

British Virgin Islands Financial Services Commission



**EXEMPTION GUIDELINES FOR LICENSEES
IN
RUN-OFF, SOLVENT LIQUIDATION OR
INSOLVENT LIQUIDATION**

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INTRODUCTION

The Financial Services Commission (“the Commission”) is responsible for the licensing, regulation and supervision of entities conducting regulated financial services business, via the powers established under the Financial Services Commission Act, 2001 (“the FSCA”) and the various regulatory legislation. This encompasses the regulation and supervision of entities licensed pursuant to the Banks and Trust Companies Act, 2001 (“the BTCA”), the Insurance Act, 2008 (“the IA”), the Securities and Investment Business Act, 2010 (“SIBA”), the Financing and Money Services Act (“the FMSA”) and the Company Management Act, 1990 (“the CMA”) (collectively, “the relevant regulatory legislation”). The regulation and supervision of insolvency practitioners licensed under the Insolvency Act, 2003 is not considered relevant for purposes of these Exemption Guidelines for Licensees in Solvent liquidation, Insolvent Liquidation or Run-Off (“the Guidelines”).

Entities licensed by the Commission (“licensees”) are subject to the requirements of the relevant regulatory legislation under which they were granted a licence, and must also adhere to and be guided by the principles of the FSCA, the Regulatory Code, 2009 (“the Code”) and any other relevant financial services legislation. The obligations imposed on licensees aim to ensure and confirm the implementation of adequate measures and controls for the performance of licensees’ business activities, protect the interests of customers, clients, shareholders and other licensee stakeholders, and promote the operation of business activities with integrity and at the highest level of professional standards.

The Commission, in employing a risk-based approach to supervision, recognises that there are stages within a licensee’s life cycle where the nature of its existence and the levels of risks posed, require less regulatory interference and supervision. This scenario may arise where licensees have effectively ceased conducting regulated business and are awaiting an official conclusion of their business affairs, such as in periods of run-off, solvent liquidations and insolvent liquidations. Under these circumstances, regulatory supervision would likely not serve its intended purpose, as the activities of the licensee that require regulatory oversight, in most instances, would have or is about to be effectively concluded. Further, licensees may experience practical impediments in seeking to meet regulatory obligations, which may be excessively onerous and immaterial at that stage.

In consideration of the foregoing, licensees are being offered an exemption from certain requirements while in solvent and insolvent liquidation status, and in run-off status, where requisite criteria are met. The Guidelines identify the licensees that qualify for an exemption, detail the particulars of the exemption, offer licensees guidance on applying for the exemption and relays ongoing obligations needed to ensure continuance of the exemption.

1. Definitions

1.1 For the purposes of these Guidelines, the following definitions apply:

“Insolvent Liquidation” refers to a BVI Business Company that has entered into liquidation under the Insolvency Act, 2003.

“Run-off” refers to a period after a reinsurer has ceased conducting new business, in terms of trading and its underwriting operations, and remains in operation solely to fulfil the obligations of existing contracts.

“Solvent liquidation” refers to a BVI Business Company that has entered into liquidation in accordance with section 200 (3) of the BVI Business Companies Act, 2004.

“Licensee” refers to any person that is granted a licence, or recognised or registered, pursuant to the BTCA, the IA, SIBA, the FMSA and the CMA; however in relation to a run-off, it refers to Captive insurers only.

2. Objectives

2.1 Licensees subject to the regulatory remit of the Commission must comply with various requirements mandated by relevant regulatory legislation, including the FSCA and the Code. These include requirements to appoint an auditor, submit audited financial statements for each financial year, appoint a Compliance Officer, submit annual Compliance Officer Reports, appoint an internal audit function, appoint an investment manager and a custodian (in the case of private, professional and public funds) and file prudential returns.

2.2 It is recognised that during the stages of run-off and liquidation, licensees may essentially cease or be in the process of ceasing to perform the activities that warranted their licensing and regulation, save for some instances where activities are continued with the aim of winding down the licensees’ operations. These stages usually immediately precede the revocation or cancellation of a licensee’s licence. The imposition of standard regulatory obligations during these interim stages may not provide any added value to the Commission’s regulatory and supervisory function and may cause undue hardship to licensees. In this regard, these Guidelines offer licensees the opportunity to forgo certain requirements, by granting specified exemptions (consistent with the applicable laws) once certain criteria are met. This also eliminates the need for licensees to seek individual exemptions from certain requirements on an ongoing basis during these periods.

3. Prohibitions

3.1 Licensees seeking an exemption offered under these Guidelines are prohibited from undertaking any new business, or transacting outstanding business in any way that may result in gain unless that business is being undertaken with a view to eventually winding down a licensee’s business.

3.2 Where a licensee is granted an exemption pursuant to these Guidelines, it must strictly comply with the requirements of the Guidelines. If at any point in time, a licensee forms the view that it can no longer comply with a specific guideline, it must immediately notify the Commission (*that is, within seven working days of forming the view*) and comply with the requirements applicable to it under the relevant regulatory legislation. This effectively means the exemption granted to the licensee ceases to have effect (unless the Commission considers there are justifiable reasons otherwise) and the licensee must comply with the full obligations applicable to it under the relevant regulatory legislation.

3.3 If a licensee that is granted an exemption under these Guidelines engages in or transacts any business contrary to any prohibited act as detailed in 3.1 above, it shall be treated as if the exemption did not apply and shall be dealt with as having committed a breach of or an offence under the relevant regulatory legislation. It shall, in that case, be dealt with in accordance with the powers granted under the FSCA and any applicable financial services legislation.

4. Exemption offered under the Guidelines

4.1 In consideration of licensees' operations during the stages of liquidation or run-off and the implementation of a risk-based supervisory approach, licensees that qualify, apply and are approved pursuant to the Guidelines are granted an exemption from providing or having the following under the FSCA or applicable financial services legislation:

- (i) an auditor;
- (ii) audited financial statements;
- (iii) a compliance officer;
- (iv) annual compliance officer report;
- (v) an internal audit function;
- (vi) an investment manager and a custodian; and
- (vii) prudential returns.

4.2 Sub-paragraphs (iii), (iv) and (v) of paragraph 4.1 are not applicable to private, professional and public mutual funds .

4.3 Sub-paragraph (v) of paragraph 4.1 applies only to licensees holding (a) a general banking licence; (b) a Category A or Category D insurer's licence; or (c) a Category 5 investment business licence.

4.4 Sub-paragraph (vi) of paragraph 4.1 applies only to private, professional and public mutual funds.

5. Qualifying under the Guidelines

- 5.1 A licensee may only qualify for an exemption under paragraph 4.1 of these Guidelines, if:
- (i) in the case of a solvent liquidation, the licensee has sought and has been granted the Commission's approval to enter into voluntary liquidation, in accordance with paragraph 5 of the *Guidance Notes on Revocation or Cancellation of Licenses or Certificates of Regulated Persons, Including the Approval of Solvent Liquidation Procedures*;
 - (ii) in the case of an insolvent liquidation, notification of the liquidator's appointment has been provided in accordance with section 178(1)(d) of the Insolvency Act, 2003; and
 - (iii) in the case of a run-off, the licensee, that is a Captive insurer, has informed the Commission of its intention to enter into run-off, in accordance with paragraph 6.4.1 of the Guidelines.

6. Applying for an Exemption

6.1 A qualifying licensee **must** apply to the Commission to obtain the exemption established under paragraph 4.1 of these Guidelines. Applications for the exemption must be submitted to the Commission in the form of a written letter, requesting the exemption. Applications must be made in accordance with a licensee's particular circumstance as detailed below.

6.2 *Solvent Liquidations*

6.2.1 A licensee may submit a request for an exemption under these Guidelines, in conjunction with its request for the Commission's approval to enter into solvent liquidation under section 200 (3) of the BVI Business Companies Act, 2004 and the *Guidance Notes on Revocation or Cancellation of Licenses or Certificates of Regulated Persons, Including the Approval of Solvent Liquidation Procedures*. In this context, the licensee must provide:

- (i) confirmation in writing from its board of directors, liquidator or authorised or legal representative that the licensee has ceased to perform any regulated business; or
 - (ii) where a licensee continues to perform regulated activity, details of the regulated activity being performed and how such activity relates to the eventual winding down of the licensee's business.
- 6.2.2 Where a licensee was previously approved to enter into a solvent liquidation, the licensee must provide the following:
- (i) confirmation as to whether the licensee's liquidation has commenced, and;
 - a. if so, the date liquidation commenced; or
 - b. if not, the reason why the liquidation has not commenced and the intended date of commencement; and
 - (ii) a declaration, signed by a director of the licensee, an authorised representative, a legal representative or a liquidator that;

- a. the licensee has not conducted any regulated business since being granted approval to enter into liquidation; or
- b. where a licensee has continued to perform regulated activity, details of the regulated activity being performed and how such activity relates to the eventual winding down of the licensee's business.

6.3 *Insolvent Liquidations*

- 6.3.1 A licensee may submit a request for an exemption under these Guidelines, in conjunction with its liquidator's notice to the Commission of his appointment in accordance with section 178 (1) (d) of the Insolvency Act, 2003. Where this occurs, the licensee must also submit a declaration, signed by a director, that the licensee has ceased performing any regulated business or where a licensee continues to perform regulated activity, detail the regulated activity being performed and how such activity relates to the eventual winding down of the licensee's business.
- 6.3.2 Where a licensee previously notified the Commission of the appointment of a liquidator, the licensee must provide the following:
- (i) confirmation as to whether the liquidation of the licensee had commenced, along with the date that the liquidation commenced; and
 - (ii) a declaration, signed by a director, an authorised representative, a legal representative or a liquidator that the licensee has:
 - a. not conducted any regulated business since the insolvent liquidation commenced; or
 - b. where a licensee continues to perform regulated activity, details of the regulated activity being performed and how such activity relates to the eventual winding down of the licensee's business.

6.4 *Licensees in Run-Off*

- 6.4.1 A licensee wishing to notify the Commission of its intention to operate in run-off, must provide the following (without prejudice to the Commission requesting additional information where it considers that necessary):
- (i) confirmation as to expected length of the run-off period;
 - (ii) a copy of the licensee's latest unaudited statements or management accounts;
 - (iii) details of the licensee's run-off strategy and procedures, including:
 - a. any plans to accelerate the run-off;
 - b. whether specialist run-off managers will be deployed;
 - c. the approach taken for determining future loss reserve requirements or use of actuaries;
 - d. measures for containing and/or eliminating ongoing liabilities;

- e. implementation of risk management programmes for reinsurance risk and credit risk relative to reinsurance and funds withheld;
 - f. availability of letters of credit and details thereof, including any unused amounts to settle future liabilities, as well as copies of the letters of credit agreements;
 - g. details of any other financing available to settle future liabilities; and
 - h. portfolio transfers;
- (iv) copies of any reinsurance contracts that remain in effect;
 - (v) a list of policyholders for which policies **remain** in effect and detailing for each policyholder (a) coverage, (b) policy expiry dates, (c) claims made, (d) claims settled, (e) claims outstanding as at the end of the previous financial year, (f) losses reserved (IBNR) and (g) percentage losses covered under reinsurance contracts;
 - (vi) copies of policies that remain in effect;
 - (vii) a declaration, signed by a director of the licensee, an authorised representative or a legal representative that the licensee has ceased to conduct any new underwriting or trading business; and
 - (viii) confirmation that the licensee is in good regulatory standing, as defined in paragraph 1 of the *Guidance Notes on Revocation or Cancellation of Licenses or Certificates of Regulated Persons, Including the Approval of Solvent Liquidation Procedures*.

6.4.2 A licensee's request for exemption under paragraph 4.1 of the Guidelines may accompany the notification to the Commission of the licensee's intention to enter into run-off, as detailed in paragraph 6.4.1.

6.4.3 Where a licensee previously notified the Commission of its intention to enter into run-off, it should submit in writing its request for the exemption.

6.5 Additional Information

6.5.1 A licensee, where it considers appropriate, may provide in its application for an exemption any other information not specified in the Guidelines which it considers will be helpful to the Commission in considering the licensee's application. It shall, in that regard, ensure full compliance with Principle 6 of section 8 of the Code (the obligation to deal with the Commission in an open and cooperative manner).

6.5.2 Where the Commission, having reviewed the information submitted within a licensee's application, requires additional information to make an assessment of the licensee's circumstances, it may request such other information as it considers appropriate.

7. Application and Approval Fees

Where an exemption is sought under paragraph 6 of the Guidelines, the licensee will be subject to the relevant application and approval fees associated with seeking an exemption from the

requirement to prepare and submit audited financial statements under paragraph 2 of Schedule 5 of the Financial Services (Miscellaneous Exemptions) Regulations, 2010.

8. Approval

8.1 Where the Commission is satisfied with the information provided within a licensee's application under paragraph 6 of the Guidelines, it may grant a licensee an exemption accordingly.

8.2 Notwithstanding the grant of an exemption under these Guidelines, the Commission may within its discretion, require a licensee to meet any of the requirements detailed under paragraph 4.1 where it deems fit.

9. Ongoing Obligations

9.1 The exemption granted under the Guidelines may only continue where a licensee meets its ongoing obligations at the end of each of its financial year end, while it remains in run-off or liquidation and until its licence has been cancelled or revoked.

9.2 A licensee granted an exemption under the Guidelines is required to provide the following within 1 month of its financial year end, with respect to that financial year, in order to retain the exemption granted:

- (i) a declaration, signed by a director, an authorised representative, a legal representative or a liquidator that the licensee has not conducted any regulated business since being granted approval under these Guidelines, or where regulated business has been conducted, that this business is being conducted with the aim of winding down the licensee's business;
- (ii) a copy of the licensee's unaudited financial statements or management accounts for the preceding year, signed by a director, an authorised representative, a legal representative or a liquidator; and
- (iii) details of any claim payments or disposal of assets within the financial year.

9.3 A licensee's annual licence fees must be paid and remain current as prescribed under the Financial Services Commission (Fees) Regulations, 2010.

9.4 Where a licensee fails to meet its obligations under paragraphs 9.2 and 9.3, the exemption granted to it under these Guidelines shall cease to apply and the licensee shall, upon such cessation, be subject to all the regulatory obligations applicable to it under the relevant financial services legislation.

10. Submission of Application and Ongoing Requirements

10.1 Applications for an exemption under these Guidelines, as well as ongoing filings must be submitted to the Commission via a licensee's Registered Agent, Legal Advisor, Insurance Manager (in the case of an entity licensed under the IA), Authorised Representative (in the case of an entity licensed under SIBA), or liquidator. The applications and filings should be addressed to

the Director of the licensee's specific supervisory Division within the Commission, at the following address:

BVI Financial Services Commission
Pasea Estate
P.O. Box 418
Road Town, Tortola VG1110
British Virgin Islands

10.2 Where a licensee or its representative requires clarifications with regard to any matter outlined in these Guidelines, it may seek the Commission's assistance in writing at the address detailed in paragraph 10.1.

Issued this day of , 2018.

Signed:
Robert Mathavious
Managing Director/CEO