

**FINANCIAL SERVICES COMMISSION ORDINANCE
TRUST COMPANIES CODE 2015**

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FINANCIAL SERVICES COMMISSION ORDINANCE

TRUST COMPANIES CODE 2015

(Legal Notice of 2015)

ISSUED by the Financial Services Commission under section 42 of the Financial Services Commission Ordinance.

PART 1

PRELIMINARY PROVISIONS

Citation and commencement

1. This Code may be cited as the Trust Companies Code 2015 and comes into force on [date].

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; or
- (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;

“licensee” means a company that holds a licence issued under section 8 of the Ordinance, but excludes a private trust company;

“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;

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

“Regulations” mean the Regulations made under section 59 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 53;

“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 2

LICENSING

Application for licence

5. (1) 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.

(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 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 54(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 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 undertaking 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 3

PRUDENTIAL REQUIREMENTS

Paid-up capital and statutory deposit

Paid-up share capital requirements

9. (1) For the purposes of the Ordinance and this Code, the "paid-up share capital" of a licensee is the total of—

(a) monies paid; and

- (b) 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.

(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—

- (a) for an unrestricted trust company is \$250,000; and
- (b) for a restricted trust company is \$25,000.

Minimum statutory deposit

10. (1) For the purposes of section 16 of the Ordinance, the minimum statutory deposit required of an unrestricted trust company is \$250,000.

(2) A restricted trust company is not required to make a statutory deposit unless the Commission issues a written directive under section 16(2) of the Ordinance.

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 that subparagraph 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 cover 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; or
 - (ii) the dishonesty of the licensee's directors, employees or persons engaged under a contract for services;
 - (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 subparagraph (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 cover specified in paragraph 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 paragraph, 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 subparagraph (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 cover required

13. (1) The minimum level of cover is—

- (a) for any one claim, \$5,000,000; and
- (b) in the aggregate, \$10,000,000.

(2) The maximum excess that may be deducted from any claim under the policy shall not exceed \$20,000.

(3) If the aggregate level of cover provided under the professional indemnity insurance contract is depleted as a result of a claim under the contract, the licensee shall obtain re-instated cover that meets the requirements set out in this Code.

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; or
 - (ii) the liability of the insured licensee is covered by another insurance contract, other than a required professional indemnity insurance contract;
 - (iii) the insured licensee becomes insolvent.
- (d) contain any exclusions, other than the exclusions permitted by paragraph 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 subparagraph (1), 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 Authority 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 paragraphs 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 paragraphs 12 to 15.

PART 4

GOVERNANCE, MANAGEMENT AND CONTROL AND TRAINING

Governance framework

Directors of licensee

20. (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 at least three directors;
- (b) at least one of its directors shall be resident in the Islands; and
- (c) at least one of its directors shall be a non-executive director.

(3) The Chief Executive Officer of a licensee shall not be appointed, or act, as the Chairman of its board.

(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

21. (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 the 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

22. 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

23. (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

24. 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

25. (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

26. (1) The risk management strategy, policies, systems and controls required by section 22 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 22(2)(c) of the Ordinance.

Business continuity plans

27. (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

28. (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

29. (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 28 are established and maintained;
 - (ii) the information systems required under paragraph 30 are put in place; and
 - (iii) the internal controls are monitored and deficiencies corrected as required by paragraph 31; and
- (c) reviewing the licensee's internal controls, at least annually, and reporting on the results of their review to the board.

Information systems

30. (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

31. (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.

Record keeping

Licensee to maintain records

32. (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 [Cap. 16.01], the Ordinance, the Trusts Ordinance, 2014, 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

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

- (a) the period of time for which various types of record will be retained, which shall be no less than the minimum period specified in 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

34. (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 [Cap. 16.01], the Ordinance, the Trusts Ordinance, 2014, 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

35. (1) The individual appointed as the compliance officer of a licensee in accordance with section 31(2) of the Financial Services Commission Ordinance shall be an employee of the licensee who has the appropriate skills and experience and is otherwise fit and proper to act as the licensee's compliance officer.

(2) An employee shall not be appointed as the compliance officer without the approval of the 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;

- (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

36. (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, or approving, a compliance procedures manual for the licensee and keeping the compliance procedures manual under regular review and current.

(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

37. (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; and
 - (f) the procedures that will be used to test compliance and how breaches in compliance will be reported and rectified.

Group compliance

38. 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

- 39.** (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

- 40.** 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

41. (1) The outsourcing policy established under paragraph 40(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

42. (1) A licensee that outsources any activities 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

43. (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 5

BUSINESS CONDUCT

Business conduct

Overriding obligations

44. 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

45. (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 44.

(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 44, 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; and
- (e) the management of the reasonable expectations of customers.

Trust property and customer assets

General obligations with respect to customer assets

46. 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

47. (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

48. (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 47(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 47.

(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

- 49.** (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;
 - (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;
 - (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

- 50.** (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

51. 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

52. 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

53. (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.

(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 6

MISCELLANEOUS PROVISIONS

Restricted trust companies

Management of restricted trust companies

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

(a) shall, within five 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 55 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

55. (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 35, a restricted trust company may outsource the compliance function to the managing trust company.

Books and records

56. (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

57. (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

58. (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

59. (1) Without limiting paragraph 57, 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

60. (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 must ensure that each of its professional employees completes appropriate and relevant continuing professional development in each 12 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

61. 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; 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

62. (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

63. (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

64. (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

65. (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; and
- (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 or this Code.

Signing of auditor's report

66. (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 62(2); and
- (b) authorised to sign the audit report on behalf of the partnership or corporate body.

Time period for submission of financial statements

67. (1) A licensee shall submit its financial statements and the documents specified in section 38(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 section 38(3) of the Ordinance to the Commission within thirty days of the last day of the period to which the periodic financial statements relate.

Transitional provisions

68. The transitional provisions in Schedule 3 have effect.

SCHEDULE 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;

- (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 60% 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
MATTERS TO BE NOTIFIED TO COMMISSION

	<u><i>Event</i></u>	<u><i>Time Limit for Notification</i></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
10.	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
11.	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;
or
- (b) involving fraud or dishonesty
12. 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
13. The commission by any employee of the licensee of a fraud against a customer of the licensee Immediate
14. The licensee becomes aware of any fraud committed against it. Immediate
15. 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
16. Any significant failure in the licensee's systems or controls Immediate
17. Any proposed significant restructuring or reorganisation of the licensee or its regulated business or activities Within a reasonable time prior to the proposed restructuring or reorganisation taking effect
18. 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
19. 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 14 days of the transfer

- 20 Change of address of principal office, Whether within or outside the Islands, change where prior approval of Commission for change in principal office not required

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SCHEDULE 3

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 25	Establishment of policies, systems and controls	6 months after the commencement date of the Code
Paragraph 27	Business continuity plan	6 months after the commencement date of the Code
Paragraph 45	Business conduct policies, procedures, systems and controls	6 months after the commencement date of the Code
Paragraph 52	Complaints policies and procedures	6 months after the commencement date of the Code

ISSUED this _____ day of _____ 2015.

Chairman of the Financial Services Commission.