

AMENDMENT OF THE

BRITISH VIRGIN ISLANDS

FINANCIAL SERVICES COMMISSION

APPROVED FORMS AND RELATED GUIDELINES



Issued by the Financial Services Commission pursuant to section 41B of the Financial Services Commission Act, 2001 (No. 12 of 2001) and published in accordance with the Financial Services (Approved Forms Publication) Regulations, 2010.

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Amendment to the British Virgin Islands Financial Services Commission Approved Forms and Related Guidelines

Introduction

These Guidelines, amending the British Virgin Islands Financial Services Commission Approved Forms and Related Guidelines issued and published on 30th March, 2010, are issued by the Financial Services Commission pursuant to section 41B of the Financial Services Commission Act, 2001 (No. 12 of 2001) and published in accordance with the Financial Services (Approved Forms Publication) Regulations 2010.

Commencement

1. These Guidelines come into effect on the 15th day of June, 2014.

Amendment of Introduction to Original Guidelines

2. The British Virgin Islands Financial Services Commission Approved Forms and Related Guidelines (hereafter referred to as “the Guidelines”) issued and published on 30th March, 2010 are amended in the Introduction, by
 - (a) deleting from the fifth paragraph the words “six specific Parts” and replacing them with the words “seven specific Parts”; and
 - (b) deleting from the fifth paragraph the words “the fifth Part” and replacing them with the words “Part 5”.

Amendment of Paragraph 1

3. The Guidelines are amended in paragraph 1 by deleting sub-paragraph 1.4, and substituting the following new sub-paragraphs:
 - “1.4 While the approved forms outlined in Parts 1 through 5 of the Schedule generally relate to applications for licences under the regulatory legislation, some post-licensing transactions are also required to be carried out using an approved form as stipulated in the relevant regulatory legislation.
 - 1.5 Such post-licensing transactions include:
 - the submission of a director/trustee’s certificate at the time of submission of a licensee’s audited financial statements. This certificate must be submitted using the approved form provided in Part 5A of the Schedule.
 - the submission of a Trust Deed by a specified foreign insurer licensed under the Insurance Act, 2008 that wishes to establish a domestic business trust. This Trust Deed must be submitted using the approved form provided in Part 5B of the Schedule.”

Amendment of Paragraph 3

4. The Guidelines are amended in paragraph 3, by
- (a) deleting the word “and” at the end of sub-paragraph (fa); and
 - (b) inserting the following new sub-paragraph (fb):
 - “(fb) Part 5B: this Part is to be completed by an authorised signatory of a specified foreign insurer licensed under the Insurance Act, 2008 that wishes to establish a domestic business trust for the purpose of satisfying its domestic liabilities, and should be countersigned by an authorised signatory of the trustee identified to execute the trust deed; and”.

Amendment of Schedule

5. The Guidelines are amended in the Schedule by inserting after Part 5A, the following:

“PART 5B: DEED OF TRUST

VIRGIN ISLANDS

TORTOLA

THIS DEED OF TRUST is made the day of 20[]

BETWEEN:

- (1) **[Name of Company]** of [Address] (the “**Company**”);
- (2) **[Name of Trustee]** of [Address] (the “**Original Trustee**”); and
- (3) **BRITISH VIRGIN ISLANDS FINANCIAL SERVICES COMMISSION** of Pasea Estate, PO Box 418, Road Town, Tortola VG 1110, British Virgin Islands (the “**Commission**”).

WHEREAS:

- (A) The Company is a licensed insurer within the meaning of the Insurance Act, 2008 (the “**Act**”) and is authorised to carry on insurance business in or from within the Virgin Islands (the “**Territory**”) by the Commission;

- (B) The Company is, further, a "specified foreign insurer" as that term is defined in the Insurance Regulations, 2009 (the "**Regulations**") made under the Act and it wishes in accordance therewith to establish a "domestic business trust" for the purpose of satisfying its "domestic liabilities" as those terms are defined in the Regulations;
- (C) The Trustee is the holder of a Class I trust licence issued under the Banks and Trust Companies Act 1990 (the "**BTCA**") and has agreed to act as trustee of the domestic business trust hereinafter established;
- (D) The Commission wishes to confirm, by its execution of this Deed, that the Trustee is, as at the date of the Commission's execution of this Deed, in its opinion a fit and proper person to act as the trustee of a domestic business trust and, by the same act, to approve the terms of the trust hereby established as a domestic business trust established by the Company in accordance with the Regulations;
- (E) The Regulations require that a specified foreign insurer shall:
 - (a) transfer "approved assets" as that term is defined in the Regulations to the trustee of a domestic business trust established by it for the purposes of such trust; and
 - (b) ensure that at all times the value of approved assets that constitute the trust property is at least equal
 - (i) to the total of its domestic liabilities; or
 - (ii) where its domestic liabilities are less than US\$250,000, an amount of US\$250,000 unless, on the application of the insurer or of its own volition, the Commission directs in writing a lesser amount;
- (F) The Company has transferred the property listed in the Schedule to this Deed to the Trustee as at the date hereof (the "**Initial Fund**");
- (G) The Initial Fund consists of approved assets and the value thereof as at the date of this Deed is at least equal to the total of the Company's domestic liabilities;
- (H) The Company and the Trustee wish to declare that the Trustee holds the Initial Fund on trust for the purpose of satisfying the Company's domestic liabilities as defined by the Regulations and the Company and the Commission wish to acknowledge, agree to and approve the terms of such declaration.

NOW THIS DEED WITNESSES AND THE PARTIES HEREBY AGREE as follows:

1. DEFINITIONS AND CONSTRUCTION

1.1 Terms used in this Deed, other than the terms defined below, which have a meaning defined by the Act or the Regulations shall have the meaning defined by, as the case may be, the Act or the Regulations and the following terms, except where the context otherwise requires, shall have the meanings ascribed to them hereunder:

the "**Act**" shall have the meaning ascribed to it above;

"**BTCA**" shall have the meaning ascribed to it above;

"**Commission**" shall have the meaning ascribed to it above;

"**Company**" shall have the meaning ascribed to it above;

"**Deed**" means this deed of trust as the same or any provisions of it may be amended, varied, added to, excluded or restated from time to time;

"**gross negligence**" means any act or omission showing so marked a departure from the normal standard of conduct of a professional person exercising ordinary professional care and skill as to demonstrate reckless or wilful disregard of the consequences of that act or omission;

"**Initial Fund**" shall have the meaning ascribed to it above;

"**instrument**" includes any document executed in the manner required by the laws of the Territory or by the law of the place where the same was executed;

"**Insurance Contract Holders**" means the person or persons to whom the Company has domestic liabilities (as defined in the Regulations) at any time or times during the Trust Period;

"**Original Trustee**" shall have the meaning ascribed to it above;

"**quarter**" means the months of March, June, September and December.

"**Regulations**" shall have the meaning ascribed to it above;

"**Territory**" shall have the meaning ascribed to it above;

"**Trust**" means the trust constituted by this Deed;

"**Trustee Act**" means the Trustee Act or Ordinance of the 1991 Revised Edition of the Laws of the Territory, Chapter 303;

"**Trustee**" means the Original Trustee or the trustee for the time being of this Trust;

"**Trust Fund**" means

- (i) the Initial Fund;
- (ii) any other property transferred to the Trustee to hold on the terms of this Trust; and
- (iii) all property from time to time representing the property identified in (i) and (ii) immediately preceding;

"**Trust Period**" means the period commencing on the date of this Deed and ending:

- (a) 360 years from the date hereof (which period and no other shall be the perpetuity period applicable to this Trust); or
- (b) on such earlier date as the Trustee may (with the prior or simultaneous written consent of the Commission) by deed declare to be the end of the Trust Period (not being a date earlier than the date of execution of such deed).

1.2 References to any enactment or regulation shall include the same as it may be amended, consolidated or re-enacted from time to time.

1.3 The singular shall include the plural and vice versa.

1.4 Each of the genders shall include all others.

1.5 References to persons shall include unincorporated associations, partnerships, firms, and charities (whether incorporated or not), wherever situated.

1.6 References to writing shall include handwriting, type print, telex, facsimile transmission, lithography, photography and other modes of representing or reproducing words in a lasting and visible form and "written" shall be construed accordingly.

1.7 References to any Clause, Sub-clause, Paragraph, Sub-paragraph or Schedule shall mean a clause, sub-clause, paragraph, sub-paragraph or schedule to this Deed.

1.8 The headings and sub-headings of this Deed are included for reference only and do not affect the interpretation of this Deed.

1.9 This Trust shall be known as the **Domestic Business Trust of [Insert Name of Company]**.

2. DECLARATION

2.1 The Company and the Trustee hereby declare, and the Company and the Commission hereby acknowledge and agree, that the Trust Fund shall be held upon trust for the Insurance Contract Holders and subject thereto for the

Company as follows:

- (a) the Trustee may not, without the prior or simultaneous written approval of the Commission, make any payment of money from or, subject to Paragraphs 2.1 (b) and (d), transfer to any other person any asset held as part of the Trust Fund otherwise than in accordance with the Regulations;
- (b) the Trustee shall ensure that all assets in registered form held as part of the Trust Fund are registered either in the name of the Trustee or, with the prior written approval of the Commission, in the name of nominees holding to the order of the Trustee under, or as evidenced by, a written instrument executed by the nominees;
- (c) on or before the fourteenth day of each calendar month or, where that is not a business day, the first business day following the fourteenth day, the Trustee shall provide to the Commission and the Company a statement detailing, as at the last business day of the previous month
 - (i) the assets comprised in the Trust Fund; and
 - (ii) the value of those assets and the basis for the valuation of the assets;
- (d) the Company shall have power to direct the Trustee in writing from time to time to invest and re-invest the Trust Fund in any class or classes of assets indicated as being acceptable in any guidance or policy in that regard issued by the Commission but save as aforesaid the Trustee shall be entitled to keep the Trust Fund and any asset transferred to it invested in its original state and shall be under no obligation to diversify the investment of the Trust Fund;
- (e) the Trustee shall and may, subject to the foregoing paragraphs of this Sub-clause, make payments or transfers from the Trust Fund to any one or more Insurance Contract Holders for the purposes of satisfying a domestic liability of the Company and
 - (i) no such payment or transfer shall amount to a breach of the Regulations or of this Trust if the Trustee take reasonable care to ensure that the monies paid, or the assets transferred, are used to satisfy a domestic liability of the Company; and
 - (ii) in determining whether the Company has a domestic liability and, if so, the value thereof, the Trustee may rely on credible evidence provided to it by the Company and, unless it has reason to suspect the credibility of that evidence, shall be under no obligation to make further enquiry of any Insurance Contract Holder or any third party;

- (f) Nothing in this Deed shall impose on the Trustee any responsibility for determining
 - (i) the domestic liabilities of the Company; or
 - (ii) whether the Trust Fund is sufficient to satisfy those liabilitieswhich responsibilities shall be those of the Company alone;
- (g) the Trustee shall have no responsibility for ensuring that assets transferred to it for the purposes of this Trust, including the Initial Fund, are free of charge, lien or other encumbrance which responsibilities shall be those of the Company alone;
- (h) the Commission may by prior writing approve the payment of a sum of money, or the transfer of an asset, from the Trust Fund to the Company if satisfied that the value of the Trust Fund, after the payment or transfer, will equal or exceed the Company's domestic liabilities but no prior written or other approval shall be required in the case of
 - (i) a payment or transfer to the Company if prior to or simultaneously with the payment or transfer, the Company makes a payment, or transfers another asset, of at least equivalent value to the Trustee to be held on the terms of this Trust;
 - (ii) the payment of interest and other income accruing on the Trust Fund to the Company under Clause 5; or
 - (iii) a payment or transfer made for the purpose of satisfying a domestic liability of the Company; and
- (i) subject to the foregoing Paragraphs, the Trustee shall at the end of the Trust Period hold the Trust Fund on trust for the Company absolutely.

3. RESIGNATION AND REMOVAL OF TRUSTEE

- 3.1 The Trustee may resign by providing both the Commission and the Company with not less than 42 days' written notice of its resignation provided that such resignation shall not be effective until the appointment of another trustee has taken place.
- 3.2 The Commission may by notice revoke the appointment of the Trustee and may remove a trustee in the circumstances stipulated in the Regulations.

4. APPOINTMENT OF NEW TRUSTEE

- 4.1 The Company shall appoint a new trustee as soon as reasonably practicable and

in any event not less than 60 days after the Trustee gives notice of its intention to resign pursuant to Sub-clause 3.1 or the Commission gives notice of revocation of the Trustee's appointment or notice of its removal pursuant to Sub-clause 3.2 failing which the Commission may appoint a new trustee.

- 4.2 Notwithstanding the foregoing provisions of this Clause the trusteeship of this Trust shall be sole and undertaken only by the holder of a Class I trust licence under the BTCA which holder is, in the opinion of the Commission, fit and proper to act as the trustee of a domestic business trust and is otherwise approved by the Commission to be the trustee hereof.

5. TRUST INCOME

The Trustee shall pay to the Company the whole of the income of the Trust Fund in accordance with the Regulations.

6. COVENANTS OF COMPANY

The Company hereby covenants with the Trustee and the Commission:

- (a) to comply with the Regulations at all times during the Trust Period and to take any steps which the Trustee or the Commission may, acting reasonably, determine necessary or desirable to ensure or effect such compliance.
- (b) to provide to the Commission and the Trustee on or before the fourteenth business day of the month following each quarter a statement detailing its domestic liabilities as at the last business day of the previous month;
- (c) in the event that the value of the Trust Fund is at any time less than the amount of the Company's domestic liabilities, to make an immediate payment or transfer into the Trust Fund to ensure that the value of the approved assets is at least equal to the sum of its domestic liabilities or to such other sum as may have been directed by the Commission in accordance with the Regulations.

7. TRUSTEE'S REMUNERATION AND PROTECTIONS

- 7.1 The Trustee shall be entitled to charge such remuneration as may from time to time be in accordance with its published terms for trust business or, if the Trustee so determines, as may otherwise be agreed in writing with the Company from time to time and the Company hereby covenants with the Trustee to pay such remuneration.

- 7.2 The Commission shall in no circumstance have liability for the Trustee's remuneration.

- 7.3 Neither the Trustee, nor any director, officer or employee of the Trustee, shall be liable for any loss of the Trust Fund or its income howsoever arising unless caused by the gross negligence, actual fraud or wilful default of the Trustee or the director, officer or employee in question.
- 7.4 The Company hereby covenants with the Trustee to indemnify the Trustee in respect of any loss, cost or expense (including legal expenses) suffered by it in connection with its acting as trustee of this Trust unless the same shall be caused by the gross negligence, actual fraud or wilful default of the Trustee.
- 7.5 The Commission shall in no circumstances be liable to indemnify the Trustee or its directors, officers and employees in respect of its trusteeship of this Trust. Nor shall the Commission be liable for any loss to the Trust Fund or its income or to the Insurance Contract Holders, the Company or the Trustee, howsoever arising.
- 7.6 Provided that the Trustee is acting in good faith, the Trustee shall incur no liability whatsoever for acting in accordance with any direction, request or advice in writing received from the Commission in connection with this Trust.

8. AMENDMENT OF PROVISIONS

The Trustee with the prior or simultaneous written consent of both the Company (such consent not to be unreasonably withheld or delayed) and the Commission shall have power, by deed, to vary, add to or exclude any provisions of this Trust (including provisions concerning the remuneration, protection or indemnity of the Trustee) in order to reflect any change in the laws of the Territory or for the better administration of this Trust as the Trustee may consider necessary or desirable. Any such variation, addition or exclusion purported to be made without the Commission's approval as required by this Clause 8 shall be void and of no effect.

9. ACCESS TO INFORMATION

Further to the Trustee's reporting obligation as set out in Paragraph 2.1 (c), the Company and the Trustee shall provide the Commission with such information as it may require concerning this Trust and the Trust Fund and the Trustee shall allow the Commission access to the records of the Trust.

10. TERMINATION

This Trust shall continue for the duration of the Trust Period subject to the power conferred on the Commission by the Regulations to terminate it on grounds specified in the Regulations.

11. GOVERNING LAW

This Trust shall be governed by and construed in accordance with the laws of

the Territory, including the Trustee Act except to the extent the Trustee Act is inconsistent with the Act or the Regulations and the courts of the Territory shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Trust.

12. SERVICE OF NOTICES

- 12.1 Any notice or document required to be given to the Company in relation to this Trust may be given by delivery of the same to: [Address];
- 12.2 Any notice or document required to be given to the Trustee in relation to this Trust may be given by delivery of the same to: [Address].
- 12.3 Any notice or document required to be given to the Commission in relation to this Trust may be given by delivery of the same to: Pasea Estate, PO Box 418, Road Town, Tortola VG 1110, British Virgin Islands.

13. COMMISSION'S AND COMPANY'S APPROVAL

The Commission hereby confirms, by its execution of this Deed, that the Trustee is in its opinion a fit and proper person to act as the trustee of a domestic business trust and, by executing this Deed, the Commission and the Company hereby approve the terms of this Trust as a domestic business trust established by the Company in accordance with the Regulations and hereby approve the terms hereof.

IN WITNESS whereof the parties hereto have executed this Deed as a deed the day and year first before written.

SCHEDULE

[List approved assets in the requisite amount comprising the Initial Fund]

EXECUTED AS A DEED for and on behalf) _____
of [Name of Company] by:) Duly Authorised Signatory
)
) Name: [_____]
)
) Title: [_____]
)

in the presence of:

Signature of Witness

Name: [_____]

Address: [_____]

Occupation: [_____]

The COMMON SEAL of the said)
[Name of Trustee])
was hereunto affixed in the presence of:)

) _____
Authorised Signatory

Authorised Signatory

in the presence of:

Signature of Witness

Name: [_____]

Address: [_____]

Occupation: [_____]

The COMMON SEAL of the said)
BRITISH VIRGIN ISLANDS FINANCIAL)
SERVICES COMMISSION)
was hereunto affixed in the presence of:)

) _____

Authorised Signatory

Authorised Signatory

in the presence of:

Signature of Witness

Name: []

Address: []

Occupation: []

”

Issued by the Financial Services Commission this 28th day of May, 2014.

[sgd:]Robert Mathavious
Managing Director/CEO