



TURKS AND CAICOS ISLANDS

CHAPTER 16.11
TRUST COMPANIES
(LICENSING AND SUPERVISION) ORDINANCE

Revised Edition
showing the law as at 31 March 2018

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance.

This edition contains a consolidation of the following laws—

	Page
TRUST COMPANIES (LICENSING AND SUPERVISION) ORDINANCE	3
Ordinance 6 of 2016 .. in force 15 September 2016 (L.N. 47/2016)	
TRUST COMPANIES REGULATIONS	43
Legal Notice 48/2016 .. in force 15 September 2016	
TRUST COMPANIES CODE	55
Legal Notice 49/2016 .. in force 15 September 2016	



TURKS AND CAICOS ISLANDS

CHAPTER 16.11
TRUST COMPANIES
(LICENSING AND SUPERVISION) ORDINANCE

Revised Edition
showing the law as at 31 March 2018

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance.

This edition contains a consolidation of the following laws—

	Page
TRUST COMPANIES (LICENSING AND SUPERVISION) ORDINANCE	3
Ordinance 6 of 2016 .. in force 15 September 2016 (L.N. 47/2016)	
TRUST COMPANIES REGULATIONS	43
Legal Notice 48/2016 .. in force 15 September 2016	
TRUST COMPANIES CODE	55
Legal Notice 49/2016 .. in force 15 September 2016	

CHAPTER 16.11

TRUST COMPANIES (LICENSING AND SUPERVISION) ORDINANCE

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

SECTION

1. Short title
2. Interpretation
3. The public interest

PART II

PROHIBITIONS, LICENSING AND CHANGES OF CONTROL AND MANAGEMENT

Prohibitions and restrictions

4. Prohibitions in relation to trust business
5. Restrictions on use of certain words, phrases and abbreviations

Licensing of trust companies

6. Categories of licence
7. Application for a licence
8. Issue of licence
9. Notification of decision
10. Commencement of trust business

Changes in control

11. Changes in control
12. Approval under section 11

Appointment of and changes in management and key functions

13. Appointment of and changes in directors, management and persons responsible for key functions

PART III

SUPERVISION OF LICENSED TRUST COMPANIES

Prudential requirements

14. Over-riding prudential requirements
15. Maintenance of paid-up share capital
16. Statutory deposit
17. Use of statutory deposit
18. Release of statutory deposit
19. Licensee to notify likely failure to comply
20. Restrictions in relation to the issue of shares
21. Approval for transfer of shares
22. Notice of change in beneficial ownership of shares

Governance and management

23. Governance framework
24. Risk management
25. Appointment of manager
26. Maintenance of key functions

Other obligations and restrictions

27. Branches and subsidiaries
28. Professional indemnity insurance
29. Customer assets
30. Effect of ceasing to be a licensee

Financial statements, audit and returns

31. Financial year
32. Financial statements
33. Maintenance of financial records
34. Preparation of financial statements
35. Appointment of auditor
36. Licensee's duties in relation to audit
37. Audit and audit report
38. Reporting obligations of auditors
39. Powers of Commission
40. Submission of financial statements to the Commission
41. Extension of time
42. Group financial statements
43. Submission of reports and returns

PART IV

PRIVATE TRUST COMPANIES

Interpretation for this Part

44. Interpretation for this Part
45. Unremunerated trust business
46. Connected person
47. Related trusts and groups of related trusts

Exemptions

48. Licensing exemption
49. Application of Financial Services Commission Ordinance

Obligations of private trust companies

50. Private trust company to have representative in the Islands
51. Private trust company not entitled to exemption

Appointed representatives

52. Obligations of appointed representative

PART V

MISCELLANEOUS PROVISIONS

53. Applications
54. Conditions
55. Recording of Deeds Ordinance not to apply to trust instruments in certain cases
56. Certain laws relating to confidentiality of information not to apply
57. False or misleading representations, statements, reports or returns
58. Offences by body corporate
59. Trust Law Advisory Committee

PART VI

FINAL PROVISIONS

60. Fees
61. Regulations
62. Code
63. Fit and proper criteria
64. Transitional Regulations

SCHEDULE: Disapplication and Modification of Financial Services Commission
Ordinance to Private Trust Companies

CHAPTER 16.11

TRUST COMPANIES (LICENSING AND SUPERVISION) ORDINANCE

AN ORDINANCE TO REPEAL AND REPLACE THE TRUSTEES LICENSING ORDINANCE AND TO MAKE PROVISION FOR THE LICENSING AND SUPERVISION OF TRUST COMPANIES; AND FOR CONNECTED PURPOSES.

Commencement

[15 September 2016]

PART I

PRELIMINARY

Short title

1. This Ordinance may be cited as the Trust Companies (Licensing and Supervision) Ordinance.

Interpretation

2. (1) In this Ordinance—

“approved bank” means—

(a) a person holding a National Banking Licence granted under the Banking Ordinance; or

(b) a person holding a licence equivalent to a National Banking Licence in a jurisdiction recognised by the Commission;

“approved form” means a form approved under section 44 of the Financial Services Commission Ordinance;

“auditor” means a person qualified under the Code to act as the auditor of a licensee;

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

“Code” means the Code issued under section 42 of the Financial Services Commission Ordinance;

“commencement date”, in relation to this Ordinance, means the date that the Ordinance comes into force;

“Commission” means the Turks and Caicos Islands Financial Services Commission established under the Financial Services Commission

Ordinance, 2001 and preserved and continued under the Financial Services Commission Ordinance;

“corporation” means a body corporate, wherever incorporated, registered or formed;

“country” includes a territory;

“Court” means the Supreme Court;

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

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

“financial statements” has the meaning specified in section 32;

“financial year” has the meaning specified in section 31;

“fit and proper criteria” means the fit and proper criteria specified by the Commission in accordance with section 63;

“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; or
- (e) an undertaking of which the first undertaking, or an undertaking specified in paragraphs (a) to (d), is a significant owner;

“key function” means a function specified in section 26;

“licence” means a licence granted under section 8;

“licensee” means a company that holds a licence;

“manager”, in relation to a licensee, means a person appointed as manager in accordance with section 25;

“paid-up share capital” has the meaning specified in regulations;

“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;

“private trust company” has the meaning specified in Part IV;

“regulations” means the regulations made under this Ordinance;

“restricted term” means a word, phrase or abbreviation that is specified in regulations as a word, phrase or abbreviation that suggests trust business;

“senior management”, in relation to a licensee, means—

- (a) the senior managers of the licensee collectively; or
- (b) where the context requires, those senior managers having responsibility for particular functions;

“senior manager”, in relation to a licensee, means an employee of the licensee who—

- (a) acts as the chief executive officer of the licensee or occupies an equivalent position under a different name;
- (b) holds a position that requires him to be answerable to the directors of the licensee;
- (c) has responsibility, whether alone or jointly with others, for a key function;
- (d) has responsibilities that include direct involvement in the licensee’s management or decision-making process at a senior level; or
- (e) has such other responsibilities as may be specified by the Code for the purpose of this definition;

“significant owner”, in relation to a licensee, means a person who exercises control over the licensee within the meaning specified in the Code;

“statutory deposit” means the deposit required to be made under section 16;

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

“trust business” means providing trust services by way of business;

“trust service” means—

- (a) acting as the trustee, enforcer, protector or administrator of trusts or settlements; or
- (b) managing or administering trusts or settlements;

“Turks and Caicos qualifying company” means a company that is formed and registered under the Companies Ordinance or an existing company within the meaning of that Ordinance, but excludes—

- (a) an exempted company;
- (b) a foreign company registered under Part XI of that Ordinance; and
- (c) a company that has been struck off the register of companies maintained under that Ordinance;

“Turks and Caicos Trust” has the meaning specified in the Trusts Ordinance;

“undertaking” means—

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

(2) Sections 3 and 4 of the Trusts Ordinance apply for determining the existence of a trust and the proper law of a trust, respectively.

(3) Without limiting the definition of trust business, a person is deemed to provide trust services by way of business if the person receives, directly or indirectly, any remuneration or financial compensation for the provision of a trust service.

The public interest

3. Where the Commission is permitted or required to consider or take into account the public interest, the public includes—

- (a) the public inside and outside the Islands; and
- (b) persons who have a legitimate interest in the decision to be made by the Commission.

PART II

PROHIBITIONS, LICENSING AND CHANGES OF CONTROL AND MANAGEMENT

Prohibitions and restrictions

Prohibitions in relation to trust business

4. (1) Subject to subsection (3)—

- (a) a person shall not carry on, or purport to carry on, trust business in the Islands; and
- (b) a Turks and Caicos qualifying company, and any other corporation incorporated or formed in the Islands, shall not carry on, or purport to carry on, trust business in any country outside the Islands,

unless the person or corporation is a licensee.

(2) Without limiting subsection (1), a person purports to carry on trust business if the person uses any name, style, designation, description, title or trade mark that represents or implies that the person carries on trust business, whether licensed or not.

(3) Subsection (1) does not apply to—

(a) a private trust company carrying on business as permitted by Part IV; or

(b) a person carrying on trust business as permitted by an exemption specified in regulations.

(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$20,000 or to a term of imprisonment of one year, or to both, and if the offence is a continuing one, to a further fine of \$500 for every day or part of a day during which the offence continues.

Restrictions on use of certain words, phrases and abbreviations

5. (1) Subject to subsections (2) and (3), a person shall not—

(a) use, whether in the name under which the person is registered or in the description or title under which the person carries on business, any restricted term; or

(b) make any representation, whether in a document or in any other manner, that is likely to suggest that the person is carrying on, or licensed or otherwise entitled to carry on, trust business.

(2) Subsection (1) does not apply to a licensee.

(3) Subsection (1)(a) does not apply to—

(a) a private trust company that has the benefit of the licensing exemption under section 48; or

(b) a person who is using a restricted term—

(i) with the prior written approval of the Commission; or

(ii) in accordance with an exemption specified in regulations.

(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$20,000 or to a term of imprisonment of one year, or to both, and if the offence is a continuing one, to a further fine of \$500 for every day or part of a day during which the offence continues.

Licensing of trust companies

Categories of licence

6. (1) A licence issued under this Ordinance shall be in one of the following categories—

(a) an unrestricted trust company licence, which authorises the licensee to carry on trust business in and from within the Islands;

(b) a restricted trust company licence, which is subject to the conditions specified in regulations.

(2) A licence shall be in writing and in the approved form and shall state the category of licence.

(3) Regulations may specify exemptions in relation to this Ordinance and the Financial Services Commission Ordinance applicable to, or in relation to, licensees with a restricted trust licence.

Application for a licence

7. (1) An application for a licence may be made by a Turks and Caicos qualifying company.

(2) An application under subsection (1) shall be accompanied by—

- (a) a business plan that complies with the Code; and
- (b) all other documents specified by the Code.

Issue of licence

8. (1) The Commission may issue a licence to an applicant if it is satisfied that—

- (a) the applicant satisfies the requirements of this Ordinance, the regulations and the Code with respect to the application;
- (b) the applicant intends, if issued with the licence, to carry on trust business;
- (c) the applicant will, on the grant of the licence, be able to comply with the statutory deposit requirements specified in section 16;
- (d) the applicant's ownership, corporate and management structure, governance framework, procedures and controls (including its risk management procedures and controls), or proposed procedures and controls and financial resources are appropriate having regard to the nature, scale and complexity of the applicant's trust business or proposed trust business;
- (e) the applicant intends, and has the ability, to carry on its trust business in compliance with applicable requirements of this Ordinance, the regulations and the Code;
- (f) the applicant has the ability to comply with any conditions the Commission intends to attach to the licence under section 54;
- (g) the applicant's significant owners, directors, senior managers and persons responsible for key functions, individually and collectively, satisfy the Commission's fit and proper criteria; and
- (h) issuing the licence is not against the public interest.

(2) Without limiting the discretion given to the Commission under subsection (1), the Commission may refuse to issue a licence to an applicant if it

has reasonable grounds for believing that any person having an interest in the applicant does not satisfy the Commission's fit and proper criteria.

(3) A decision of the Commission under this section is final and is not subject to appeal to, or review by, any court or other authority.

Notification of decision

9. The Commission shall, within fourteen days of determining an application, give written notice of its decision to the applicant.

Commencement of trust business

10. (1) A person granted a licence shall notify the Commission, in writing, within fourteen days of commencing its trust business.

(2) If a licensee does not commence its licensed business within twelve months of the date of the license, it shall not commence the licensed business without the prior written approval of the Commission.

(3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of \$5,000.

Changes in control

Changes in control

11. (1) A person shall not become a significant owner of a licensee, except with the prior written approval of the Commission.

(2) A person who is a significant owner of a licensee shall not, except with the prior written approval of the Commission—

- (a) increase or reduce the person's control over the licensee, within the meaning of the Code; or
- (b) cease to be a significant owner of the licensee.

(3) A licensee shall not cause, permit or acquiesce in any dealing with its shares that would result in a person contravening subsection (1) or (2).

(4) A person who contravenes subsection (1) or (2) commits an offence and is liable—

- (a) on summary conviction, to a fine of \$20,000 or to a term of imprisonment of two years, or to both; or
- (b) on conviction on indictment, to a fine of \$20,000 or to a term of imprisonment of two years, or to both.

(5) A licensee that contravenes subsection (1) or (2) commits an offence and is liable—

- (a) on summary conviction, to a fine of \$20,000 or to a term of imprisonment of two years, or to both; or

- (b) on conviction on indictment, to a fine of \$50,000 or to a term of imprisonment of three years, or to both.

Approval under section 11

12. (1) An application to the Commission for approval under section 11(1) or (2) shall be made by the licensee on behalf of the person who is, or intends to become, a significant owner.

(2) In determining whether to approve the application, the Commission may take into account any factors which it reasonably considers appropriate.

(3) Without limiting subsection (2), the Commission shall consider whether—

- (a) the person becoming a significant owner, or acquiring increased control, satisfies the Commission's fit and proper criteria;
- (b) following the change of significant ownership or control, the licensee's ownership structure will be appropriate having regard to the nature, scale and complexity of its trust business; and
- (c) the change in significant owner or in control will, or is likely to—
 - (i) adversely affect the financial soundness of the licensee or the ability of the Commission to supervise it; or
 - (ii) be prejudicial to the customers of the licensee.

(4) If, whether before or after the Commission has approved an application under section 11, a licensee becomes aware of any information that is reasonably material to the Commission's fit and proper assessment of the significant owner or proposed significant owner, it shall notify the Commission of the information as soon as reasonably practicable.

Appointment of and changes in management and key functions

Appointment of and changes in directors, management and persons responsible for key functions

13. (1) A licensee shall not appoint a director, manager, senior officer or person responsible for a key function except with the prior written approval of the Commission.

(2) The Commission shall not grant approval under subsection (1) unless it is satisfied that—

- (a) the person concerned satisfies the Commission's fit and proper criteria; and
- (b) following the appointment, the licensee's governance and management structure will be appropriate having regard to the nature, scale and complexity of its trust business.

(3) A licensee shall provide written notice to the Commission within fourteen days after a director, manager, senior officer or person responsible for a

key function is appointed or ceases to hold office with, be employed by, or act for the licensee.

(4) The written notice provided under subsection (3) shall include a statement of the reasons for the director, manager, senior officer or person responsible for key function ceasing to hold office with, be employed by or act for the licensee.

(5) If, whether before or after the Commission has approved an application under this section, a licensee becomes aware of any information that is reasonably material to the Commission's fit and proper assessment of the individual in relation to whom the application relates, it shall notify the Commission of the information as soon as reasonably practicable.

PART III

SUPERVISION OF LICENSED TRUST COMPANIES

Prudential requirements

Over-riding prudential requirements

14. (1) A licensee shall, at all times—

(a) maintain its business in a financially sound condition by—

(i) having assets;

(ii) providing for its liabilities; and

(iii) conducting its business,

so as to be in a position, at all times, to meet its liabilities as they fall due; and

(b) maintain its resources at a level that is adequate to support its licensed business, taking into account the nature, size and complexity of that business and its risk profile; and

(c) maintain adequate systems and controls to monitor and assess the adequacy of its resources on an ongoing basis.

(2) This section does not limit the specific prudential requirements specified in this Ordinance or regulations.

Maintenance of paid-up share capital

15. (1) A licensee shall at all times ensure that its paid-up share capital equals or exceeds—

(a) the prescribed paid-up share capital requirements; or

(b) if the Commission issues a directive under subsection (2), the paid-up share capital requirements specified in the directive.

(2) If the Commission considers it appropriate, having regard to the nature, scale and complexity of the trust business carried on, or proposed to be carried on, by a licensee, the Commission may issue a directive increasing the paid-up share capital applicable to the licensee to an amount higher than the prescribed minimum.

(3) Unless the circumstances justify immediate compliance, a directive issued under subsection (2) shall specify a reasonable period for compliance with the directive.

(4) The Commission shall issue guidelines setting out the criteria that it will use in deciding to issue a directive under subsection (2).

Statutory deposit

16. (1) A licensee shall deposit in an account established and maintained with an approved bank for the purpose, and keep deposited, funds in an amount at least equal to—

- (a) such minimum amount as may be prescribed; or
- (b) such greater amount as may be specified by the Commission in a directive issued under subsection (2).

(2) The Commission may, by written directive, at any time increase the prescribed minimum amount in relation to that licensee.

(3) A directive issued under subsection (2) shall specify a reasonable period within which the licensee shall comply with the notice by depositing additional funds with the approved bank.

(4) If the total value of the funds deposited is at any time less than the prescribed minimum amount, for any reason, including that the prescribed minimum amount has increased or the Commission has issued a directive under subsection (3), the licensee shall make good the deficiency by depositing additional funds with the bank.

Use of statutory deposit

17. (1) The statutory deposit of a licensee shall be dealt with solely as follows—

- (a) to make a payment or transfer to the licensee in accordance with section 18;
- (b) to pay any outstanding fees, charges or penalties owed to the Commission;
- (c) to satisfy the costs of, or associated with—
 - (i) any enforcement action taken by the Commission against the licensee;
 - (ii) the running off and winding up of the licensed business of the licensee; and

- (iii) the winding up of the licensee under the Companies Ordinance; and
 - (d) in the event that the licensee is wound up under the Companies Ordinance, to pay to the liquidator of the licensee for the purposes of the winding up.
- (2) An approved bank that holds a statutory deposit—
- (a) shall deal with funds deposited in accordance with the written directions of the Commission, which may include a direction that the funds, or part of the funds, are paid to the Commission for one or more of the purposes specified in subsection (1); and
 - (b) shall not release funds deposited with it as a statutory deposit, including any interest earned on those funds, without the written approval of the Commission.

Release of statutory deposit

18. (1) If the Commission is satisfied that the total value of the deposited funds exceeds the minimum amount, the Commission may, on the application of the licensee authorise the payment to the licensee by the approved bank of the surplus funds.

(2) If a licensee ceases to carry on trust business, the licensee may apply to the Commission for its approval for the release of the deposited funds and the Commission may authorise the release of the deposited funds, if it is satisfied that the trust business of the licensee has been fully wound up.

Licensee to notify likely failure to comply

19. (1) A licensee shall as soon as reasonably practicable, notify the Commission in writing if it has reasonable grounds for believing that, at any time in the following two years, it is likely to fail to comply with a requirement imposed in section 14 or 15.

(2) A licensee that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000 or to a term of imprisonment of one year, or to both.

Restrictions in relation to the issue of shares

20. (1) Subject to subsection (2), every share in a licensee issued on or after the commencement date shall be fully paid for in cash.

(2) The Commission may, on the application of a licensee, give its written approval for the issue of one or more shares for a consideration other than cash.

(3) A licensee that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$2,000 or to a term of imprisonment of two years, or to both.

Approval for transfer of shares

21. (1) Notwithstanding any law to the contrary, no transfer of any shares in a licensee shall take effect unless the transfer has been approved by the Commission under subsection (2).

(2) Upon application being made to the Commission by a licensee, the Commission may approve the transfer of any shares in the licensee.

(3) Where the Commission approves a transfer referred to in subsection (2), the licensee shall notify the Commission in writing that the transfer has taken place as soon as reasonably practicable thereafter.

Notice of change in beneficial ownership of shares

22. (1) If at any time a licensee or the manager or any director of the licensee has reasonable cause to believe that a change has occurred in the beneficial ownership of any shares in the licensee, other than by transfer, the licensee shall as soon as reasonably practicable after the change has occurred serve on the Commission a notice in writing giving particulars of the change.

(2) A licensee who contravenes subsection (1) commits an offence and is liable on summary conviction, to a fine of \$20,000 or to a term of imprisonment of two years, or to both.

*Governance and management***Governance framework**

23. (1) A licensee shall—

- (a) take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors, senior managers and persons responsible for key functions so that—
 - (i) it is clear who has which of those responsibilities;
 - (ii) there is appropriate separation of the oversight function from the management responsibilities; and
 - (iii) the business and affairs of the licensee can be adequately monitored and controlled by the directors and its relevant senior managers;
- (b) establish and maintain such strategies, policies, procedures and controls, including internal controls, as are appropriate for the nature, scale and complexity of its trust business;
- (c) ensure that its policies, procedures and controls are regularly reviewed and updated as required;
- (d) ensure that its directors are adequately resourced and that they have sufficient powers to—

- (i) obtain in a timely manner such information as they require to undertake their functions; and
 - (ii) access senior management and persons responsible for key functions and other relevant persons; and
- (e) make and retain for the period specified in the Code, a record of how it has complied with this section.
- (2) The procedures and controls established and maintained under subsection (1) shall—
- (a) provide for the effective oversight of its senior management and persons responsible for key functions;
 - (b) recognise and protect the interests of clients; and
 - (c) take into account—
 - (i) the nature, scale and complexity of the licensee’s business; and
 - (ii) the degree of risk associated with each area of its business.
- (3) Without limiting subsections (1) and (2), a licensee shall establish and maintain such policies, procedures and controls as are specified in the Code.

Risk management

24. (1) A licensee shall establish and maintain—
- (a) a clearly defined strategy, and if the board considers it appropriate, policies, for the effective management of all significant risks that the licensee is or may be exposed to; and
 - (b) procedures and controls that are sufficient to ensure that the risk management strategy and policies are effectively implemented.
- (2) The risk management strategy and policies shall—
- (a) be appropriate for the nature, scale and complexity of the licensee’s business;
 - (b) specify how risks are to be identified, measured, assessed, monitored, controlled and reported;
 - (c) be approved, and reviewed on at least an annual basis, by the board; and
 - (d) comply with such other requirements as may be specified in the Code.

Appointment of manager

25. (1) A licensee shall appoint and at all times retain a manager.
- (2) A person shall not be appointed as manager under subsection (1) unless—
- (a) the person is—

- (i) an individual who is ordinarily resident in the Islands who is fit and proper to undertake the duties and responsibilities of manager; or
 - (ii) another licensee which itself has a manager who satisfies subparagraph (i);
- (b) the person has consented in writing to act as manager of the licensee; and
- (c) the Commission has given its prior written approval to the person's appointment as manager of the licensee under section 13.

(3) In determining whether an individual is fit and proper for the purposes of subsection (2)(a), a licensee shall have particular regard to the matters included in the Commission's fit and proper criteria and any guidance issued by the Commission.

(4) The manager of a licensee is responsible for the day-to-day management of the licensee's trust business carried on in or from within the Islands.

Maintenance of key functions

26. (1) A licensee shall establish and maintain the following key functions—

- (a) a compliance function; and
- (b) such other functions as may be specified as key functions in the Code.

(2) A licensee shall not outsource the compliance function except to the extent permitted by the Code.

(3) Subject to subsection (4), a licensee shall appoint a senior employee to—

- (a) undertake the duties of the function; or
- (b) if the duties of the function are to be undertaken by more than one employee, to have overall responsibility for, and oversight of, the key function.

(4) Subsection (3) does not apply if the duties of a key function are to be undertaken wholly by a service provider under an outsourcing arrangement, as permitted by the Code.

(5) A person shall not be appointed as the employee or service provider responsible for a key function without the approval of the board of the licensee.

Other obligations and restrictions

Branches and subsidiaries

27. 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 in any country outside the Islands; or
- (b) incorporate, form or acquire a subsidiary.

Professional indemnity insurance

28. (1) A licensee shall at all times maintain such professional indemnity, fidelity and other insurance as may be prescribed.

(2) A licensee that contravenes subsection (1) commits an offence and is liable—

- (a) on summary conviction to a fine of \$20,000 or to a term of imprisonment of two years, or to both; or
- (b) on conviction on indictment to a fine of \$50,000 or to a term of imprisonment of three years, or to both.

Customer assets

29. (1) A licensee shall comply with the requirements for holding and dealing with customer assets as are specified in the Code.

(2) A licensee that contravenes subsection (1) commits an offence and is liable—

- (a) on summary conviction to a fine of \$20,000 or to a term of imprisonment of two years, or to both; or
- (b) on conviction on indictment to a fine of \$50,000 or to a term of imprisonment of three years, or to both.

Effect of ceasing to be a licensee

30. (1) In this section, a company that has ceased to be a licensee by reason of the revocation of its licence, is referred to as a “former licensee”.

(2) Subject to this section, the revocation of the licence of a licensee does not affect the validity of—

- (a) the appointment of the former licensee as trustee, protector or enforcer of any trust where the appointment was made before the company ceased to be a licensee; or
- (b) any act or thing done by the company as trustee of any trust of which it was a trustee, protector or enforcer before it ceased to be a licensee.

(3) A former licensee that is a trustee of any trust shall apply to the Court under section 52 of the Trusts Ordinance for directions in relation to the trust, within two weeks after ceasing to be a licensee.

(4) If an administrator of a licensee is appointed under the Financial Services Commission Ordinance or a liquidator of a licensee is appointed under

the Companies Ordinance, the administrator or liquidator may apply to the Court under section 52 of the Trusts Ordinance for directions in relation to the trust.

(5) On an application made in accordance with subsection (3) or (4), the Court may make any order which it may make on an application under section 52 of the Trusts Ordinance other than an order restoring, or which would have the effect of restoring, the former licensee's licence.

(6) The Commission shall be made a party to any proceedings on an application made in accordance with subsection (3) or (4).

(7) Pending the making or the determination of an application under subsection (3)—

- (a) where the former licensee is the sole trustee of any trust of which it was trustee before it ceased to be a licensee, it shall act in relation to that trust only for the purpose of preserving trust property;
- (b) subject to paragraph (c), where the former licensee is not the sole trustee of any such trust, it shall not take part in the administration of that trust but, notwithstanding any law to the contrary, the other trustee or trustees may nevertheless continue to administer that trust; and
- (c) where the former licensee is not the sole trustee of any such trust, but the other trustee or trustees of that trust are also former licensees, all of them shall act in relation to that trust only for the purpose of preserving trust property.

(8) Unless authorised by an order of the Court made after it ceased to be a licensee, a former licensee shall not be entitled to receive and shall not accept remuneration for anything done by it which it is required or empowered to do by this section in relation to any trust of which it was a trustee before it ceased to be a licensee, notwithstanding any provision in the terms of any such trust or in any written consent given by the beneficiaries of such trust, or in any order of the Court relating to any such trust made before it ceased to be a licensee.

(9) A former licensee that does not apply to the Court in accordance with subsection (3) or who, pending the making or the determination of that application, acts otherwise than in accordance with subsections (7) or (8)—

- (a) commits an offence; and
- (b) is deemed to be in breach of trust.

(10) A former licensee that commits an offence under subsection (9) is liable—

- (a) on summary conviction, to a fine of \$20,000 or to a term of imprisonment of two years, or to both; or
- (b) on conviction on indictment, to a fine of \$50,000 or to a term of imprisonment of three years, or to both.

(11) Without regard to whether or not criminal proceedings have been or may be taken against a former licensee under subsection (9), any proceedings

which lie against a trustee who is in breach of trust under the Trusts Ordinance or any law shall lie and may be taken against a trustee who is deemed to be in breach of trust under that subsection.

(12) This section shall not apply to a former licensee if the terms of any trust of which it was a trustee before it ceased to be a licensee provide otherwise; but any term of any such trust which provides that any such trustee may continue to act as a trustee shall be of no effect.

Financial statements, audit and returns

Financial year

31. (1) The financial year end of a licensee is—

- (a) the date specified in its application for a licence; or
- (b) such other date as may subsequently be approved by the Commission, provided that the financial year end shall not be less than nine months, or more than fifteen months, after the date of the previous financial year end.

(2) Subject to subsection (3), the financial year of a licensee is—

- (a) in the case of its first financial year, the period from the date of its incorporation to the date specified in its application subsection (1)(a); and
- (b) in the case of subsequent financial years, the period of one year commencing on the day immediately after the date of its previous financial year end.

(3) The Commission may, on the application of a licensee, in respect of any financial year, direct that the financial year shall be a period not exceeding eighteen months that is different to that determined in accordance with subsection (2).

Financial statements

32. In this Ordinance and the Code, “financial statements”, in relation to a licensee and to a financial year, means—

- (a) a statement of the financial position of the licensee as at the last date of the financial year;
- (b) a statement of the financial performance of the licensee in relation to the financial year;
- (c) a statement of cash flows for the licensee in relation to the financial year;
- (d) in the case of a licensee as may be specified in the Code or as may be required by the accounting standards in accordance with which the financial statements are prepared;
- (e) such other statements as may be specified in the Code; and

- (f) any notes or other documents giving information relating to the matters specified in paragraphs (a), (b), (c), (d) or (e).

Maintenance of financial records

33. (1) A licensee shall keep at its principal office in the Islands, records that are sufficient—

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

(2) A licensee shall retain the records required to be kept under this section for a period of at least five years after the completion of the transaction to which they relate.

(3) Subsection (2) continues to apply to a person who held a licence, even if the licence has been revoked or suspended.

(4) A licensee or former licensee that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of \$10,000 or to a term of imprisonment of one year, or to both.

Preparation of financial statements

34. (1) A licensee shall prepare financial statements for each financial year.

(2) The financial statements shall—

- (a) be prepared in accordance with, and comply with, the accounting standards specified in the Code; and
- (b) shall comply with any requirements of the Code.

(3) 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.

(4) The financial statements prepared under subsection (1) shall—

- (a) be approved by the directors of the licensee; and
- (b) be signed by at least two directors on behalf of all the directors, following approval under paragraph (a).

(5) The director signing the financial statements shall state the date when the financial statements were approved by the directors and the date when he signs the financial statements.

Appointment of auditor

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

(2) A person shall not be appointed as auditor under subsection (1) unless—

- (a) the person is qualified under the Code to act as the auditor of a licensee;
- (b) the person has consented in writing to act as auditor; and
- (c) the Commission has given its prior written approval to the person's appointment as auditor of the licensee.

(3) The Commission shall not approve the appointment of a person as auditor of a licensee unless it is satisfied that the person is qualified to act as auditor and has sufficient experience and is competent to audit the financial statements of the licensee.

(4) The approval of the Commission is not required where the auditor appointed in respect of a financial year acted as the auditor of the licensee in the previous financial year and the Commission has not revoked its approval of the auditor under section 39.

(5) Where, for whatever reason, a person ceases to be the auditor of a licensee, the licensee is deemed not to have contravened subsection (1) if it appoints another auditor in accordance with this section within two months of the date that the person who was previously appointed auditor ceases to hold that appointment.

(6) A licensee commits an offence if—

- (a) subject to subsection (5), it does not have an auditor; or
- (b) it appoints an auditor contrary to subsection (2).

(7) A licensee that commits an offence under subsection (6) is liable—

- (a) on summary conviction, to a fine of \$10,000 or to a term of imprisonment of one year, or to both; or
- (b) on conviction on indictment, to a fine of \$20,000 or to a term of imprisonment of two years, or to both.

Licensee's duties in relation to audit

36. A licensee shall make such arrangements as are necessary to enable its auditor to audit its financial statements in accordance with this Ordinance and the Code, including by—

- (a) giving the auditor a right of access at all reasonable times to its financial records and to all other documents and records; and
- (b) providing the auditor with the information and explanations that the auditor reasonably requires for the purposes of the audit.

Audit and audit report

37. (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 this Ordinance and the Code.

(2) Upon completion of the audit of the financial statements of a licensee, the auditor shall provide an audit report to the licensee complying with the Code.

(3) The Commission may at any time, by notice in writing, direct a licensee 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.

(4) A report prepared under subsection (3) shall be at the cost of the licensee.

Reporting obligations of auditors

38. (1) Despite anything to the contrary in any other law, the auditor of a licensee shall report immediately to the Commission any information relating to the affairs of the licensee that the auditor has obtained in the course of acting as its auditor that, in the opinion of the auditor, suggests that—

- (a) the licensee is, or is likely to become insolvent or its business is not, or is likely to cease to be, in a financially sound condition;
- (b) the licensee is in breach of, or likely to breach, the statutory deposit requirements specified in this Ordinance and regulations;
- (c) an offence has been or is being committed by the licensee or in connection with its business;
- (d) the licensee has significant weaknesses in its internal controls which render it vulnerable to significant risks or exposures that have the potential to jeopardize its financial viability; or
- (e) a serious breach of this Ordinance, the regulations or the Code or the anti-money laundering and terrorist financing legislation has occurred in respect of the licensee or its business.

(2) Where the appointment of an auditor of a licensee is terminated, or the auditor resigns, the auditor whose appointment has been terminated, or who has resigned, shall—

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

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

(4) Where, in good faith, a person who is, or was, an auditor of a licensee provides any information to the Commission under subsection (1), (2) or (3), the person is considered not to be in contravention of any law, rule of law, agreement, regulatory or administrative requirement or professional code of conduct to which the person is subject and no civil, criminal or disciplinary proceedings shall lie against the person in respect thereof.

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

(6) Subject to subsection (7), the auditor of a licensee shall, before reporting to the Commission under subsection (1) or (2), take reasonable steps to inform the licensee of his or her intention to make the report and the nature of the report.

(7) An auditor is not required to inform the licensee of his or her intention to make a report under this section if the auditor is of the opinion that to give notice to the licensee may be detrimental to the interests of the licensee's clients.

(8) An auditor or former auditor who fails to comply with subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of \$20,000 or to a term of imprisonment of two years, or to both.

Powers of Commission

39. (1) If the Commission is of the opinion that the auditor of a licensee has failed to fulfil his or her obligations under this Ordinance or is otherwise not a fit and proper person to act as the auditor of a licensee, it may give written notice to the licensee and to the auditor of its intention to revoke the appointment of the auditor on the date specified in the notice.

(2) A notice given under subsection (1) shall state—

- (a) the grounds on which it intends to revoke the appointment of the auditor;
- (b) that the licensee and the auditor may provide written representations to the Commission objecting to the revocation of the auditor's appointment; and
- (c) the last date for the provision of written representations to the Commission, which must be a date no earlier than fourteen days after the date of the notice.

(3) The Commission shall consider any objections it receives before deciding whether or not to revoke the appointment of the auditor.

(4) A notice revoking the appointment of an auditor under subsection (1) shall be given to the auditor.

(5) If a licensee fails to appoint an auditor, the Commission may appoint a qualified person to act as the auditor of the licensee.

(6) An auditor appointed under subsection (5) is considered, for the purposes of this Ordinance, to have been appointed by the licensee, which shall be responsible for the auditor's costs and remuneration.

Submission of financial statements to the Commission

40. (1) A licensee shall, within the time period specified in the Code, submit to the Commission its annual financial statement accompanied by—

- (a) a director's certificate in the approved form, if any;
- (b) the auditor's report;
- (c) any report on the affairs of the licensee made to its members in respect of the financial year; and
- (d) such other documents as may be specified in, or required by, the Code.

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

(3) A licensee shall, in respect of and within such periods as may be specified in the Code, submit to the Commission—

- (a) periodic financial statements, that may be unaudited;
- (b) a return in the form approved by the Commission, if any; and
- (c) such other information and documentation as may be specified in the Code.

(4) If the Commission considers that the financial statements submitted by a licensee under subsection (1), or any documents attached to them, are inaccurate or incomplete or that they are not prepared in accordance with the accounting standards specified in the Code, the Commission may by written notice reject the financial statements.

Extension of time

41. (1) The Commission may, on the application of a licensee, extend the time for compliance with section 40 for a period not exceeding three months or, where it grants more than one extension, for an aggregate period of no more than three months.

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

Group financial statements

42. (1) Where a licensee is a member of a group of companies, the Commission may require the licensee to submit group financial statements.

(2) The Commission may require that the group financial statements are audited by the auditor of the licensee or by another auditor approved by the Commission in writing.

Submission of reports and returns

43. (1) A licensee shall submit to the Commission such reports and returns relating to the licensee's financial condition and its business as may be specified in this Ordinance or the Code, or as may otherwise be required by the Commission.

(2) If the Commission considers that any report or return submitted by a licensee under subsection (1) is inaccurate or incomplete or is not prepared in accordance with this Ordinance or the Code or is not in the approved form, the Commission may, by written notice, require the licensee to amend the report or return or submit a replacement.

PART IV

PRIVATE TRUST COMPANIES

Interpretation for this Part

Interpretation for this Part

44. (1) In this Part—

“connected person” has the meaning specified in section 46;

“private trust company” means a company—

- (a) that is a Turks and Caicos qualifying company; and
- (b) the memorandum of which states that it is a private trust company;

“qualifying trust” means a trust where each beneficiary of the trust is—

- (a) a connected person in relation to the settlor of the trust;
- (b) its settlor; or
- (c) a charity;

“related trust” has the meaning specified in section 47;

“related trust business” means trust business provided in respect of—

- (a) a single qualifying trust; or
- (b) a group of related qualifying trusts;

“relevant trust”, with respect to a private trust company, means a trust with respect to which the private trust company is providing services that constitute trust business;

“unremunerated trust business” has the meaning specified in section 45.

Unremunerated trust business

45. (1) Trust business carried on by a private trust company is unremunerated trust business if no remuneration is payable to, or received by, the private trust company, or any person associated with the private trust company, in consideration for, or with respect to, the services that constitute the trust business.

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

- (a) “remuneration” includes money or any other form of property; and
- (b) it is immaterial whether remuneration is payable or received—
 - (i) out of the assets, or underlying assets, of a relevant trust;
 - (ii) from the settlor or beneficiary of a relevant trust; or
 - (iii) from any other person pursuant to an arrangement with the settlor or beneficiary of a relevant trust.

(3) For the purposes of, but without limiting subsection (1), a person is associated with a private trust company if—

- (a) he has an interest, whether legal or beneficial, in the private trust company;
- (b) he is a director or former director of the private trust company; or
- (c) he is an employee or former employee of the private trust company.

(4) Any remuneration payable to, or received by, a director of a private trust company as a director is remuneration payable to, or received by, a person associated with the private trust company within the meaning of subsection (1) unless payable to, or received by, the director by way of director’s remuneration—

- (a) with respect to professional director services provided to the private trust company; and
- (b) where the director is not otherwise associated with the private trust company, whether by virtue of having a direct or indirect beneficial interest in the private trust company or otherwise.

(5) For the avoidance of doubt, payments made to a private trust company to indemnify it in respect of costs and expenses paid or incurred by the private trust company, shall not be regarded as “remuneration” within the meaning of subsection (1).

Connected person

46. A person is a connected person in respect of any person that he has a personal relationship with, as defined in the Trusts Ordinance.

Related trusts and groups of related trusts

47. (1) A trust (the first trust) is related to another trust (the second trust) where the settlor of the first trust is, or is a connected person with respect to, the settlor of the second trust.

(2) A group of trusts are related trusts where each trust in the group is related to all of the other trusts in the group.

Exemptions

Licensing exemption

48. (1) Subject to section 50(2), a private trust company is exempt from the requirement to obtain a licence under this Ordinance where its trust business consists solely of—

- (a) unremunerated trust business; or
- (b) related trust business.

(2) For the purposes of subsection (1), the business of a private trust company is deemed—

- (a) to consist solely of unremunerated trust business, notwithstanding that part or all of that unremunerated trust business is also related trust business; or
- (b) to consist solely of related trust business, notwithstanding that part or all of that related trust business is also unremunerated trust business.

Application of Financial Services Commission Ordinance

49. Certain provisions of the Financial Services Ordinance are disapplied and modified with respect to private trust companies to the extent specified in the Schedule.

Obligations of private trust companies

Private trust company to have representative in the Islands

50. (1) A private trust company—

- (a) shall appoint and at all times retain a licensee with an unrestricted trust licence as its appointed representative in the Islands; and
- (b) shall not—
 - (i) carry on any business that is not trust business;
 - (ii) solicit trust business from members of the public; or
 - (iii) carry on any trust business other than either unremunerated trust business or related trust business, as the case may be.

(2) Subject to subsection (3), a private trust company shall not have the benefit of the licensing exemption provided for in section 48 during any period in which it is in contravention of subsection (1).

(3) If, subsequent to its appointment as the appointed representative of a private trust company, the appointed representative ceases to hold an unrestricted trust licence, subsection (2) does not apply for the period of four weeks following the date on which the appointed representative ceases to hold an unrestricted trust licence.

Private trust company not entitled to exemption

51. (1) Where a private trust company is not entitled to the licensing exemption, it shall forthwith amend its memorandum to remove the statement that it is a private trust company.

(2) For the avoidance of doubt, a company carries on unauthorised financial services business for the purposes of the Financial Services Commission Ordinance if—

- (a) without having the benefit of the licensing exemption, it carries on any trust business; or
- (b) having the benefit of the licensing exemption, it carries on trust business that is not unremunerated or related trust business, as the case may be.

Appointed representatives

Obligations of appointed representative

52. (1) A licensee shall not agree to act as the appointed representative of a private trust company unless it has taken all reasonable steps to satisfy itself that the private trust company—

- (a) complies with section 50(1)(b); or
- (b) where the private trust company is not at that time carrying on trust business, that the private trust company will, on commencing its trust business, comply with section 50(1)(b).

(2) The appointed representative of a private trust company shall on a periodic basis take all reasonable steps to satisfy itself that the private trust company continues to comply with section 50(1)(b).

(3) The frequency with which the appointed representative reviews the compliance of a private trust company with section 48(1)(b) shall be determined by the appointed representative on the basis of its assessment of the risk that the private trust company may fail to comply with that section.

(4) The appointed representative shall take all reasonable steps to ensure that up to date copies of the following records with respect to each private trust company for which it acts as appointed representative are kept at its office in the Islands—

- (a) the trust deed, or other document creating or evidencing a trust and any deed or document varying the terms of the trust, for each relevant trust; and
- (b) the documentation and other information on which it has relied to satisfy itself that the private trust company complies with section 50(1)(b).

(5) If at any time the appointed representative of a private trust company forms the opinion that the private trust company does not comply with section 50(1)(b), it shall immediately notify the Commission in writing of its opinion.

PART V

MISCELLANEOUS PROVISIONS

Applications

53. (1) Every application made under this Ordinance, whether for a licence or for any other approval or matter, shall—

- (a) be in writing and, where appropriate, in the approved form; and
- (b) have included with it such documents or information as may be specified by this Ordinance, the Code or in the approved form.

(2) The Commission may—

- (a) require an applicant to provide it with such documents and information, in addition to those specified in subsection (1)(b), as it reasonably requires to determine the application;
- (b) specify the form in which the documents and information are to be provided; and
- (c) require any documents and information provided to be verified in such manner as it 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.

(4) An applicant who fails to comply with subsection (3) commits an offence and is liable on summary conviction to a fine of \$20,000 or to a term of imprisonment of two years, or to both.

Conditions

54. (1) In this section—

“approval” means an approval or permission granted under this Ordinance or the Code;

“condition” means a condition attached to a licence or to an approval or exemption and includes a condition as varied in accordance with this section;

“exemption” means an exemption granted under this Ordinance or the regulations.

(2) A licence may be issued or an approval or exemption granted subject to such conditions as the Commission considers appropriate.

(3) If a licence is issued, or an approval or exemption is granted, subject to one or more conditions—

- (a) the Commission shall, together with the licence, approval or exemption, issue a written notice specifying the condition or conditions; and
- (b) if, in respect of any conditions, it considers that it is in the public interest to do so, the Commission may state those conditions on the licence, approval or exemption.

(4) The Commission may, upon giving reasonable written notice to a licensee, at any time—

- (a) vary or revoke any condition; or
- (b) impose new conditions on the licence, approval or exemption.

(5) A licensee may apply to the Commission in writing for a condition to be revoked or varied and, if the Commission is satisfied that the condition is no longer necessary or should be varied, it may revoke or vary the condition.

(6) If the Commission revokes or varies a condition or imposes a new condition, the licensee shall, if requested to do so by the Commission, deliver its licence, approval or exemption to the Commission for re-issue.

Recording of Deeds Ordinance not to apply to trust instruments in certain cases

55. The Recording of Deeds Ordinance shall not apply to—

- (a) any instrument creating or modifying —
 - (i) a trust which appoints a licensee as a trustee of that trust; or
 - (ii) a Turks and Caicos Trust;
- (b) any instrument appointing a new or additional trustee of—
 - (i) a trust which appoints a licensee as a trustee of that trust; or
 - (ii) a Turks and Caicos Trust;

- (c) any instrument by which a power conferred or a duty imposed by—
 - (i) a trust which appoints a licensee as a trustee of that trust, or
 - (ii) a Turks and Caicos Trust,is exercised or performed; or
- (d) any conveyance, transfer, mortgage, charge, lease or other document relating to any property which is the subject of—
 - (i) a trust which appoints a licensee as a trustee of that trust; or
 - (ii) a Turks and Caicos Trust.

Certain laws relating to confidentiality of information not to apply

56. The Confidential Relationships Ordinance and any other law relating to the confidentiality of information does not apply in relation to any documents submitted, or information provided, to the Commission by, or on behalf of, a licensee where the documents or information are required or permitted to be submitted or provided to the Commission by this Ordinance, the regulations or the Code.

False or misleading representations, statements, reports or returns

57. (1) For the purposes of this section, information or a representation, statement, report, return or other document, whether provided orally or in writing, is relevant if it is required or permitted by this Ordinance, the regulations or the Code to be provided to, made to or, in the case of a document, submitted to the Commission.

- (2) A person commits an offence if the person—
 - (a) makes or assists in making a relevant representation, statement, report or return that contains a statement that is false, deceptive or misleading in a material particular and—
 - (i) the person knows or has reasonable grounds to believe that the statement is false, deceptive or misleading in a material particular; or
 - (ii) the person makes the statement dishonestly or recklessly;
 - (b) makes or assists in making a relevant representation, statement, report or return knowing or believing or having reasonable grounds to believe that it omits a particular that is necessary to avoid the statement or document being false, deceptive or misleading or being dishonest or reckless as to the omission;
 - (c) produces or submits to the Commission, or causes or permits to be produced or submitted to the Commission, relevant information or a relevant document that the person knows or has reasonable grounds to believe is false, deceptive or misleading in a material particular; or

- (d) dishonestly or recklessly produces or submits to the Commission, or causes or permits to be produced or submitted to the Commission, relevant information or a relevant document that is false, deceptive or misleading in a material particular.
- (3) A person who commits an offence under subsection (2) is liable—
 - (a) on summary conviction, to a fine of \$20,000 or to a term of imprisonment of two years, or to both; or
 - (b) on conviction on indictment, to a fine of \$50,000 or to a term of imprisonment of three years, or to both.

Offences by body corporate

58. Where an offence under this Ordinance is committed by a body corporate, a director, manager or officer who authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on conviction to the same penalty as the body corporate would be liable for.

Trust Law Advisory Committee

59. (1) The Commission shall establish a committee to be known as the “Trust Law Advisory Committee”.

(2) Subject to any specific requirements of the regulations in relation to membership, the Commission shall appoint as members of the Committee such persons having knowledge and experience of trust law as it considers appropriate.

- (3) The functions of the Trust Law Advisory Committee shall be—
 - (a) to keep this Ordinance, the Trusts Ordinance and other enactments relevant to trust law and trust business under review;
 - (b) to make such recommendations as it considers appropriate to the Commission and for changes to this Ordinance, the Trust Ordinance and other enactments relevant to trust law; and
 - (c) to make such recommendations as it considers appropriate to the Commission for the development and reform of trust law in the Islands.

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

(5) Subject to regulations, the Committee shall determine its own procedures.

- (6) Regulations may specify—
 - (a) requirements in relation to the membership of the Committee; and
 - (b) rules of procedure for the Committee.

PART VI

FINAL PROVISIONS

Fees

60. (1) Regulations may provide for the fees and charges payable under this Ordinance.

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

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

Regulations

61. (1) The Governor may, after consultation with the Commission, make regulations generally for giving effect to the provisions of this Ordinance and specifically for prescribing anything required or permitted to be prescribed by this Ordinance and may in particular make regulations prescribing the financial resources to be maintained by licensees.

(2) Regulations made under this section may make different provision in relation to persons, cases or circumstances of different descriptions.

Code

62. (1) Without limiting the powers of the Commission under section 42 of the Financial Services Commission Ordinance or specific provisions of this Ordinance, the Code may specify or provide for—

- (a) 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;
- (b) principles and rules of corporate governance to be adhered to by licensees;
- (c) internal reporting;
- (d) the responsibilities of the directors, manager and senior officers of licensees;
- (e) requirements relating to business conduct;
- (f) information to be provided and returns to be submitted to the Commission by licensees;
- (g) record keeping;
- (h) outsourcing;
- (i) complaints made against licensees;
- (j) measures for the detection and prevention of crime;

- (k) staff training; and
- (l) the preparation by a licensee of a business plan and the information to be included in, and the form of, the business plan.

(2) The Code may contain such incidental, supplemental and transitional provisions as the Commission considers necessary or expedient.

Fit and proper criteria

63. (1) The Commission shall issue guidance—

- (a) setting out the criteria that it will use when assessing the fitness and propriety of a person—
 - (i) as an owner of a licensee; or
 - (ii) to perform a specific role or function;
- (b) with respect to compliance by licensees and pension agents with this Decree, the regulations and the Pension Rules; and
- (c) with respect to such matters as it considers relevant to its functions.

(2) The fit and proper criteria shall cover—

- (a) competency and capability;
- (b) honesty and integrity;
- (c) financial soundness; and
- (d) such other matters as the Commission considers appropriate.

(3) The guidance issued under this section may make different provision in relation to different persons, circumstances or cases.

Transitional Regulations

64. (1) The Governor may, after consultation with the Commission, make transitional Regulations.

(2) Transitional Regulations may be retroactive to the commencement date or a date after the commencement date.

SCHEDULE

(Section 49)

DISAPPLICATION AND MODIFICATION OF FINANCIAL SERVICES COMMISSION ORDINANCE TO PRIVATE TRUST COMPANIES

1. In this Schedule, “Ordinance” means the Financial Services Commission Ordinance.

2. For the purposes of the Ordinance, unremunerated and related trust business is deemed to be financial services business.

3. The Ordinance does not apply to private trust companies, except as specified in this Schedule.

4. Sections 23 to 27 and sections 48 and 49 of the Ordinance apply to private trust companies, as if they were licensees within the meaning of the Ordinance.

5. Sections 33, 35, 37, 38 and 39 of the Ordinance apply to private trust companies as if they were licensees within the meaning of the Ordinance, with the following modifications—

(a) the Commission may take enforcement action against a private trust company only where it is of the opinion that—

- (i) the private trust company has contravened or is in contravention of this Ordinance;
- (ii) the private trust company is carrying on, or is likely to carry on, business in a manner detrimental to the public interest or the interests of beneficiaries of any trust with respect to which it provides, or has provided, trust services;
- (iii) the private trust company has failed to comply with a directive given to it by the Commission; or
- (iv) a liquidator is appointed in respect of the private trust company, whether by its directors, its members or the Court, or the private trust company is struck off the Register of Companies or dissolved;

(b) where the Commission is entitled to take enforcement action against a private trust company, it may—

- (i) appoint an examiner to conduct an investigation under section 35 of the Ordinance;
- (ii) issue a directive under section 37 of the Ordinance;
- (iii) apply for a protection order under section 38 of the Ordinance;
- (iv) issue a public statement under section 39 of the Ordinance; or
- (v) petition the Court for the winding up of the company under section 126 of the Companies Ordinance.

6. For the avoidance of doubt, nothing in this Schedule limits the powers of the Commission to take action against a private trust company which is carrying on, or has carried on, unauthorised financial services business.

TRUST COMPANIES REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

GENERAL

3. Persons exempted from licensing under the Ordinance
4. Restricted trust company licence
5. Restricted trust company in breach of licensing condition
6. Restriction on licensee engaging in other business
7. Fees and charges

PART III

PRUDENTIAL REQUIREMENTS

Paid-up Share Capital and Statutory Deposit, etc.

8. Application of Part III
9. Paid-up share capital requirements
10. Minimum statutory deposit

Professional indemnity and fidelity insurance

11. Required professional indemnity and other insurance
12. Extent of coverage required
13. Level of coverage required
14. Restrictions relating to professional indemnity insurance
15. Permitted exclusions
16. Run-off insurance
17. Systems and controls
18. Reports to Commission
19. Commission may vary insurance requirements

PART IV

MISCELLANEOUS PROVISIONS

20. Transitional provisions

SCHEDULE 1:	Licensing Exemptions
SCHEDULE 2:	Fees and Charges
SCHEDULE 3:	Transitional Provisions

TRUST COMPANIES REGULATIONS – SECTION 61

(Legal Notice 48/2016)

Commencement

[15 September 2016]

PART I

PRELIMINARY

Short title

1. These Regulations may be cited as the Trust Companies Regulations.

Interpretation

2. In these Regulations—

“large trust company” means an unrestricted trust company having gross revenue equal to or greater than \$5,000,000;

“medium trust company” means an unrestricted trust company having gross revenue equal to or greater than \$2,000,000, but less than \$5,000,000;

“Ordinance” means the Trust Companies (Licensing and Supervision) Ordinance;

“paid-up share capital” has the meaning specified in regulation 9(1);

“restricted trust company” means a company that holds a restricted trust company licence issued in accordance with section 6(1)(b) of the Ordinance;

“small trust company” means an unrestricted trust company having gross revenue less than \$2,000,000;

“unrestricted trust company” means a company that holds an unrestricted trust company licence issued in accordance with section 6(1)(a) of the Ordinance;

PART II

GENERAL

Persons exempted from licensing under the Ordinance

3. (1) A person specified in Schedule 1 is exempt from the requirement to obtain a licence under Part II of the Ordinance.

(2) Notwithstanding subregulation (1) a person ceases to be entitled to the exemption immediately the provisions or conditions specified in Schedule 1 cease to apply to that person.

Restricted trust company licence

4. (1) A restricted trust company licence shall be granted only to a Turks and Caicos qualifying company that is—

- (a) a wholly owned subsidiary of an unrestricted trust company; or
- (b) is managed and administered by an unrestricted trust company.

(2) A restricted trust company licence authorises the holder to act as trustee for one or more qualifying trusts.

(3) For the purposes of subregulation (2), a qualifying trust is a trust, the settlor of which is a person specified on the most recent list of settlors submitted by the restricted trust company to the Commission.

(4) The list submitted to the Commission under subregulation (3)—

- (a) shall contain the names of no more than four persons at any one time; and
- (b) may be amended by written notice submitted to the Commission.

(5) An amendment of the list of settlors to delete a person from the list shall be accompanied by a declaration made by the restricted trust company to the effect that it does not act as trustee of any trust for which the person to be deleted is the settlor.

(6) An amendment of the list of settlors takes effect fourteen days after it has been received by the Commission, unless the Commission provides the restricted trust company with a notice of objection to the amendment.

Restricted trust company in breach of licencing condition

5. (1) If a restricted trust company does not meet the applicable condition specified in regulation 4(1), it shall immediately notify the Commission in writing.

(2) A restricted trust company that does not meet the applicable condition specified in regulation 4(1) is considered to be in breach of the conditions attached to its licence and shall be subject to enforcement action under the Financial Services Commission Ordinance.

Restriction on licensee engaging in other business

6. A licensee shall not, without the prior approval of the Commission and the necessary share capital, and any other specified requirements that the Commission may reasonably require to mitigate increased risks, add or engage in any new form of business or product other than those for which the licensee was permitted to undertake in its initial application for a licence.

Fees and charges

7. The fees and charges specified in Schedule 2 are payable to the Commission.

PART III

PRUDENTIAL REQUIREMENTS

Paid-up Share Capital and Statutory Deposit, etc.

Application of Part III

8. This Part applies to an unrestricted trust company.

Paid-up share capital requirements

9. (1) Subject to section 15 of the Ordinance, the “paid-up share capital” of a licensee—
- (a) is the total of—
 - (i) monies paid for ordinary shares that have been issued by the licensee; and
 - (ii) where approved by the Commission, on a case-by-case basis, the value of other consideration provided for ordinary shares that have been issued by the licensee; and
 - (b) may include the deposit paid pursuant to regulation 10.
- (2) The following shall be excluded from any calculation of paid-up share capital—
- (a) where shares are partly paid, any monies or other consideration due in respect of those shares, whether or not called; and
 - (b) bonus shares.
- (3) Where a shareholder agrees to pay, or provide consideration, for shares in whole or in part at a future time, the shares are partly paid with respect to the amount still to be paid or the consideration still to be provided, and the amount outstanding shall not be included in paid-up share capital.
- (4) The minimum paid-up share capital requirement for a licensee is \$250,000.

Minimum statutory deposit

10. For the purposes of section 16 of the Ordinance, the minimum statutory deposit required of a licensee is \$100,000.

Professional indemnity and fidelity insurance

Required professional indemnity and other insurance

11. (1) An unrestricted trust company shall ensure that, at all times, it maintains such professional indemnity, fidelity and other insurance as is appropriate taking into account the nature, size and complexity of its business.
- (2) The insurance required to be maintained under subregulation (1) shall be effected with—
- (a) an insurer holding an insurer’s licence under the Insurance Ordinance that is authorised by its licence to write professional indemnity insurance in the Islands; or

- (b) an insurer approved by the Commission as an external insurer under the Insurance Ordinance.

Extent of coverage required

12. (1) The professional indemnity insurance maintained by a licensee must extend to every jurisdiction in, or from which, the licensee carries on trust business and must indemnify it against—

- (a) its liability for loss or damage caused to another person where the claim arises from—
 - (i) a negligent act, error or omission or breach of a duty of care in connection with the carrying on by the licensee of its business;
 - (ii) the dishonesty of the licensee’s directors, employees or persons engaged under a contract for services; or
 - (iii) the loss and theft of documents and data, including the costs of replacement, the reinstatement of data and the increased costs of working;
- (b) the legal and other costs connected with defending a claim referred to in paragraph (a); and
- (c) the costs of investigating and settling such a claim.

(2) A professional indemnity insurance contract must—

- (a) be a “claims made” insurance contract;
- (b) provide the minimum amount of coverage specified in regulation 13; and
- (c) include an indemnity with respect to the negligent acts, errors and omissions of an employee of the licensee or a person engaged by the licensee under a contract for services.

(3) For the purposes of this regulation, a “claims made” insurance contract is an insurance contract that covers any claim made against the licensee that—

- (a) is of a type referred to in subregulation (1)(a); and
- (b) is made during the policy term or arises from circumstances first notified to the insurer during the policy term.

Level of coverage required

13. (1) The minimum level of coverage—

- (a) for a small trust company—
 - (i) for any one claim is, \$500,000; or
 - (ii) in the aggregate is, \$1,000,000;
- (b) for a medium trust company—
 - (i) for any one claim is, \$1,000,000; or
 - (ii) in the aggregate is, \$3,000,000; and
- (c) for a large trust company—

- (i) for any one claim is, \$2,500,000; or
 - (ii) in the aggregate is, \$5,000,000.
- (2) The maximum excess that may be deducted from any claim under the policy shall not exceed—
- (a) for a small trust company, \$25,000;
 - (b) for a medium trust company, \$50,000; and
 - (c) for a large trust company, \$75,000.
- (3) If the aggregate level of coverage provided under the professional indemnity insurance contract is depleted as a result of a claim under the contract, the licensee shall obtain re-instated coverage that meets the requirements set out in this regulation.

Restrictions relating to professional indemnity insurance

14. (1) A professional indemnity insurance contract shall not—
- (a) exclude or limit claims made against the insured licensee that arise from acts, omissions or circumstances which occurred prior to the commencement of the policy term, other than claims that are covered by an insurance contract taken out by the insured licensee for a period prior to the commencement of the policy term;
 - (b) include any provisions that entitle the insurer to avoid the contract;
 - (c) include any provisions that entitle the insurer to terminate the contract or to reduce or deny its liability under the contract, including by reason of the fact that—
 - (i) the insured licensee is in breach of the insurance contract;
 - (ii) the liability of the insured licensee is covered by another insurance contract, other than a required professional indemnity insurance contract; or
 - (iii) the insured licensee becomes insolvent; or
 - (d) contain any exclusions, other than the exclusions permitted by regulation 15.

Permitted exclusions

15. A required professional indemnity insurance contract may exclude or limit the liability of the insurer with respect to—
- (a) the liability of the insured licensee for causing or contributing to bodily injury or property damage; and
 - (b) any claim in respect of which the insured is entitled to be indemnified under a required professional indemnity insurance contract that was in force, and terminated, prior to the commencement of the policy term.

Run-off insurance

16. A company that ceases to hold a licence shall maintain such “run-off” professional indemnity, fidelity and other insurance cover in respect of claims arising from past acts or omissions as may be required by the Commission.

Systems and controls

17. A licensee shall establish systems and controls to ensure compliance with the terms and conditions set out in an insurance policy required under regulation 11, including in relation to the timely notification of events that may lead to a claim on the policy.

Reports to Commission

18. (1) A licensee shall immediately provide written notice to the Commission if—
- (a) any limitations are in place in relation to its professional indemnity insurance, whether carried on in, or from within, the Islands or any other jurisdiction in which the business is or may be carried on; or
 - (b) for any reason, it does not have professional indemnity insurance cover complying with regulations 11 to 15.

Commission may vary insurance requirements

19. The Commission may, on the application of a licensee, by written notice, vary the requirements specified in regulations 12 to 15.

PART IV

MISCELLANEOUS PROVISIONS

Transitional provisions

20. The transitional provisions in Schedule 3 have effect.

SCHEDULE 1

(Regulation 3)

LICENSING EXEMPTIONS

1. In accordance with section 4(3)(b) of the Ordinance, the following persons are exempted from the requirement to obtain a licence under the Ordinance—

- (a) a person, other than a corporation, when acting as the executor or administrator of the estate of a deceased person;
- (b) the trustee in bankruptcy of the estate of a bankrupt person;
- (c) a person acting solely as a bare trustee.

2. Subject to paragraph 3, for the purposes of paragraph 1(c), a bare trustee is a trustee who holds the trust property for the beneficiaries absolutely.

3. A trustee is not a bare trustee if either of the following apply—

- (a) the trustee has any discretion in relation to the trust property;
- (b) the trustee has any powers in relation to the trust property beyond those powers necessary—
 - (i) to comply with the directions of the beneficiaries; or
 - (ii) to maintain ownership of the trust property.

4. The following Orders made under the Trustees Licensing Ordinance continue to have effect as if made as Regulations under the Ordinance, notwithstanding their repeal—

- (a) the Trustees Licensing (RBTT) Exemption Order; or
- (b) the Trustees Licensing (TCIB) Exemption Order.

SCHEDULE 2

(Regulation 7)

FEES AND CHARGES

The following fees and charges are payable under the Ordinance—

1. Non-refundable application fee:
 - (a) for an unrestricted trust company licence \$3,000
 - (b) for a restricted trust company licence \$1,000
2. On the grant of an unrestricted trust company licence:
 - (a) to a small trust company \$10,000
 - (b) to a medium trust company \$10,000
 - (c) to a large trust company \$10,000
3. Annually, on the 31 March during the subsistence of the licence:
 - (a) for an unrestricted trust company licence
 - (i) small trust company \$10,000
 - (ii) medium trust company \$15,000
 - (iii) large trust company \$20,000
 - (b) for a restricted trust company licence \$1,500
4. The application fee for a restricted or unrestricted trust company licence is payable whether the application is refused or granted.
5. If the applicant is a wholly owned subsidiary of a licensed trust company, the fee payable on application shall be 1/5 of the fee otherwise payable.
6. When a licence is first granted, the annual fee payable for the initial year of the company's operations shall be the relevant annual fee indicated above, pro-rated from the month in which the licence is granted to the following 31 March.

SCHEDULE 3

(Regulation 20)

TRANSITIONAL PROVISIONS

1. For the purposes of this Schedule—
“commencement date” means the date that the Ordinance comes into operation;
“former Ordinance licensee” means a company that, immediately prior to the coming into force of the Ordinance, was holding a licence granted under the former Ordinance.
2. A former Ordinance licensee is deemed to have been granted a licence under the Ordinance on the coming into force of the Ordinance, as follows—
 - (a) where the person concerned is a TCI qualifying company that holds an unrestricted licence under the former Ordinance, that person is deemed to have been granted an unrestricted trust company licence under the Ordinance;
 - (b) where the person concerned is a TCI qualifying company that holds a restricted licence under the former Ordinance, that person is deemed to have been granted a restricted trust company licence under the Ordinance.
3. The Commission shall, within three months of the coming into force of the Ordinance, issue each person that is deemed under paragraph 1 to have been granted a licence under the Ordinance with a replacement licence issued under the Ordinance.
4. Section 10 of the Ordinance does not apply to a former Ordinance licensee.
5. The provisions of the Ordinance set out in the first column and described in the second column take effect against a former Ordinance licensee as provided in the third column instead of on the commencement date.

Provision	Description	Takes Effect
Section 23(1)(b), (c) and (e) and (3)	Certain provisions concerning governance framework	Six months after the commencement date
Section 24	Risk management strategy, policies, procedures and controls	Six months after the commencement date

TRUST COMPANIES CODE
ARRANGEMENT OF PARAGRAPHS

PART I

PRELIMINARY PROVISIONS

PARAGRAPH

1. Short title
2. Interpretation
3. Application of Code
4. Principles for business

PART II

LICENSING

5. Application for licence
6. Display of licence
7. Responsibility of licensee to undertake fit and proper assessment
8. Persons subject to fit and proper assessment

PART III

GOVERNANCE, MANAGEMENT AND CONTROL AND TRAINING

Governance framework

9. Directors of licensee
10. Responsibilities of board
11. Responsibilities of senior management
12. Span of control
13. Licensee with overseas subsidiaries

Strategies, policies, systems and controls

14. Establishment of policies, systems and controls
15. Risk management
16. Business continuity plans
17. Establishment and maintenance of internal controls
18. Responsibilities of board and senior management in relation to internal controls
19. Information systems
20. Monitoring of internal control systems and correcting deficiencies

Record keeping

21. Licensee to maintain records
22. Retention of records

Compliance

23. Compliance systems and controls
24. Compliance officer
25. Duties and responsibilities of compliance officer
26. Compliance procedures manual
27. Group compliance

Outsourcing

28. Responsibility for outsourced activities
29. Outsourcing of material activities
30. Outsourcing policy
31. Managing outsourcing risks
32. Outsourcing arrangements

PART IV

BUSINESS CONDUCT

Business conduct

33. Overriding obligations
34. Business conduct policies, procedures and controls

Trust property and customer assets

35. General obligations with respect to customer assets
36. Establishment of customer bank accounts
37. Operation of customer accounts
38. Use of customer money
39. Records relating to customer assets
40. Interest on customer money

Complaints

41. Complaints policy and procedures
42. Significant complaints

PART V

MISCELLANEOUS PROVISIONS

Restricted trust companies

- 43. Management of restricted trust companies
- 44. Management agreements and outsourcing
- 45. Books and records

Reporting to Commission

- 46. Disclosure of matters having material regulatory impact
- 47. Disclosures to Commission to be accurate and complete
- 48. Disclosures on occurrence of specified changes

Continuing Professional Development and Training

- 49. Continuing professional development
- 50. Staff training

Financial statements and audit

- 51. Qualifications for auditor
 - 52. Auditor to be independent
 - 53. Auditor to provide information when at request of Commission
 - 54. Accounting and audit standards
 - 55. Signing of auditor's report
 - 56. Time period for submission of financial statements
 - 57. Transitional provisions
- SCHEDULE 1: Meaning of "Control" and Associated Terms
SCHEDULE 2: Matters to be notified to Commission
SCHEDULE 3: Transitional Provisions

TRUST COMPANIES CODE – SECTION 42

(Legal Notice 49/ 2016)

Commencement

[15 September 2016]

PART I

PRELIMINARY PROVISIONS

Short title

1. This Code may be cited as the Trust Companies Code.

Interpretation

2. (1) In this Code—

“AML/CFT obligation” has the meaning specified in the Proceeds of Crime Ordinance;

“approved bank” has the meaning specified in the Ordinance;

“board” means—

- (a) in relation to a corporate body, the board of directors, committee of management or other governing authority of the corporate body, by whatever name called or, if the corporate body only has one director, that director;
- (b) in relation to a partnership, the partners, or in the case of a limited partnership, the general partners; or
- (c) in relation to any other organisation or undertaking, the persons fulfilling functions equivalent to the functions of the directors of a company;

“Code” means this Code;

“complaint”, in relation to a licensee, means any oral or written expression of dissatisfaction, whether justified or not, from or on behalf of a person about the provision of a service which constitutes trust business and which—

- (a) alleges that the complainant has suffered, or may suffer, financial loss, material distress or material inconvenience; and
- (b) relates to the provision of the service by the licensee or on its behalf;

“control” has the meaning specified in Schedule 1;

“customer account” means a general customer account or a specific customer account;

“customer assets” means assets that, in the course of its licensed trust business, a licensee holds, has custody or control of or responsibility for that—

- (a) are trust property;
- (b) otherwise belong to a customer or potential customer of the licensee; or

- (c) the licensee holds, has custody or control of or is responsible for, on behalf of a customer or a prospective customer;

“customer money” means customer assets that consist of money;

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

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

“general customer account” means a bank account maintained by a licensee in its name that holds, or is intended to hold, customer money in respect of two or more customers of the licensee;

“large trust company” has the same meaning as in the Trust Companies Regulations;

“medium trust company” has the same meaning as in the Trust Companies Regulations;

“Ordinance” means the Trust Companies (Licensing and Supervision) Ordinance;

“outsourcing arrangement” means an arrangement between a licensee and a service provider whereby the service provider, or another person acting for the service provider, undertakes an activity on a continuing basis that would normally be undertaken by the licensee, and “outsource” shall be construed accordingly;

“Regulations” mean the Regulations made under section 61 of the Ordinance;

“regulatory obligations” means the obligations of a licensee under the Financial Services Commission Ordinance, the Ordinance, the Regulations and the Code;

“restricted trust company” means a company that holds a restricted trust company licence issued in accordance with section 6(1)(b) of the Ordinance;

“service provider”, in relation to an outsourcing arrangement, means any person other than—

- (a) a director of the licensee acting in his capacity as a director; or
(b) an employee of the licensee acting in his capacity as an employee;

“significant complaint” has the meaning specified in paragraph 42;

“small trust company” has the same meaning as in the Trust Companies Regulations;

“specific customer account” means a bank account maintained by a licensee in the name of a specific customer of the licensee or, with the agreement of the customer in the licensee’s name, that holds, or is intended to hold, customer money in respect of that customer only;

“unrestricted trust company” means a company that holds an unrestricted trust company licence issued in accordance with section 6(1)(a) of the Ordinance;

(2) Any word or phrase defined in the Ordinance has, unless the context otherwise requires, the same meaning in this Code.

Application of Code

3. (1) This Code applies, to the extent specified, to—
(a) licensed trust companies;

- (b) directors and boards of licensed trust companies; and
 - (c) any other persons that the Code, in respect of particular provisions, expressly specifies.
- (2) The Code does not apply to—
- (a) a private trust company; or
 - (b) a licensee—
 - (i) to the extent that the Code provides otherwise;
 - (ii) where, from the context, it is clearly intended that a specific provision does not apply to a licensee or is intended to apply to licensed trust companies of a different category or type; or
 - (iii) to the extent specified in any exemption notice issued by the Commission with respect to a licensee under section 40 of the Financial Services Commission Ordinance.

Principles for business

4. (1) A licensee shall at all times carry out its licensed business in accordance with the following principles—

1. Integrity

A licensee shall conduct its business with integrity.

2. Governance, Management and Control

A licensee shall take reasonable care to organise and control its affairs effectively and have adequate risk management procedures and controls in place.

3. Financial Resources

A licensee shall maintain adequate financial resources taking into account the nature, size and complexity of its business and the risks that it faces.

4. Customers' Interests

A licensee shall have due regard for the interests of its customers and treat them fairly. A licensee shall make adequate arrangements to protect its customers' assets, when it has responsibility for them, and shall manage conflicts of interest fairly.

5. Transparency

A licensee shall be transparent in its business arrangements.

6. Relationship with Commission

A licensee shall deal with the Commission in an open and cooperative manner.

PART II
LICENSING

Application for licence

5. (1) An application for a trust company's licence shall be made by submitting a completed application, in the approved form, accompanied by the documentation specified in the form.

(2) Subject to subparagraph (3), the application shall be accompanied by a business plan in a form approved by the Commission.

(3) A business plan is not required to be submitted with an application for a restricted trust company licence.

(4) An application for a restricted trust company licence shall be accompanied by a copy of the management agreement proposed to be made between the applicant and an unrestricted trust company in accordance with paragraph 43(1)(a).

Display of licence

6. (1) A licensee, other than a restricted trust company, shall display its licence, or a copy of its licence, prominently—

- (a) at its principal office in the Islands;
- (b) at each place in the Islands where its licensed trust business is carried on; and
- (c) at such other places as the Commission may, by written notice, direct.

(2) The Commission may, in addition to or as an alternative to the requirements specified in subparagraph (1), direct that the licence of a licensee, or the information contained in the licence, is brought to the attention of customers of the licensee or members of the public in some other manner.

Responsibility of licensee to undertake fit and proper assessment

7. (1) A licensee shall—

- (a) take reasonable care to satisfy itself, prior to appointment, that its directors, senior managers and auditor, and persons undertaking key functions for it, are fit and proper for the role to which they are appointed; and
- (b) establish and maintain procedures for verifying the fitness and propriety of the persons specified in paragraph (a) on an ongoing basis.

(2) In determining a person's fitness and propriety, a licensee shall have particular regard to—

- (a) the person's honesty and integrity;
- (b) the person's competence to perform the duties and to carry out the responsibilities that the person has, or will have if appointed; and
- (c) where appropriate, the person's financial soundness.

(3) In determining whether information may be reasonably material to the Commission's fit and proper assessment, for the purposes of paragraph 8(2), and in carrying out its own fit and

proper assessments, a licensee shall have regard to the matters included in the Commission's fit and proper criteria and any Guidance issued by the Commission.

Persons subject to fit and proper assessment

8. (1) The following persons are required to satisfy the Commission's fit and proper criteria, on application for a licence and on an ongoing basis—

- (a) the significant owners of a licensee; and
- (b) the directors, senior managers and auditor of, and persons under-taking key functions for, a licensee.

(2) If, whether before the Commission has approved the appointment of a person specified in subparagraph (1), or at any subsequent time, a licensee (or an applicant for a licence) becomes aware of any information that is reasonably material to the Commission's fit and proper assessment of the person, it shall notify the Commission of the information as soon as reasonably practicable.

PART III

GOVERNANCE, MANAGEMENT AND CONTROL AND TRAINING

Governance framework

Directors of licensee

9. (1) A licensee shall have an adequate number of directors who—

- (a) are capable of exercising independent judgment;
- (b) as a board, have sufficient knowledge, skills, experience and understanding of the business of the licensee, and the risks to which it is exposed, to ensure that the board is able to fulfil its responsibilities; and
- (c) have sufficient time and commitment to undertake their duties diligently.

(2) Without limiting subparagraph (1)—

- (a) a licensee shall, at all times, have—
 - (i) in relation to a small trust company, at least two directors;
 - (ii) in relation to a medium trust company, at least three directors; and
 - (iii) in relation to a large trust company, at least four directors, one of whom must be a non-executive director; and
- (b) at least one of its directors shall be resident in the Islands.

(3) The Chief Executive Officer of a licensee, who is a large trust company, shall not be appointed, or act, as the Chairman of its board, however the Commission may impose this restriction on other licensees in certain circumstances due to risk and complexity of the business.

(4) If at any time a licensee does not comply with this paragraph, it shall—

- (a) immediately provide written notification of its non-compliance to the Commission; and

- (b) within a period not exceeding twenty-one days from the date the licensee failed to comply with subparagraph (2), submit to the Commission an application for approval to appoint a director, to ensure compliance with subparagraph (2).

Responsibilities of board

10. (1) The board of a licensee has ultimate responsibility for the business and affairs of the licensee and for ensuring its effective organisation.

(2) Without limiting subparagraph (1), the board of a licensee has the following responsibilities—

- (a) monitoring the sufficiency and independence of its members;
- (b) establishing the licensee's business objectives and the strategy for achieving those objectives;
- (c) ensuring that a corporate governance framework complying with this Code is established and maintained by the licensee;
- (d) ensuring that it has effective oversight of the management of the licensee, including approving, periodically reviewing and overseeing—
 - (i) the licensee's overall business strategy and its corporate values;
 - (ii) the licensee's risk management strategy; and
 - (iii) such other strategies as are required by the Ordinance or this Code or that the board considers to be necessary or appropriate;
- (e) setting or approving, and periodically reviewing, the significant policies of the licensee;
- (f) monitoring the management of the licensee by senior management in accordance with the strategies and policies established or approved by the board;
- (g) ensuring that—
 - (i) the licensee has adequate and sufficiently qualified and experienced senior managers and other employees;
 - (ii) appropriate and effective systems and controls are established, maintained and implemented for giving effect to the strategies and policies of the licensee, which shall include internal controls and systems and controls with respect to risk management; and
 - (iii) the licensee complies with its regulatory obligations and its AML/CFT obligations;
- (h) establishing standards for business conduct and ethical behaviour for directors, senior management and other employees;
- (i) monitoring, and ensuring, the financial soundness of the licensee; and
- (j) such other responsibilities as are specified in this Code.

(3) Subparagraphs (1) and (2) apply, notwithstanding that the regulatory enactments or this Code may require the appointment of a senior manager to undertake, or oversee, particular functions.

Responsibilities of senior management

11. Subject to the strategy and policies established by the board, the senior management of a licensee is responsible for—

- (a) overseeing the operations of the licensee and providing direction to it on a day-to-day basis in accordance with the strategy and policies established by the board;
- (b) providing the board with recommendations, for its review and approval on the licensee's strategy, business plans and significant policies; and
- (c) providing the board with timely and accurate information, including financial information, that is adequate to enable the board to fulfil its responsibilities, including holding senior management to account.

Span of control

12. (1) A licensee shall ensure that it has a span of control that is adequate for the nature, size and complexity of its business.

(2) Without limiting subparagraph (1), a licensee shall ensure that its management is undertaken by at least two individuals each of whom is either an executive director or a senior manager and is fit and proper for the purpose.

(3) The relationship between the directors or senior managers who undertake the management of the licensee for the purposes of this paragraph shall be such so as to ensure that they can each exercise independent judgment and that none of them is able to exercise duress or undue influence over the other or others.

Licensee with overseas subsidiaries

13. Where a licensee carries on business through one or more subsidiaries incorporated outside the Islands, an appropriate and effective corporate governance framework must be established, maintained and implemented in each subsidiary.

Strategies, policies, systems and controls

Establishment of policies, systems and controls

14. (1) A licensee shall—

- (a) establish such strategies, policies, systems and controls as are appropriate given the nature, size and complexity of its business and the degree of risk associated with each area of its business; and
- (b) ensure that the strategies, policies, systems and controls are fully and clearly documented and are communicated, as appropriate, to members of staff and other functionaries.

(2) The strategies, policies, systems and controls of a licensee shall specify the duties and responsibilities of the board and senior management, including such responsibilities and duties as are imposed on the board and senior management by this Code.

(3) The senior management of a licensee is responsible for ensuring that, insofar as it is necessary for them to perform their duties, all staff of the licensee—

- (a) are made aware of and understand the strategies, policies, systems and controls established and maintained by the licensee; and
- (b) are provided with information concerning the licensee and its business.

Risk management

15. (1) The risk management strategy, policies, systems and controls required by section 24 of the Ordinance shall be fully and clearly documented and effectively communicated and readily available to the directors and to those senior managers, staff and other functionaries of the licensee who have responsibility for implementing them.

(2) The board and senior management are responsible for—

- (a) ensuring that they understand all the risks to which the licensee is exposed in its business;
- (b) assessing the resources required for an appropriate risk management system, including accurate and reliable management information and reporting systems, and for ensuring that the required resources are available; and
- (c) overseeing the implementation of the licensee's risk management strategy, policies, systems and controls.

(3) Without limiting this paragraph, the risk management systems and controls of a licensee shall—

- (a) enable the licensee to monitor the adequacy and effectiveness of—
 - (i) its risk management strategy and policies and their implementation; and
 - (ii) measures taken to address any deficiencies identified in the risk management strategy, policies, systems and controls; and
- (b) ensure that any exceptions to the licensee's risk management strategy and policies are reviewed and authorised by senior management and, where appropriate, the board.

(4) The directors of a licensee shall, in the annual return, certify compliance with section 24(2)(c) of the Ordinance.

Business continuity plans

16. (1) A licensee shall establish a business continuity policy, and put business continuity arrangements in place, aimed at ensuring that, in the event of an unforeseen interruption or disruption—

- (a) the licensee is able to continue to carry on its trust business and to meet its regulatory and AML/CFT obligations;

- (b) losses to its functions, systems and data are limited and any losses may be recovered in a timely manner; and
 - (c) where the severity of the interruption or disruption results in the licensee ceasing its regulated business, or any part of it, it is able to resume its business in a timely manner.
- (2) The business continuity policy and arrangements shall be—
 - (a) appropriate for the nature, size and complexity of the licensee’s business and the types and degree of risk to which it is exposed; and
 - (b) regularly reviewed and tested, and updated as required.
- (3) Without limiting subparagraph (1) or (2), the interruptions and disruptions covered by the business continuity plan and arrangements shall include—
 - (a) the loss or failure of internal and external resources, including human resources, systems and other assets;
 - (b) the loss or corruption of data and other information; and
 - (c) external events, such as criminal acts and hurricanes and other natural disasters.

Establishment and maintenance of internal controls

17. (1) A licensee shall establish and maintain an adequate and effective system of internal controls appropriate for the nature, size and complexity of its business.
- (2) The internal controls established under subparagraph (1) shall, as appropriate, operate at all levels of the licensee.
- (3) A licensee shall ensure that its internal controls extend to any outsourced functions.
- (4) Where a licensee also operates through subsidiaries and branches, its internal control systems must extend to those operations and enable effective oversight by the licensee.

Responsibilities of board and senior management in relation to internal controls

18. (1) The board of a licensee has ultimate responsibility for ensuring that an adequate and effective system of internal controls is established and maintained by the licensee.
- (2) Without limiting subparagraph (1), the board of a licensee shall—
 - (a) approve and periodically review the overall business strategies and significant policies of the licensee;
 - (b) ensure that senior management implements the internal controls strategy and policies established by the board;
 - (c) approve an appropriate organisational structure for the licensee; and
 - (d) ensure that senior management is monitoring the effectiveness of the licensee’s internal control system.
- (3) The senior management of a licensee have responsibility for—
 - (a) implementing the strategy and policies of the board with respect to internal controls;

- (b) ensuring that—
 - (i) the internal controls required under paragraph 17 are established and maintained;
 - (ii) the information systems required under paragraph 19 are put in place; and
 - (iii) the internal controls are monitored and deficiencies corrected as required by paragraph 20; and
- (c) reviewing the licensee’s internal controls, at least annually, and reporting on the results of their review to the board.

Information systems

19. (1) A licensee shall have in place reliable and secure information systems that cover all the significant activities carried on by the licensee.

(2) A licensee’s information systems shall be monitored independently and supported by adequate contingency arrangements.

Monitoring of internal control systems and correcting deficiencies

20. (1) A licensee shall ensure that—

- (a) the effectiveness of the internal control system is monitored on an on-going basis;
- (b) regular reports on the effectiveness of the internal control system are made to the board; and
- (c) any deficiencies identified in the internal control system are corrected as soon as reasonably practicable.

(2) A licensee’s internal control policies shall require any deficiencies identified in the internal control system to be reported in a timely manner to senior management and for material internal control deficiencies identified to be reported to the board, notwithstanding that they may have been corrected.

(3) A licensee shall establish an internal audit function in line with the Commission’s guidance to ensure an independent review of internal controls.

Record keeping

Licensee to maintain records

21. (1) A licensee shall keep adequate and orderly records which must include full records of its business, including—

- (a) records in relation to the trusts that it manages or to which it provides services;
- (b) records of all services provided to, and transactions undertaken for, customers; and
- (c) records of its internal organisation, including records of its policies, procedures, systems and controls.

(2) The records kept by a licensee shall be sufficient to enable the Commission to monitor the compliance of the licensee with its regulatory obligations and its AML/CFT obligations.

(3) A licensee shall—

- (a) maintain its records so that they can be readily retrieved in the Islands and, if kept otherwise than in legible form, so that they can be accessed and read at a computer terminal in the Islands and produced in the Islands in legible form and in the English language without 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 licensee shall not keep any records that it is required to maintain under the Financial Services Commission Ordinance, the Ordinance, the Trusts Ordinance, the Regulations or this Code outside the Islands if access to those records will or is likely to be impeded by confidentiality or data protection restrictions.

Retention of records

22. (1) A licensee shall establish a record retention policy which shall include—

- (a) the period of time for which various types of records will be retained, which shall be no less than the minimum period specified in subparagraph (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 licensee, the Commission, law enforcement agencies or other persons entitled to access them.

(2) Subject to any requirement to which the licensee is subject, to retain records for a longer period, a licensee shall retain all records that it is required to maintain under this Code for a period of at least five years.

(3) In the case of records relating to transactions with a customer, the five-year period shall commence on the termination of the licensee's relationship with the customer.

(4) A licensee shall not, without the written consent of the Commission and whether before or after the expiration of the retention period, alter, destroy or erase any record which is, or may be, relevant to any enforcement action being taken by the Commission or to any matter which is being investigated by the Commission or any law enforcement authority in the Islands.

Compliance

Compliance systems and controls

23. (1) The compliance systems and controls required to be established and maintained by a licensee under section 31 of the Financial Services Commission Ordinance shall—

- (a) be appropriate for the nature, scale and complexity of the business carried on by a licensee;
- (b) extend to compliance with the Trusts Ordinance;
- (c) be sufficient to ensure compliance—

- (i) by the licensee with its compliance policies and its regulatory obligations;
 - (ii) by the licensee's board, senior management and employees with its compliance policies and any obligations that may be imposed on them by the Financial Services Commission Ordinance, the Ordinance, the Trusts Ordinance, the Regulations or this Code; and
 - (iii) with the licensee's internal controls;
 - (d) be adequate to identify compliance breaches; and
 - (e) be effectively implemented by the licensee.
- (2) The board of a licensee shall—
- (a) approve the licensee's compliance policy; and
 - (b) on at least an annual basis—
 - (i) review the compliance policy; and
 - (ii) assess the effectiveness of the compliance policy, systems and controls in managing the licensee's compliance risk.
- (3) The compliance policy, systems and controls of a licensee shall be—
- (a) documented in a compliance procedures manual; and
 - (b) communicated, and readily available, to the directors and to those senior managers and employees who have responsibility for implementing them.

Compliance officer

24. (1) The person appointed as the compliance officer of a licensee, in accordance with section 31(2) of the Financial Services Commission Ordinance, shall have the appropriate skills and experience and is otherwise fit and proper to act as the licensee's compliance officer.

(2) An employee of a licensee shall not be appointed as the compliance officer without the approval of its board.

- (3) The board shall ensure that the compliance officer—
- (a) possesses sufficient independence to perform the role objectively and, without limiting this paragraph, the compliance officer shall not be—
 - (i) involved in the performance of services or activities that he is responsible for monitoring;
 - (ii) placed in a position where he is expected to perform functions that conflict with his role as compliance officer; or
 - (iii) subjected to any undue influence or pressure with respect to the carrying out of the compliance function;
 - (b) is given sufficient status in the organisational structure of the licensee to effectively undertake the compliance function and, in particular, to ensure that—
 - (i) senior management and the board react to, and act on, his recommendations; and

- (ii) his requests, where appropriate, are acted upon by the licensee and its staff;
and
 - (c) has sufficient resources to perform the compliance function effectively.
- (4) Without limiting subparagraph (3)(b), for the purposes of undertaking the compliance function, the compliance officer of a licensee shall have unrestricted access to—
- (a) the directors, senior management and auditor of the licensee;
 - (b) the employees of the licensee, in order to seek information and explanations concerning compliance matters; and
 - (c) documents and information relating to the business of the licensee and its customers.

Duties and responsibilities of compliance officer

25. (1) The compliance officer of a licensee, in addition to the responsibilities specified in section 31(2) of the Financial Services Commission Ordinance, has the following duties—

- (a) to assist the licensee to meet its statutory and regulatory obligations;
- (b) to monitor the licensee's compliance with its statutory and regulatory obligations;
- (c) to keep the compliance systems and controls of the licensee under review, identifying any deficiencies, making regular assessment reports to the board and senior management and making recommendations for any updates or revisions; and
- (d) to promote and sustain a compliance culture within the licensee.

(2) The compliance officer shall report directly to the board and, without limiting any other obligations specified in this paragraph, shall prepare and submit an annual compliance report to the board.

(3) For the purposes of subparagraph (1), the compliance officer is responsible for preparing a compliance procedures manual for the licensee and keeping the compliance procedures manual under regular review.

(4) A licensee shall require the compliance officer to report to the chair of the board, as soon as reasonably practicable—

- (a) any material non-compliance by a member of management; and
- (b) any material non-compliance by the licensee with a statutory or regulatory obligation if the compliance function is of the opinion that—
 - (i) senior management are not taking the necessary remedial action; and
 - (ii) a delay would be prejudicial to the licensee or its customers.

(5) The compliance function shall, on behalf of a licensee—

- (a) maintain a register of compliance breaches containing information on the date, nature and extent of each compliance breach;

- (b) ensure that the employees of the licensee are aware of the need for and the objectives of compliance and of their responsibilities under the compliance procedures manual; and
- (c) establish and maintain procedures for the monitoring and handling of complaints, and keeping the complaints procedures under review.

Compliance procedures manual

26. (1) The compliance procedures manual of a licensee shall provide sufficient detail and structure to ensure that employees of the licensee understand the compliance function and their individual roles in the compliance framework.

- (2) The general areas covered by the compliance manual shall include the following—
 - (a) the purpose and importance of the compliance function;
 - (b) the role of the compliance officer and any compliance committee that may be established and how the compliance function is to be monitored and reviewed;
 - (c) a description of the business undertaken by the licensee, including risks associated with the business and the risk management systems in place;
 - (d) an organisational chart clearly indicating who is responsible for various procedures and tasks within the licensee and a description of those tasks and the compliance reporting structure;
 - (e) a description of the regulatory framework insofar as it is relevant to the licensee and of the regulatory obligations of the licensee;
 - (f) the procedures that will be used to test compliance and how breaches in compliance will be reported and rectified.

Group compliance

27. Where a licensee has one or more branches or subsidiaries in a jurisdiction outside the Islands, the licensee shall ensure that the activities carried on through the branch or subsidiary are in compliance with the legal and regulatory requirements of that jurisdiction.

Outsourcing

Responsibility for outsourced activities

28. (1) Where a licensee outsources an activity, the licensee—
- (a) shall oversee the performance of the activity by the service provider; and
 - (b) remains responsible for—
 - (i) the performance of the activity by the service provider; and
 - (ii) any failure by the service provider in relation to the performance of the activity.
- (2) A licensee shall not outsource any activity if the outsourcing of that activity would—
- (a) impair the Commission's ability to supervise the licensee; or

- (b) affect the rights of a customer or potential customer against the licensee, including the right to obtain legal redress.

Outsourcing of material activities

29. A licensee shall not enter into an outsourcing arrangement in relation to any material activity unless—

- (a) the board of the licensee has—
 - (i) undertaken an assessment of the outsourcing risk;
 - (ii) satisfied itself as to the expertise and experience of the service provider;
 - (iii) satisfied itself that the charges, fees and costs payable under the outsourcing agreements are reasonable given the activities to be undertaken by the service provider under the agreement and are affordable given the licensee's current and likely future income and costs;
 - (iv) taking full account of the matters specified in subparagraphs (i), (ii) and (iii), approved the outsourcing arrangement; and
 - (v) ensured that the outsourcing will be subject to appropriate controls; and
- (b) the licensee has established an outsourcing policy with respect to the activities to be outsourced ("the relevant activities").

Outsourcing policy

30. (1) The outsourcing policy established under paragraph 29(b) shall—

- (a) consider the potential effects of outsourcing on the compliance function;
- (b) include an evaluation of whether, and the extent to which, the relevant activities are appropriate for outsourcing;
- (c) set out the internal review and approvals required;
- (d) specify criteria for making outsourcing decisions, including how, and to whom, particular types of relevant activities should be outsourced; and
- (e) provide for outsourcing only as permitted by, and in accordance with, the Code.

(2) The board of a licensee—

- (a) shall approve the licensee's outsourcing policy and keep it under review; and
- (b) is responsible for ensuring that any outsourcing arrangements are put in place and operated in accordance with the licensee's outsourcing policy.

Managing outsourcing risks

31. (1) A licensee that outsources any activity shall establish and maintain appropriate and adequate procedures and controls to manage its outsourcing risk.

(2) Without limiting subparagraph (1), the outsourcing management risk systems and controls shall—

- (a) provide for the monitoring and controlling of the licensee's outsourcing arrangements; and

- (b) take account of such key outsourcing risks as may be specified in Guidance issued by the Commission.

Outsourcing arrangements

32. (1) A licensee shall, before entering into any outsourcing arrangement, whether material or otherwise, undertake appropriate due diligence with respect to the service provider to whom the activities will be outsourced to enable it to assess—

- (a) the service provider's capacity and ability to undertake the outsourced activity; and
- (b) the risks associated with outsourcing the proposed activity to the service provider.

(2) The outsourcing of an activity shall be governed by a written contract with the service provider that—

- (a) clearly specifies all material aspects of the outsourcing arrangement, including—
 - (i) the activities to be outsourced;
 - (ii) the rights and responsibilities of the parties; and
 - (iii) the protection by the service provider of confidential information relating to the licensee or its customers; and
- (b) gives the licensee and its auditor access to all documents and information relevant to the outsourced activity.

(3) A licensee shall establish and maintain a contingency plan for each outsourcing agreement that it enters into.

PART IV

BUSINESS CONDUCT

Business conduct

Overriding obligations

33. A licensee shall—

- (a) in carrying on its licensed trust business, act honestly and with due skill, care and diligence;
- (b) treat its customers and potential customers fairly at all times; and
- (c) properly and fairly manage any conflict of interest with customers or potential customers.

Business conduct policies, procedures and controls

34. (1) The board of a licensee shall ensure that the licensee has business conduct policies, procedures and controls in place with the objective of achieving compliance with paragraph 33.

(2) The policies, procedures and controls shall take account of the circumstances of different customers and potential customers.

(3) Without limiting this paragraph and paragraph 33, the business conduct policies and procedures of a licensee shall cover or include the following—

- (a) the provision of clear information to customers and potential customers;
- (b) the provision of high quality advice to customers and potential customers;
- (c) procedures for dealing with customer complaints and disputes in a fair manner;
- (d) the protection of confidential information relating to customers and potential customers;
- (e) the management of the reasonable expectations of customers.

Trust property and customer assets

General obligations with respect to customer assets

35. A licensee shall ensure that—

- (a) customer assets are identified, or identifiable, and appropriately segregated and accounted for;
- (b) it makes arrangements for the safekeeping and proper protection of customer assets and any documents of title relating to customer assets;
- (c) the location of a customer's assets and documents of title relating to a customer's assets are recorded in the customer's records; and
- (d) where any customer asset is required to be registered, the asset is properly registered either in the customer's name or, where agreed with the customer, in the name of a nominee.

Establishment of customer bank accounts

36. (1) A licensee shall ensure that any customer account that it maintains is—

- (a) held with an approved bank;
- (b) separate from any of the licensee's own bank accounts;
- (c) clearly designated as a customer account; and
- (d) under at least dual signatory control, where the signatories are sufficiently senior to provide an appropriate span of control.

(2) A licensee who opens a customer bank account with a bank shall—

- (a) give written notice to the bank that the account is to be a customer account, specifying whether the account is a general customer account or a specific customer account; and
- (b) request the bank in writing to provide an undertaking to the effect that the bank—

- (i) acknowledges that the account is a customer account and that money standing to the credit of the account at any time is held by the licensee as a trustee;
- (ii) agrees not to combine the customer bank account with any other account, whether held by the licensee or by any other person;
- (iii) agrees that it has no right of set off, counterclaim or any security interest against money in the customer account with respect to any debt or other obligation of the licensee; and
- (iv) agrees that any interest payable in relation to monies standing to the credit of the account will be credited to that account.

Operation of customer accounts

37. (1) A licensee shall not—

- (a) pay any customer money into a customer account unless it has received an undertaking from the bank in the terms specified in paragraph 36(2)(b);
- (b) except as provided in subparagraph (4)—
 - (i) pay money that is not customer money into a customer account; or
 - (ii) pay customer money received in respect of one customer into a specific customer account held in respect of another customer; or
- (c) knowingly permit a customer account to become overdrawn.

(2) A licensee shall, as soon as reasonably practicable, pay all customer money that it receives into a customer account that complies with the requirements of paragraph 36.

(3) Where a licensee receives a postal order, cheque, bankers' draft or other payable order, which includes customer money and money payable to the licensee, the licensee shall—

- (a) ensure that both the customer money and the other money are paid into a customer account; and
- (b) once the postal order, cheque, bankers' draft or other payable order has been received into the account and, where appropriate, fully cleared, withdraw the money that does not represent customer money for payment into the licensee's own account.

(4) A licensee may pay into, or permit to be paid into or credited to, a customer account money that is not customer money if the money—

- (a) is required to open the account;
- (b) is required to restore an amount withdrawn in error from the account; or
- (c) represents interest earned on the money in the account.

Use of customer money

38. (1) A licensee shall ensure that—

- (a) customer money is not mixed with other money; and

- (b) customer money held with respect to a customer is not used for another customer, without proper authority.
- (2) A licensee shall ensure that—
- (a) customer money is not disbursed, whether by payment out of a customer account or otherwise, unless the money is properly required for payment to, on behalf of or with respect to a customer; and
 - (b) money is not withdrawn from a customer account, otherwise than in accordance with paragraph (a), unless it is not customer money.
- (3) Without limiting subparagraph (2)(a), customer money is properly required for payment on behalf of, or with respect to, a customer if—
- (a) it is required for the payment of fees, commissions or disbursements due and payable to the licensee by the customer in accordance with the terms of the agreement between the licensee and the customer; or
 - (b) it is withdrawn or paid on a customer's authority or otherwise in conformity with any contract between the licensee and the customer.

Records relating to customer assets

39. (1) A licensee shall maintain records of all customer assets, specifying which assets represent trust property.

- (2) The records relating to trust monies shall—
- (a) enable the licensee, at any time, to identify the balance due to, or standing to the credit of, each customer;
 - (b) show each transaction in respect of customer money in a manner that allows each transaction to be identified and traced; and
 - (c) be in a form that enables the records to be reconciled on a timely basis as required by subparagraph (3).

(3) A licensee shall, on a regular basis, carry out reconciliations between its records of customer money and statements of each customer account produced by the bank with which it is held.

Interest on customer money

40. Unless any written agreement between the licensee and a customer provides otherwise, the licensee shall account to the customer for any interest received by the licensee with respect to customer money of that customer.

Complaints

Complaints policy and procedures

41. A licensee shall—
- (a) establish and maintain a complaints policy and procedures which provide for—
 - (i) the effective consideration and proper handling of any complaints made to it;

- (ii) appropriate remedial action to be taken, where appropriate; and
- (iii) the complainant to be advised of the need for the complaint to be put in writing for it to be considered as a significant complaint; and
- (b) maintain a complaints register in which the licensee shall record any complaints received together with details of how the complaint has been, or is being, dealt with.

Significant complaints

42. (1) Subject to subparagraph (2), for the purposes of this paragraph, a “significant complaint” is a written complaint that alleges—

- (a) a breach of the Financial Services Commission Ordinance, the Ordinance, the Regulations or the Code;
- (b) bad faith, malpractice or impropriety on the part of the licensee or one of its directors, employees or agents;
- (c) the repetition or recurrence of a matter previously complained of, whether significant or otherwise; or
- (d) that the complainant has suffered, or may suffer, financial loss that is material in relation to his or her financial circumstances.

(2) A complaint shall not be treated as significant if it relates to a minor clerical error that can be easily amended.

(3) A significant complaint shall be considered by a senior manager of the licensee who is independent of the circumstances that gave rise to the complaint or, if this is not practicable, by a director of the licensee.

(4) If a significant complaint remains unsettled for longer than three months, the licensee shall immediately inform the Commission and shall also advise the complainant that he or she may inform the Commission directly of the complaint.

(5) Where a licensee has given a substantive response in relation to a significant complaint, unless and until the licensee has received an indication from the complainant that the response is unsatisfactory, the licensee is entitled to treat the complaint as settled and resolved after the expiry of four weeks from the date of its response.

(6) The first substantive reply to a significant complaint shall, unless it offers a settlement reasonably expected to be acceptable to the complainant, advise the complainant that he or she has a right to inform the Commission of the details of the complaint.

(7) Where the Commission is informed of a complaint against a licensee under this paragraph, its role in relation to the complaint is limited to considering whether any supervisory action is appropriate in relation to the alleged conduct or omission of the licensee.

PART V

MISCELLANEOUS PROVISIONS

Restricted trust companies

Management of restricted trust companies

43. (1) A restricted trust company that is not a wholly owned subsidiary of an unrestricted trust company—

- (a) shall, within five working days of obtaining its restricted trust company licence, enter into a written management agreement with an unrestricted trust company as its managing trust company that is substantively equivalent to the agreement submitted to the Commission under paragraph 5(4); and
- (b) shall not commence carrying on business until the written management agreement referred to in subparagraph (a) has been entered into and is in force.

(2) The written management agreement referred to in subparagraph (1) shall comply with paragraph 44 and shall not be amended unless—

- (a) the restricted trust company has given the Commission prior notice of the proposed amendments; and
- (b) the Commission has provided the restricted trust company with a written notice that it has no objection to the proposed amendments.

(3) A restricted trust company shall not change the unrestricted trust company that carries on and manages its business without the approval of the Commission.

Management agreements and outsourcing

44. (1) A management agreement between a restricted trust company and the unrestricted trust company that will manage it shall—

- (a) specify the responsibilities of the respective parties;
- (b) state the responsibilities of the directors of the managed trust company in its operation; and
- (c) include provisions relating to—
 - (i) the nature of the services that will be provided by the managing trust company, and on what basis;
 - (ii) the fees and other costs to be charged by the managing trust company or the basis on which such fees and costs will be calculated and the basis on which costs, including common or joint costs, and revenues;
 - (iii) the responsibilities of the respective parties for ensuring compliance with the managed trust company's AML/CFT obligations and its regulatory obligations;
 - (iv) the operational arrangements for the management of the managed trust company, including risk management and contingency plans;
 - (v) the appointment of directors and senior managers;

- (vi) the duration of the management agreement; and
- (vii) the transfer of the managed trust company's books and records on the termination of the management agreement.

(2) Notwithstanding paragraph 24, a restricted trust company may outsource the compliance function to the managing trust company.

Books and records

45. (1) The managing trust company shall keep the books and records of the managed trust company separately from—

- (a) its own books and records;
- (b) the books and records of its other customers; and
- (c) the books and records of any other managed trust company for which it acts as managing trust company.

(2) The books and records of a restricted trust company that are kept in the Islands shall be kept at the principal office of the managing trust company in the Islands.

(3) The books and records of a restricted trust company that are kept out of the Islands shall be accessible from the principal office of the managing trust company in the Islands.

Reporting to Commission

Disclosure of matters having material regulatory impact

46. (1) A licensee shall disclose to the Commission in writing any matter that might reasonably be expected to have a material regulatory impact.

(2) Without limiting subparagraph (1), the following shall be regarded as matters that might reasonably be expected to have a material regulatory impact—

- (a) any matter that could impact on the ability of the licensee to continue to carry on business substantially in accordance with its most recent business plan;
- (b) any matter that could result in significant financial consequences to other licensees; or
- (c) any incidence of fraud or other criminal activity that is connected with, or may affect, the licensee's business if the fraud or criminal activity is material to the safety, soundness or reputation of the licensee.

(3) In determining whether a disclosure should be made under this paragraph, a licensee shall consider—

- (a) any activities that are not subject to supervision by the Commission; and
- (b) the business and activities of any other group companies.

(4) Disclosure under this paragraph shall be made immediately after the licensee—

- (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.

Disclosures to Commission to be accurate and complete

47. (1) A licensee 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 licensee becomes aware that any information or documentation that it has, at any time, provided to the Commission is not accurate or complete, the licensee shall—

- (a) notify the Commission immediately on becoming aware that it has provided inaccurate or incomplete information; and
- (b) within seven days, or such shorter period as the Commission may require, provide the Commission with such information or documentation as is required to ensure that subparagraph (1) is complied with.

Disclosures on occurrence of specified changes

48. (1) Without limiting paragraph 46, a licensee shall notify the Commission in writing of any event specified in Schedule 2, within the time limit specified in relation to that event.

(2) Where the time limit specified in Schedule 2 is “immediate”, the licensee shall notify the Commission—

- (a) immediately after there are reasonable grounds for the licensee believing that the event is likely to occur in the foreseeable future; and
- (b) whether or not paragraph (a) applies, immediately after the licensee knows, or has reasonable grounds for believing, that the event has occurred.

(3) A licensee shall not, without giving the Commission reasonable prior written notice—

- (a) cause or permit a change in—
 - (i) its name or any business name under which it carries on regulated business;
 - (ii) the address of its principal office or place of business in the Islands; or
 - (iii) the address of its registered office; or
- (b) carry on business in a manner materially different to its most recent business plan.

Continuing Professional Development and Training

Continuing professional development

49. (1) For the purposes of this paragraph a “professional employee” is an employee of a licensee who holds one or more professional or technical qualifications that are relevant to the employee’s role and responsibilities as an employee of the licensee.

(2) A licensee shall ensure that each of its professional employees completes appropriate and relevant continuing professional development in each twelve month period.

(3) In complying with this paragraph, a licensee—

- (a) may rely on the continuing professional development provided by, or through, any professional associations of which the employee is a member; and
- (b) shall have regard to any Guidance issued by the Commission.

(4) A licensee is not required to comply with subparagraph (1) during any period in which a professional employee is continuously absent from work due to long-term sickness or extended leave.

(5) Where, due to a continuous absence, a professional employee has not taken the required continuing professional development, the licensee shall ensure that the employee completes appropriate professional development as soon as practicable after the employee's return to work.

(6) A licensee shall maintain records of—

- (a) the nature and extent of the continuing professional development completed by each professional employee; and
- (b) the dates for which any professional employee failed to complete continuing professional by reason of a continuous absence from work, and the reasons for the absence.

Staff training

50. A licensee shall establish and maintain an appropriate staff training programme, which shall include the provision of training—

- (a) to all staff on—
 - (i) the procedures, systems and controls of the licensee that are relevant to their roles and responsibilities, including anti-money laundering training; and
 - (ii) the licensee's ethical standards; and
- (b) to appropriate staff, on trusts and trust business and on the trust services that the licensee provides.

Financial statements and audit

Qualifications for auditor

51. (1) The following are recognised professional bodies for the purposes of this paragraph—

- (a) the Institute of Chartered Accountants in England and Wales;
- (b) the Association of Chartered Certified Accountants;
- (c) the Institute of Chartered Accountants of Scotland;
- (d) the Institute of Chartered Accountants in Ireland;
- (e) the Canadian Institute of Chartered Accountants;
- (f) the American Institute of Certified Public Accountants; and

- (g) such other professional body as may be recognised by the Commission for the purposes of this paragraph on a case-by-case basis.
- (2) An individual is qualified to act as the auditor of a licensee if—
 - (a) he is a member of a recognised professional body; and
 - (b) he is eligible to be appointed as an auditor under the rules of his professional body.
- (3) A partnership is qualified to act as the auditor of a licensee if a majority of the partners are individuals qualified to act as the auditor of a licensee under subparagraph (2).
- (4) A body corporate is qualified to act as the auditor of a licensee if the body corporate is controlled by individuals qualified to act as the auditor of a licensee or partnerships qualified to act as the auditor of a licensee under subparagraph (3).
- (5) A person who is qualified to act as the auditor of a licensee under this paragraph shall not be appointed as the auditor of a particular licensee unless, in accordance with the applicable regulatory enactment—
 - (a) he has consented to act as the auditor of the licensee; and
 - (b) the Commission has approved his appointment as auditor of the licensee.

Auditor to be independent

52. (1) A licensee shall take reasonable steps to ensure that the person it appoints as auditor is independent of the licensee and shall not appoint as its auditor a person who it knows, or ought to have known, has a conflict of interest with respect to the licensee.
- (2) The auditor of a licensee shall take reasonable steps to satisfy himself that he is independent of the licensee and that he has no conflicts of interest with respect to the licensee.
- (3) A licensee shall notify the Commission in writing if, at any time, it forms the opinion that its auditor is not independent of it.

Auditor to provide information when at request of Commission

53. (1) An auditor, or a person that a licensee proposes for appointment as its auditor, shall, at the request of the Commission, provide the Commission with such information or documentation regarding his experience, skills and resources as the Commission reasonably requires to determine whether he is fit and proper to audit the licensees.
- (2) A request under subparagraph (1) may be made as part of the approval basis or at any subsequent time.

Accounting and audit standards

54. (1) A licensee shall ensure that its financial statements, and any group accounts required to be submitted to the Commission, are prepared in accordance with—
 - (a) the International Financial Reporting Standards, promulgated by the International Accounting Standards Board; or
 - (b) such other recognised international accounting standards as may be approved by the Commission on a case-by-case basis.

- (2) The auditor of a licensee shall—
- (a) audit the licensee’s financial statements and report to the licensee in accordance with—
 - (i) the auditing standards specified or endorsed by the recognised professional body of which he is a member; or
 - (ii) such other recognised international auditing standards as may be approved by the Commission on a case-by-case basis;
 - (b) certify the licensee’s compliance with such obligations and matters as may be specified in the regulatory enactments and this Code;
 - (c) provide such certifications or confirmations as may be specified by the Commission in a written notice sent to the licensee and the auditor;
 - (d) review, but not audit, the trust accounts of the licensee with a view to assessing whether they are appropriate; and
 - (e) carry out such other duties as may be required of the auditor by the Ordinance, the Regulations, this Code or guidelines as may be issued by the Commission from time to time.

Signing of auditor’s report

55. (1) Where the auditor of a licensee is an individual, he shall sign the audit report.
- (2) Where the auditor is a partnership or a corporate body, the audit report shall be signed by an individual who is—
- (a) qualified to act as the auditor of a licensee under paragraph 51(2); and
 - (b) authorised to sign the audit report on behalf of the partnership or corporate body.

Time period for submission of financial statements

56. (1) A licensee shall submit its audited financial statements and the documents specified in section 40(1) of the Ordinance to the Commission within three months of the end of the financial year to which the financial statements relate.
- (2) A licensee shall submit its periodic financial statements and the documents specified in sections 40(3) and 43(1) of the Ordinance to the Commission for every six months, that is, as at the last day of June and the last day of December in every calendar year, within forty-five days of the end of the period to which the periodic financial statements relate.
- (3) The Commission may, based on the licensee’s risk profile, require more frequent submission of the periodic financial statements as required under subparagraph (2).

Transitional provisions

57. The transitional provisions in Schedule 3 have effect.

SCHEDULE 1

(Paragraph 2(1))

Meaning of “Control” and Associated Terms

1. A person exercises control over an undertaking if the person, whether alone or acting together with one or more associates—

- (a) holds, whether legally or equitably, 10% or more of the issued shares of the undertaking, or its parent;
- (b) has the power, directly or indirectly, to exercise, or control the exercise of, 10% or more of the voting rights in the undertaking, or its parent; or
- (c) has the power to appoint or remove one or more directors of the undertaking or one or more members of a committee of directors.

2. A person who is a significant owner of an undertaking significantly increases the person’s control over the undertaking if, whether alone or acting together with one or more associates—

- (a) the person’s legal or equitable holding in the issued shares of an undertaking, or its parent, increases—
 - (i) from less than 20% to 20% or more;
 - (ii) from less than 30% to 30% or more;
 - (iii) from less than 40% to 40% or more;
 - (iv) from less than 50% to 50% or more; or
 - (v) from less than 75% to 75% or more;
- (b) the person’s power, directly or indirectly, to exercise or control the voting rights in the undertaking or its parent increases—
 - (i) from less than 20% of the voting rights to 20% of the voting rights or more;
 - (ii) from less than 30% of the voting rights to 30% of the voting rights or more;
 - (iii) from less than 40% of the voting rights to 40% of the voting rights or more;
 - (iv) from less than 50% of the voting rights to 50% of the voting rights or more; or
 - (v) from less than 75% of the voting rights to 75% of the voting rights or more; or
- (c) the person acquires the power to appoint or remove a greater number of directors of the undertaking.

3. A person who is a significant owner of an undertaking significantly reduces the person’s control over the undertaking if, whether alone or acting together with one or more associates—

- (a) the person’s legal or equitable holding in the issued shares of an undertaking, or its parent, reduces—

- (i) from 75% or more to less than 75%;
 - (ii) from 50% or more to less than 50%;
 - (iii) from 40% or more to less than 40%;
 - (iv) from 30% or more to less than 30%; or
 - (v) from 20% or more to less than 20%;
- (b) the person's power, directly or indirectly, to exercise or control the voting rights in the undertaking or its parent reduces—
- (i) from 75% or more to less than 75%;
 - (ii) from 50% or more of the voting rights to less than 50% of the voting rights;
 - (iii) from 40% or more of the voting rights to less than 40% of the voting rights;
 - (iv) from 30% or more of the voting rights to less than 30% of the voting rights; or
 - (v) from 20% or more of the voting rights to less than 20% of the voting rights; or
- (c) the number of directors that the person has the power to appoint or remove is reduced.
4. For the purposes of this paragraph, an associate is a person who, in exercising voting or other rights in relation to the undertaking—
- (a) acts in accordance with an explicit or implicit agreement with the other person;
or
 - (b) acts, or is accustomed to act, in accordance with the wishes of the other person.

SCHEDULE 2

(Paragraph 48)

MATTERS TO BE NOTIFIED TO COMMISSION

	<u>Event</u>	<u>Time Limit for Notification</u>
1.	Application being made to the Court for the appointment of a liquidator of the licensee	Immediate
2.	A meeting being called to consider the appointment of a liquidator of the licensee	Immediate
3.	The making of, or any proposals for the making of, a composition or arrangement with one or more creditors of the licensee	Immediate
4.	The appointment of a receiver of the licensee or any of its property, whether by a creditor, the Court or otherwise	Immediate
5.	Anything equivalent to events 1 to 4 occurring in a jurisdiction outside the Islands	Immediate
6.	The bringing of civil proceedings against the licensee where the size of the claim is significant with respect to the licensee's financial resources or is likely to affect the licensee's reputation	Immediate
7.	The commencement of an investigation with respect to the business or affairs of the licensee by any overseas regulatory authority	Immediate
8.	The taking of any enforcement action or the imposition of any disciplinary measures against the licensee by a foreign regulatory authority or a professional body outside the Islands, including the refusal or revocation of membership by such a professional body	Immediate
9.	The prosecution or conviction of the licensee, or any of its directors or senior managers, in or outside the Islands for any offence	Immediate
	(a) relating to financial services;	
	(b) involving fraud or dishonesty;	

- or
- (c) relating to any criminal activity
- | | | |
|-----|--|--|
| 10. | The granting or refusal of an application for a licence to carry on any financial services business outside the Islands or the revocation of any such application | Immediate |
| 11. | The commission by any employee of the licensee of a fraud against a customer of the licensee | Immediate |
| 12. | The licensee becomes aware of any fraud committed against it. | Immediate |
| 13. | Any matter that the licensee considers to be material to the fit and properness of the licensee, any significant owner of the licensee or any of its directors or senior managers | Immediate |
| 14. | Any significant failure in the licensee's systems or controls | Immediate |
| 15. | Any proposed significant re-structuring or reorganisation of the licensee or its regulated business or activities | Within a reasonable time prior to the proposed restructuring or reorganisation taking effect |
| 16. | Any material breach of the paid-up capital or financial resource requirements imposed on the licensee by the Ordinance, the Regulations or this Code | Immediate |
| 17. | Any transfer of an interest in a licensee by operation of law or pursuant to an order of the Court, where
(a) the person whose interest is transferred is, or before the transfer was, a significant owner of the licensee; or
(b) as a result of the transfer, a person becomes a significant owner of the licensee.

In this paragraph "transfer" includes a sale, charge or other disposal. | Within fourteen days of the transfer |
| 18. | Change of address of principal office, whether within or outside the Islands, where prior approval of Commission for change in principal office not required | Within fourteen days of the change |

SCHEDULE 3

(Paragraph 57)

TRANSITIONAL PROVISIONS

1. For the purposes of this Schedule, “former Ordinance licensee” means a company that, immediately prior to the coming into force of the Ordinance, was holding a licence granted under the former Ordinance.

2. The provisions of this Code set out in the first column and described in the second column take effect against a former Ordinance licensee as provided in the third column instead of on the commencement date of the Code.

Provision	Description	Takes Effect
Paragraph 14	Establishment of policies, systems and controls	Six months after the commencement date of the Code
Paragraph 16	Business continuity plan	Six months after the commencement date of the Code
Paragraph 34	Business conduct policies, procedures, systems and controls	Six months after the commencement date of the Code
Paragraph 41	Complaints policies and procedures	Six months after the commencement date of the Code