

VIRGIN ISLANDS
REGULATORY (AMENDMENT) CODE, 2019
ARRANGEMENT OF SECTIONS

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VIRGIN ISLANDS

STATUTORY INSTRUMENT 2019 NO. 69

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

Regulatory (Amendment) Code, 2019

[Gazetted 11th November, 2019]

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

Citation and commencement.

1. (1) This Code may be cited as the Regulatory (Amendment) Code, 2019.

(2) This Code shall come into force on the 13th day of November, 2019.

Section 14A inserted.
S.I. No. 60 of 2009

2. The Regulatory Code, 2009 (hereinafter referred to as “the principal Code”) is amended by inserting after section 14, the following new section:

“Staff training and development.

14A. A licensee shall establish and implement policies and procedures that require its employees to be adequately trained, or to undertake sufficient professional development, to perform their duties within the licensee.”.

Section 18 amended.

3. Section 18 of the principal Code is amended

(a) in subsection (1) (a)

(i) by deleting the word “and” at the end of sub-paragraph (i); and

(ii) by adding after sub-paragraph (ii), the following new sub-paragraph:

“(iii) the employees of the licensee are appropriately supervised; and”;

(b) by adding after subsection (3), the following new subsection:

“(4) A BVI licensee shall take all reasonable steps to ensure that it obtains sufficient information about its customers in order to

- (a) exercise a relevant discretion or other power in a proper manner; and
- (b) ensure that such discretion or power is only exercised for a proper purpose.”.

4. The principal Code is amended by adding after section 18, the following new sections: Sections 18A and 18B inserted.

“Terms of business.

18A. (1) A BVI licensee shall

- (a) inform its customer, in writing, of the agreed terms of business between the licensee and the customer, including the instructions received and the capacity and scope of discretion, if any, within which the licensee will act for the customer; and
- (b) ensure that the agreed terms of business include
 - (i) a description of the products and services to be provided;
 - (ii) the fees to be charged and the basis of the calculation of those fees;
 - (iii) where applicable, the terms upon which customers’ monies are to be held;
 - (iv) any exit fee and the basis upon which the fee is calculated; and

- (v) the means by which complaints about the licensee's services can be made.

(2) A written terms of business made in accordance with subsection (1) shall make provision that the relationship between the licensee and its customer shall be terminated upon giving reasonable notice, unless there are good reasons for not doing so.

Advertising and communication practices.

18B. A BVI licensee shall adopt advertising and communication practices that promote advertisement that is clear and fair, and is free of false or misleading statements.”.

Section 19 amended.

5. Section 19 of the principal Code is amended in subsection (2) (b), by revoking paragraph (v) thereof and substituting the following:

“(v) a Class I, Class II or Class IV trust licence, or a Class III or Class V licence, including a restricted Class II trust licence or a restricted Class III licence; or”.

Section 20 amended.

6. Section 20 of the principal Code is amended

(a) in subsection (2)

(i) in paragraph (d), by adding before the semi-colon in sub-paragraph (i), the words “whose competence it shall periodically review, having regard to the nature, size and complexity of the licensee;”;

(ii) in paragraph (f), by deleting the word “and” at the end of the paragraph;

(iii) by inserting after paragraph (f), the following new paragraphs:

“(g) delegating such functions of the board as the board considers appropriate;

(h) establishing a policy on conflicts of interest to address standards of behaviour within

the licensee, including the consequence for non-compliance with the policy; and”; and

(iv) by re-designating the existing paragraph (g) as paragraph “(i)”;

(b) by inserting after subsection (2), the following new subsection

“(2A) Where the board of a BVI licensee delegates a function under subsection (2) (g), it shall

(a) record or cause to be recorded the function that is delegated; and

(b) have ultimate responsibility for the performance of the function that has been delegated.”.

7. Section 30 of the principal Code is amended in subsection (2)

Section 30 amended.

(a) by deleting the word “and” at the end of paragraph (f);

(b) by deleting the full-stop at the end of paragraph (g) and substituting a semi-colon; and

(c) by adding after paragraph (g), the following new paragraphs:

“(h) undertake a self-assessment of its effectiveness with respect to the matters required of it under this Code; and

(i) ensure that, where applicable, the licensee has appropriate policies and procedures in place that enable a full understanding of the duties arising under the laws relevant to the administration and affairs of its customers for which the licensee is acting in other countries

(i) in which it is carrying on business; and

(ii) in which the assets are being managed or held.”.

Section 34
amended.

8. Section 34 of the principal Code is amended

- (a) in subsection (3)
 - (i) in paragraph (b), by deleting the word “and” at the end of that paragraph;
 - (ii) in paragraph (c), by deleting the full-stop and substituting the word “; and”; and
 - (iii) by adding after paragraph (c), the following new paragraph:
 - “(d) subject to subsection (3A), a Class I and Class II trust licence.”; and
- (b) by inserting after subsection (3), the following new subsections:

“(3A) Subsection (3) (d) does not apply in relation to the requirement of subsection (2), to a Class I or Class II trust licence if the licensee does not hold customer monies or, having regard to the nature, size and complexity of the licensee, the licensee determines that it does not require an internal audit function.

(3B) Where a licensee determines that it does not require an internal audit function under subsection (3A), it shall, within 14 days of making that determination, notify the Commission in writing of that fact, stating its reasons.”.

Section 45
amended.

9. Section 45 of the principal Code is amended

- (a) in subsection (1) (v) by inserting after the words “nature and extent of each compliance breach”, the words “, the remedial action taken to address the breach and within what timeframe”; and
- (b) by inserting after subsection (1), the following new subsection:

“(1A) The annual compliance reports required under subsection (1) (b) (ii) and (iii) shall be prepared and submitted to the Commission within 3 months after the end of the year to which the report relates.”.

10.
follows:

Section 48 of the principal Code is revoked and substituted as

Section 48
revoked and
substituted

“Contents
of report.

48. The report submitted by the compliance officer shall, at a minimum, contain the following:

- (a) the number of employees within the regulated person, the names and positions of the employees that underwent training, including training in AML/CFT obligation, the content of material covered, the dates of the training, and a copy of the regulated person’s training register;
- (b) a list of any Virgin Islands laws that may have been breached by the regulated person, in compliance with the requirements of section 45 (1) (a) (v), the remedial action taken and within what time frame, and a copy of the regulated person’s register of compliance breaches;
- (c) the number of suspicious activity reports made during the year of the report;
- (d) a list of significant complaints made by the customers of the regulated person, indicating the dates of the complaints, the nature of the complaints, and how the complaints were dealt with;
- (e) an indication of whether there has been a significant breakdown in the internal

control structure of the regulated person, including any compliance risks that may be associated with the licensee's business relative to

- (i) its existing risk management strategy, policies, systems and controls, and whether the internal controls remain sufficient and appropriate for the licensee's business; and
 - (ii) whether the strategy, policies, systems and internal controls are being implemented and complied with in an effective manner;
- (f) confirmation of whether or not the licensee remains properly resourced, structured and organised to enable it to effectively undertake its business activities, including serving the number and types of its customers; and
- (g) confirmation of the level of compliance by the licensee with its reporting, filing and other obligations to the Commission under financial services legislation, the FSC Act and this Code.”.

The following Explanatory Notes are inserted immediately after section 48

EXPLANATORY NOTES

(i) *The Compliance Officer Report is an essential part of supervision of regulated persons. The Report is designed to assist both the licensee to which it relates and the Commission which supervises the licensee for compliance. The licensee benefits from the honest and impartial opinions of the Compliance Officer by having the opportunity to reflect on its compliance obligations to carry out necessary reforms and ensure appropriate compliance; the Commission is able to monitor the overall behaviour of the licensee to risk-assess it to ensure the good reputation of the jurisdiction.*

(ii) *The reporting obligations outlined in section 48 must be read together with the relevant sections in the FSC Act (34 and 35) and sections 45 to 47 of this Code in order to have a better appreciation of the obligations thrust on the Compliance Officer. Section 48 outlines the minimum obligations; the Compliance Officer is expected to act professionally and include in the Report all essential obligations under the FSC Act, this Code and financial services legislation even if those matters are not specified in the section but are considered essential to regulatory compliance.*

(iii) *The inclusion of the training measures undertaken by a licensee will enable the Commission to make an assessment of whether a licensee has the requisite staff numbers to effectively carry out its duties; this includes an assessment of the level of competence of the staff to appropriately carry out the duties of the licensee, especially in relation to the licensee's customers. It is therefore important that the Report contains all the information set out in section 48 (a). That information must, in addition, include an indication of whether the licensee has carried out any testing, following the training, in order to properly evaluate the trained staff's level of understanding and knowledge. The testing must outline the nature and form of the testing method employed in evaluating the staff's understanding and knowledge. In this respect and overall in relation to the training of staff, there is no need to submit (whether together or otherwise with the Report) the training material used and/or any certificates issued; it suffices to provide just a summary of the content of the material. However,*

the material and all other relevant documentation must be retained in the licensee's office to be viewed and assessed by the Commission during an onsite inspection.

(iv) With respect to any breaches of law by a licensee, the Compliance Officer has a legal obligation to report on the nature and extent of breaches, the number of breaches (in order to assess frequency and make an objective determination on compliance), the remedial action that has been taken and the time frame within which the remedial action was taken.

(v) While the Commission will not inquire into any detail of a suspicious activity report that has been filed with the FIA, it is considered important that the Report contains information on the frequency of such filing; excessive filing may point to a significant issue or issues that may require immediate resolution. It is best that such information is contained in the Report and shared with the Commission.

(vi) Sections 69A and 69B of the Code provide detailed mechanisms with respect to the receipt and handling of significant customer complaints. Compliance Officers should pay careful attention to those provisions and ensure appropriate inclusion in their Report.

(vii) One of the methods of determining competence and capability during the licensing process is (among other things) dependent on whether, if granted a licence, a licensee will ensure "that its business is, or will be, soundly and prudently run". This requires that a licensee is properly resourced, structured and organised. The Commission does not treat this requirement as a one-off obligation (that is, only at the licensing stage); it is an ongoing obligation and is designed to ensure that policies, procedures and controls, staff capabilities and the numbers and types of appointment to the licensee and to vehicles managed by the licensee remain in place and continue to be relevant and appropriate for the type or types of business undertaken and administered by the licensee. This requirement is irrespective of whether staff are appointed to business vehicles in their own name or through corporate directors or other indirect appointments. It is a requirement, therefore, that this information is reflected in the annual Report submitted to the Commission by Compliance Officers.

(viii) While the reporting obligations of Compliance Officers is generally pegged on an annual basis, the Commission is always

mindful about compliance risks that may negatively impact the Territory. It is, therefore, important that significant compliance risks are immediately brought to the attention of the Commission (see section 45 (1) (b) of the Code).

- 11.** Section 59 of the principal Code is amended by adding after subsection (2), the following new subsection: Section 59 amended.

“(3) Where an auditor has issued a management report with respect to an audit of a licensee, the licensee shall submit to the Commission a copy of the auditor’s management report and the management’s response to the report within 6 months after the end of the licensee’s financial year or, where an extension has been granted, within the period of the extension.”.

- 12.** Section 69A of the principal Code is amended Section 69A amended.

(a) by re-designating the current provision as subsection “(1)”; and

(b) by adding after subsection (1) as re-designated, the following new subsection:

“(2) The licensee shall

(a) ensure that the complaints handling mechanism established under subsection (1) is fair and timely; and

(b) advise its customers about the licensee’s complaints handling mechanism, including providing the customers with copies of the complaints handling mechanism.”.

- 13.** Section 160 of the principal Code is amended by adding after subsection (6), the following new subsection: Section 160 amended.

“(7) A licensed trust company and a licensed company manager shall notify the Commission and the licensee’s insurer of any claim or potential claim on its professional indemnity insurance.”.

- 14.** Schedule 1A of the principal Code is amended Schedule 1A amended.

(a) in paragraph 1

- (i) by inserting after the definition of “approved person”, the following new definition:

““controller”, with respect to an undertaking, means any person that has an influence over the activities of the undertaking without having a significant interest in the undertaking;”;

- (b) in paragraph 2, by inserting after the words “significant owner”, the word “, controller” in the opening paragraph;

- (c) in paragraph 3,

- (i) by deleting the word “and” at the end of paragraph (d);

- (ii) by deleting the full-stop at the end of paragraph (e) and substituting the word “; and”;

- (iii) by inserting after sub-paragraph (e), the following new sub-paragraph:

“(f) has a conflict of interest with the regulated person or applicant and whether there are policies and procedures in place to manage such conflicts.”.

- (b) by inserting after paragraph 8, the following new paragraph:

“8A. In assessing the financial soundness of a regulated person or applicant, the Commission will also assess the source of wealth and source of funds of the significant owner or controller of the regulated person. A regulated person must be able to demonstrate legitimate sources of funds and wealth of the significant owner or controller.”.

Issued by the Financial Services Commission this 11th day of November, 2019.

(Sgd.) Robert Mathavious,
Managing Director/CEO
Financial Services Commission