditor	Private Funds Professional Funds	\$500
Application for extension of time for submission of financial statements and reports	Public Funds Incubator Funds Approved Funds	\$750
Approval of extension for the provision of copy of financial statements by a private or professional fund	Private Funds Professional Funds Private Investment Funds	\$500

Endnotes

- ¹ Securities and Investment Business (Amendment) Act 2023
- ² Securities and Investment Business (Amendment) Act 2012, section 2
- ³ Securities and Investment Business (Amendment) Act 2019
- ⁴ Securities and Investment Business (Amendment) Act 2019
- ⁵ Securities and Investment Business (Amendment) Act 2023
- ⁶ Securities and Investment Business (Amendment) Act 2023
- ⁷ Securities and Investment Business (Amendment) Act 2012, section 3(a)
- ⁸ Securities and Investment Business (Amendment) Act 2023
- ⁹ Securities and Investment Business (Amendment) Act 2023
- ¹⁰ Securities and Investment Business (Amendment) Act 2023
- ¹¹ Securities and Investment Business (Amendment) Act 2012, section 3(b)
- ¹² Securities and Investment Business (Amendment) Act 2012, section 3(c)
- ¹³ Securities and Investment Business (Amendment) Act 2023
- ¹⁴ Securities and Investment Business (Amendment) Act 2012, section 3(d)
- ¹⁵ Securities and Investment Business (Amendment) Act 2019
- ¹⁶ Securities and Investment Business (Amendment) Act 2012, section 4(a)
- ¹⁷ Securities and Investment Business (Amendment) Act 2012, section 4(b)
- ¹⁸ Securities and Investment Business (Amendment) Act 2012, section 4(c)
- ¹⁹ Securities and Investment Business (Amendment) Act 2012, section 4(c)
- ²⁰ Securities and Investment Business (Amendment) Act 2012, section 4(d)
- ²¹ Securities and Investment Business (Amendment) Act 2012, section 5(a)
- ²² Securities and Investment Business (Amendment) Act 2012, section 5(b)
- ²³ Securities and Investment Business (Amendment) Act 2012, section 5(b)
- ²⁴ Securities and Investment Business (Amendment) Act 2012, section 6
- ²⁵ Securities and Investment Business (Amendment) Act 2012, section 7
- ²⁶ Securities and Investment Business (Amendment) Act 2015, section 2
- ²⁷ Securities and Investment Business (Amendment) Act 2019
- ²⁸ Securities and Investment Business (Amendment) Act 2019
- ²⁹ Securities and Investment Business (Amendment) Act 2019
- ³⁰ Securities and Investment Business (Amendment) Act 2019
- ³¹ Securities and Investment Business (Amendment) Act 2019
- ³² Securities and Investment Business (Amendment) Act 2019
- ³³ Securities and Investment Business (Amendment) Act 2019
- ³⁴ Securities and Investment Business (Amendment) Act 2019
- ³⁵ Securities and Investment Business (Amendment) Act 2019
- ³⁶ Securities and Investment Business (Amendment) Act 2019
- ³⁷ Securities and Investment Business (Amendment) Act 2023
- ³⁸ Securities and Investment Business (Amendment) Act 2019
- ³⁹ Securities and Investment Business (Amendment) Act 2019
- ⁴⁰ Securities and Investment Business (Amendment) Act 2019
- ⁴¹ Securities and Investment Business (Amendment) Act 2019
- ⁴² Securities and Investment Business (Amendment) Act 2019
- ⁴³ Securities and Investment Business (Amendment) Act 2019
- ⁴⁴ Securities and Investment Business (Amendment) Act 2012, section 8
- ⁴⁵ Securities and Investment Business (Amendment) Act 2012, section 9(a)
- ⁴⁶ Securities and Investment Business (Amendment) Act 2012, section 9(b)
- ⁴⁷ Securities and Investment Business (Amendment) Act 2012, section 10
- ⁴⁸ Securities and Investment Business (Amendment) Act 2019
- ⁴⁹ Securities and Investment Business (Amendment) Act 2019
- ⁵⁰ Securities and Investment Business (Amendment) Act 2019
- ⁵¹ Securities and Investment Business (Amendment) Act 2012, section 11
- ⁵² Securities and Investment Business (Amendment) Act 2019
- ⁵³ Securities and Investment Business (Amendment) Act 2015, section 3
- ⁵⁴ Securities and Investment Business (Amendment) Act 2015, section 3
- ⁵⁵ Securities and Investment Business (Amendment) Act 2015, section 3
- ⁵⁶ Securities and Investment Business (Amendment) Act 2019
- ⁵⁷ Securities and Investment Business (Amendment) Act 2019

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- ⁵⁸ Securities and Investment Business (Amendment) Act 2019
⁵⁹ BVI Securities and Investment Business (Amendment of Schedule 8) Order, 2010
⁶⁰ BVI Securities and Investment Business (Amendment of Schedule 8) Order, 2010
⁶¹ BVI Securities and Investment Business (Amendment of Schedule 8) Order, 2010
⁶² BVI Securities and Investment Business (Amendment of Schedule 8) Order, 2010
⁶³ Securities and Investment Business (Amendment) Act 2019
⁶⁴ BVI Securities and Investment Business (Amendment of Schedule 8) Order, 2010
⁶⁵ BVI Securities and Investment Business (Amendment of Schedule 8) Order, 2010
⁶⁶ BVI Securities and Investment Business (Amendment of Schedule 8) Order, 2010
⁶⁷ BVI Securities and Investment Business (Amendment of Schedule 8) Order, 2010
⁶⁸ BVI Securities and Investment Business (Amendment of Schedule 8) Order, 2011
⁶⁹ BVI Securities and Investment Business (Amendment of Schedule 8) Order, 2010
⁷⁰ BVI Securities and Investment Business (Amendment of Schedule 8) Order, 2010
⁷¹ BVI Securities and Investment Business (Amendment of Schedule 8) Order, 2010
⁷² BVI Securities and Investment Business (Amendment of Schedule 8) Order, 2010
⁷³ BVI Securities and Investment Business (Amendment of Schedule 8) Order, 2010
⁷⁴ Securities and Investment Business (Amendment) Act 2019
⁷⁵ BVI Securities and Investment Business (Amendment of Schedule 8) Order, 2010
⁷⁶ Mutual Funds (Amendment) Regulations, 2019
⁷⁷ Mutual Funds (Amendment) Regulations, 2019
⁷⁸ Mutual Funds (Amendment) Regulations, 2019
⁷⁹ Mutual Funds (Amendment) Regulations, 2019
⁸⁰ Mutual Funds (Amendment) Regulations, 2010
⁸¹ Mutual Funds (Amendment) Regulations, 2019
⁸² Mutual Funds (Amendment) Regulations, 2019
⁸³ Mutual Funds (Amendment) Regulations, 2019
⁸⁴ Mutual Funds (Amendment) Regulations, 2019
⁸⁵ Mutual Funds (Amendment) Regulations, 2019
⁸⁶ Mutual Funds (Amendment) Regulations, 2019
⁸⁷ Mutual Funds (Amendment) Regulations, 2019
⁸⁸ Mutual Funds (Amendment) Regulations, 2010
⁸⁹ Mutual Funds (Amendment) Regulations, 2019
⁹⁰ Mutual Funds (Amendment) Regulations, 2019
⁹¹ Mutual Funds (Amendment) Regulations, 2019
⁹² Mutual Funds (Amendment) Regulations, 2019
⁹³ Investment Business (Approved Managers) Amendment Regulations, 2013
⁹⁴ Investment Business (Approved Managers) Amendment Regulations, 2013
⁹⁵ Investment Business (Approved Managers) Amendment Regulations, 2013
⁹⁶ Investment Business (Approved Managers) Amendment Regulations, 2013
⁹⁷ Investment Business (Approved Managers) Amendment Regulations, 2013
⁹⁸ Investment Business (Approved Managers) Amendment Regulations, 2013
⁹⁹ Investment Business (Approved Managers) Amendment Regulations, 2013
¹⁰⁰ Investment Business (Approved Managers) Amendment Regulations, 2013
¹⁰¹ Securities and Investment Business (Incubator and Approved Funds) (Amendment) Regulations, 2019
¹⁰² Securities and Investment Business (Incubator and Approved Funds) (Amendment) Regulations, 2019
¹⁰³ Securities and Investment Business (Incubator and Approved Funds) (Amendment) Regulations, 2019
¹⁰⁴ Securities and Investment Business (Incubator and Approved Funds) (Amendment) Regulations, 2019
¹⁰⁵ Securities and Investment Business (Incubator and Approved Funds) (Amendment) Regulations, 2019
¹⁰⁶ Securities and Investment Business (Incubator and Approved Funds) (Amendment) Regulations, 2019
¹⁰⁷ Securities and Investment Business (Incubator and Approved Funds) (Amendment) Regulations, 2019
¹⁰⁸ Securities and Investment Business (Incubator and Approved Funds) (Amendment) Regulations, 2019
¹⁰⁹ Financial Services (Fees) (Amendment) Regulations, 2017
¹¹⁰ Financial Services Commission (Fees) (Amendment) Regulations, 2010
¹¹¹ Financial Services Commission (Fees) (Amendment) Regulations, 2016
¹¹² Financial Services Commission (Securities and Investment Business Fees) (Amendment) Regulations, 2010
¹¹³ Financial Services (Fees) (Amendment) Regulations, 2017
¹¹⁴ Financial Services (Fees) (Amendment) (No. 2) Regulations, 2018
¹¹⁵ Financial Services Commission (Fees) (Amendment) Regulations, 2016
¹¹⁶ Financial Services Commission (Fees) (Amendment) Regulations, 2014
¹¹⁷ Financial Services (Fees) (Amendment) Regulations, 2019
¹¹⁸ Financial Services (Fees) (Amendment) Regulations, 2023
¹¹⁹ Financial Services (Miscellaneous Exemptions) (Amendment) Regulations, 2019

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- ¹²⁰ Financial Services (Miscellaneous Exemptions) (Amendment) Regulations, 2019
- ¹²¹ Financial Services (Miscellaneous Exemptions) (Amendment) Regulations, 2019
- ¹²² Financial Services (Miscellaneous Exemptions) (Amendment) Regulations, 2019
- ¹²³ Financial Services (Miscellaneous Exemptions) (Amendment) Regulations, 2019
- ¹²⁴ Financial Services (Miscellaneous Exemptions) (Amendment) Regulations, 2019
- ¹²⁵ BVI Securities and Investment Business (Recognised Jurisdictions) (Amendment) Notice, 2010
- ¹²⁶ Public Funds (Amendment) Code, 2020
- ¹²⁷ Public Funds (Amendment) Code, 2020
- ¹²⁸ Public Funds (Amendment) Code, 2020
- ¹²⁹ For examples of possible checks, see the IOSCO Report on Principles for the Valuation of Hedge Fund Portfolios referred to above.
- ¹³⁰ Amendment to the BVI FSC Approved Managers Guideline, issued by the FSC 24th February 2014
- ¹³¹ Amendment to the BVI FSC Approved Managers Guideline, issued by the FSC 24th February 2014
- ¹³² Amendment to the BVI FSC Approved Managers Guideline, issued by the FSC 24th February 2014