

TURKS AND CAICOS ISLANDS

**TRUST COMPANIES (LICENSING AND
SUPERVISION) ORDINANCE 2016**

(Ordinance 6 of 2016)

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TURKS AND CAICOS ISLANDS

**TRUST COMPANIES (LICENSING AND SUPERVISION)
ORDINANCE 2016**

(Ordinance 6 of 2016)

Assent.....22nd February 2016

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Commencement..... *in accordance with section 1*

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.

ENACTED by the Legislature of the Turks and Caicos Islands.

PART I

PRELIMINARY

Short title and commencement

1. This Ordinance may be cited as the Trust Companies (Licensing and Supervision) Ordinance 2016 and shall come into force on such day as the Governor may appoint by Notice published in the *Gazette*.

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 46 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;
- (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; and

“undertaking” means—

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

(2) Sections 5 and 6 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 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.

(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 its 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 deposit 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 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 62 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 62 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 62 of the that Ordinance other than an order restoring, or which would have the effect of restoring, the former licensee’s licence.

(6) The Commissions 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;
- (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;
- (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 directors' 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; and

“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;
- (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.

Repeals

65. The Trustees Licensing Ordinance is repealed.

SCHEDULE

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

(Section 49)

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 92 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.