

**ASSOCIATION OF THE BRITISH VIRGIN ISLANDS COMPLIANCE OFFICERS  
AND COMPLIANCE PRACTITIONERS**

**Code of Conduct for the Performance of Approved Members of  
the Association of British Virgin Islands Compliance Officers and Compliance  
Practitioners ("Association").**

**PREAMBLE**

The continued success of the British Virgin Islands ("BVI") as the premier international financial centre, in part, depends upon the reputation and image of the Association who play a vital role in upholding current and setting new standards of risk mitigation.

In order to protect the interests of the BVI, the Association hereby adopts the following code of conduct in conjunction with the code of ethics attached as Appendix A, to govern the business activities of all its members.

**THE OBJECTIVES OF THE CODE ARE:**

1. Ensure the service providers conduct business in line with regulatory requirements;
2. Ensure measures are adopted to secure and protect the interests of service providers and deter the use of the BVI for criminal and/or money laundering purposes;
3. To maintain sound ethical conduct and practice between service providers and clients;
4. To foster co-operation in investigative matters conducted in accordance with the laws of the BVI between service providers and the Financial Services Commission (the "FSC");
5. To provide a mechanism for self-regulation amongst the membership, ensuring the integrity of the Association; and,
6. To protect the interests of the Members by way of a support network.

## **SECTION 1: FOR THE GENERAL GUIDANCE OF THE CONDUCT OF MEMBERS**

### **Part 1: The General Conduct of Members**

- 1.1.1. A member should support the Association generally and in particular by:
- a. abiding by the Code of Ethics and Code of Conduct;
  - b. attendance at General Meetings;
  - c. making available candidates for election to the Council of the Association;
  - d. responding promptly to surveys, draft legislation comments and similar requests for participation;
  - e. providing opportunities and incentives for employees to be trained;
  - f. participating in periodic lunches and other social functions; and,
  - g. informing Council of the Association of any matter that ought to come to their attention pursuant to the Association's objectives.
- 1.1.2. In order to support the objectives of the Association, Members should conduct themselves in a professional and co-operative manner and should ensure that they engender suitable internal policies and procedures at least to the standard of and not inconsistent with this Code in respect of:
- a. Members' dealings with the FSC, the Financial Investigation Agency (the "FIA"), and any relevant Government office;
  - b. Members' dealings with clients and prospective clients;
  - c. Members' dealings with other Members;
  - d. Members' dealings with employees; and,
  - e. Members' dealings with employers.
- 1.1.3. A Member should maintain a high standard of professional conduct and should encourage fellow Members to do likewise. A Member should refrain from professional misconduct and all illegal and morally reprehensible conduct.
- 1.1.4 A Member should endeavour to recommend employment of individuals that display integrity, competence and good moral character.

- 1.1.5. A Member should not circumvent the law and should co-operate with the FSC, the FIA and the Government of the BVI in the operation of the law as it applies to them and its work.
- 1.1.6. A Member should not indulge in promotional or marketing activities that may reflect adversely on other Members of the Association and/or the BVI.
- 1.1.7. A Member should establish and maintain written internal procedures to ensure the monitoring by senior management of the organisation of compliance with the Code of Conduct.
- 1.1.8. A Member should provide training and guidance to staff in relation to money laundering, the Code of Conduct and the obligations of the Member under the law in the BVI relating to their remit.
- 1.1.9. A Member should pay the annual subscription to the Association in a prompt manner. Subscriptions are to be payable annually in advance, by January 31 each year.

## **Part 2: Relationship of Members with Employers**

- 1.2.1 A Member shall always stay independent and objective in its guidance and interpretation of any matter that they come across, keeping in mind that if licenced by the FSC there is a dual responsibility that becomes evident in their-day-to-day work.
- 1.2.2 A Member shall always keep senior management abreast of any regulatory or international initiatives that may affect the service provider.
- 1.2.3 A Member shall recommend resignation of services to senior management for any client that continuously fails to meet the internal controls.
- 1.2.4 A Member shall report to senior management of any staff member that breaches internal controls or outside regulations.

## **Part 3: Relationship of Members with Clients**

- 1.3.1 A Member should promote an effective “know your client” internal regime in order to facilitate proper service.
- 1.3.2 Members should not place their own financial gain before the clients’ legitimate needs.
- 1.3.3 A Member should take reasonable measures to protect the confidentiality of documents kept under their custody.

- 1.3.4 A Member should be guided by the highest standards of client confidentiality at all times and in particular:
- a. should not give or disclose to the authorities or other third parties information pertinent to the affairs of any of its clients without the prior written approval of the client or if finally and conclusively required under BVI law or pursuant to a court order; and,
  - b. subject as aforesaid communications between the Member and its clients should not be made public at any time.

#### **Part 4: Relationship of Members with the BVI Authorities**

- 1.4.1 A Member should accord full co-operation to the FSC, the FIA and the Government of the BVI to ensure the proper operation of the financial sector.
- 1.4.2 A Member should take every step necessary not to infringe the law.
- 1.4.3 A Member should assist in the general improvement of laws and practice of the BVI pertaining to the financial sector.

### **SECTION 2: CLIENT ACCEPTANCE PROCEDURES**

#### **Part 1: Know Your Client Due Diligence Procedures**

- 2.1.1 To ensure that Members take reasonable steps to know their clients and maintain adequate information on files about each Client, which term shall include each director, officer, shareholder, beneficial owner, advisor, associate, affiliate or any other person who conducts business with or has an influence over the company, ("company controllers"), so as to preserve a paper trail.
- 2.1.2 For the below mentioned types of clients this should include at least:

##### Individuals

- a. Photo verification;
- b. name, including all names used;
- c. current permanent residential address, including post code where applicable;
- d. signature;
- e. date and place of birth;
- f. nationality;
- g. telephone and fax numbers; and,
- h. occupation and name of employer; if self employed – nature of employment.

- 2.1.3 The Guidance Notes on the Prevention of Money Laundering (“the Guidance Notes”) advise, but do not require, that the date of birth of a client or prospective client is obtained and verified. The Council has decided that the date of birth of individuals should always be obtained and verified. In the case of joint applicants for business the identity of all individuals must be verified.
- 2.1.4 To establish verification of identification the following documents are considered to be the best evidence in descending order of acceptability:
- a. Current valid passport;
  - b. National Identity Card; or,
  - c. Driving Licence; and,
- 2.1.5 To establish verification of residence the following documents are considered to be the best evidence in descending order of acceptability:
- a. Utility bill;
  - b. bank/credit card statement, or,
  - c. letter from bank verifying address.

#### Companies

- 2.1.6 The following provisions apply where your client is a company not where you are establishing a company for your client.
- a. the requirements in 2.1.2 applied to all directors;
  - b. the requirements of 2.1.2 applied to all beneficial owners;
  - c. its registered corporate name and any trading names used;
  - d. its country of incorporation;
  - e. its registration number;
  - f. its registered address, including post code where applicable;
  - g. its shareholders;
  - h. its directors;
  - i. the nature of its business; and,
  - j. Proof of valid, current good standing with its regulatory authority.

Please Note: If the company publicly trades on a recognised stock exchange, a certified true copy of the director listing, ticker symbol, exchange it trades on, and a company fact sheet available from the stock exchange website is what is considered proof in such a case.

## Trusts

- 2.1.7 The following provisions apply where your client is a trust and not where you are establishing a trust for your client.
- a. The requirements in 2.1.2 applies to the settlor, beneficiaries, all trustees, and protectors; and,
  - b. Certified true copy of the Trust Deed including proof of appointment of each trustee and protector by the settlor of the trust.

## Limited Partnerships (“LPs”) or Limited Liability Companies (“LLCs”)

- 2.1.8 The following provisions apply where your client is an LP or LLC and not where you are establishing is an LP or LLC for your client.
- a. certified true copy of the partnership agreement or limited liability company operating agreement;
  - b. mandate from the LP or LLC authorizing the establishment of the relationship conferring authority on those who will issue instructions (e.g. authorized signatory list);
  - c. the identity, as set out 2.1.2 for individuals, of the general partner/managing member or authorized signatories of those authorized to issue instructions for the LP/LLC; and,
  - d. where the general partner or managing member is an entity, then the entity has to be identified in accordance with the requirement set forth in this code (depending on what type of entity is involved).

## Private Foundations

- 2.1.9 The following provisions apply where your client is a private endowment or foundation (as opposed to, for example, a university or other educational establishment or foundation) and not where you are establishing is a private endowment or foundation for your client
- a. the identity, as set out in 2.1.2 for individuals, of the founder;
  - b. where the founder is a corporate entity, then the entity has to be identified in accordance with the requirements set forth in this code (depending on what type of entity is involved);
  - c. a certified true copy of the certificate of incorporation or similar document and a certified true copy of the foundation’s constitutional documentation;
  - d. a list of directors' names or those who manage the foundation;
  - e. authorized signatories of those authorized to issue instructions for the foundation; and,
  - f. the identity of those authorised to issue instructions for the foundation in accordance with 2.1.2 for individuals.

## **Part 2: Potentates or Politically Exposed Persons**

2.2.1 Potentates or Politically Exposed Persons (“PEPs”) are individuals who have or have had positions of public trust such as government officials, senior executives of government corporations, politicians, important political party officials, etc. and their families and close associates. All too often we hear of PEPs compromising this trust. According to industry best practice these individuals require heightened scrutiny, “enhanced due diligence”. There should be full documentation of the information collected in line with 2.1.2 for individuals. If the risks are understood and properly addressed then the acceptance of PEP’s becomes a commercial decision as with all other clients. PEP clients should always be discussed with your supervisor. In particular enhanced due diligence should include:

- a. Close scrutiny of any complex structures (involving companies, trusts, foundation, and multiple jurisdictions) so as to establish that there is a clear and legitimate reason for using such structures. In the post 9/11 economic climate most legitimate political figures should expect their personal affairs to be undertaken in a more than usual open manner;
- b. Every effort to establish the source of wealth (including economic activity that created the wealth) as well as the source of funds in the relationship – again establishing that these are legitimate, both at the outset of the relationship and on an ongoing basis;
- c. The development of a profile of expected activity on the business relationship so as to provide a basis for future monitoring. The profile should be regularly reviewed and updated;
- d. A review at senior management or board level of the decision to commence the business relationship and regular review, at least annually, of the development of the relationship; and,
- e. Close scrutiny of any unusual features, such as very large transactions, the use of government or central banks accounts, particular demands for secrecy, the use of cash or bearer bonds or other instruments which break an audit trail, the use of small and unknown financial institutions in secrecy jurisdictions and regular transactions involving sums just below typical reporting threshold amounts.

## **Part 3: Combating the Financing of Terrorism (“CFT”)**

2.3.1 According to the International Convention for the Suppression of the Financing of Terrorism, December 1999, the definition and primary objective of terrorism is “to intimidate a population, or to compel a Government or an international organisation to do or abstain from doing any act.” This is in stark contrast to other types of criminal activity where financial gain is generally the ultimate goal. Even with this difference, terrorist organisations still need financial support.

- 2.3.2 There are two major differences between terrorist property and criminal property. In most cases only small amounts are required to commit individual acts of terrorism. The US authorities have approximated the total cost of the planning and execution of the 11 September attacks in America at US\$200,000. In the UK, the 1993 “Bishopsgate Bomb” in London, which caused both the loss of life and over GP£1,000,000,000, is estimated to have cost GP£3,000. This increases the difficulty of tracking the property.
- 2.3.3 Terrorists often control funds from a variety of sources around the world and employ increasingly sophisticated techniques to move these funds between jurisdictions. In doing so they require the services of professionals such as bankers, accountants, lawyers and take advantage of a range of financial services products.
- 2.3.4 In the past, the first major source of terrorist financing is the support of Nation States or organizations with large enough infrastructures to collect and then make funds available to them. The second major source came from legitimate or illegitimate revenue-generating activity committed by terrorist organizations themselves. As you will see below, this is still a major source for terrorists. This also increases the difficulty of identifying at which stage the funds become terrorist property.
- 2.3.5 Criminal activities are now believed to provide the principal source of funding. The following financial activities are typical:
- a. Extortion and kidnapping;
  - b. Smuggling;
  - c. Drug Trafficking;
  - d. Charities and fundraising; and,
  - e. Donations.
- 2.3.6 Business relationships with individuals or entities that support or commit terrorist acts will expose each Members organization to significant reputational, operational and legal risks. The risk is often more serious if the terrorist involved is later shown to have exploited ineffective systems if internal control or lack of effective due diligence.
- 2.3.7 The risk of funds destined to support terrorism entering the financial system can be reduced if Members apply satisfactory anti-money laundering strategies. In particular, adhering to “Know Your Customer” procedures.

#### **Part 4: Record Keeping**

- 2.4.1 A Member should maintain on its file contact communication numbers and addresses for each Client and should annually remind the Client that it should

- notify the Member within a reasonable period of any change of such Clients communication numbers and addresses.
- 2.4.2 Where, prior to the coming into effect of this code, a Member has not obtained communication numbers, addresses, references or passport or identity card with photo identification as referred to herein, the Member should endeavour to obtain any such items as and when the opportunity arises but in any event within one year of the coming into effect of this code.
- 2.4.3 A Member should, to the extent relevant to the services being provided maintain on its files evidence of the opening of bank and investment accounts, and copies of statement of those accounts.
- 2.4.4 A Member should to the extent relevant to the services being provided maintain on its files in respect of clients for whom it provides fiduciary services all documents required by the relevant statutory documents. This would normally include:
- a. copies of minutes of meetings of shareholders;
  - b. copies of minutes of meetings of directors;
  - c. copies of minutes of meetings of committees;
  - d. copies of the register of directors and officers with their names, addresses and contact details;
  - e. copies of the register of shareholders with their names, addresses and contact details;
  - f. copies of the register of mortgages, charges and other encumbrances;
  - g. Copies of all financial statements. This includes management accounts which are normally prepared at the end of each quarter;
  - h. Premium income, reinsurance premiums paid, claims paid and reinsurance claims received;
  - i. Copies of all general and subsidiary ledgers and journals;
  - j. Full details of any reinsurance programs including copies of treaties, limits of cover and amounts retained by the captive;
  - k. A list of any agents;
  - l. Copies of all actuarial reports or valuations and of any other document or formula by which reserves are calculated; and,
  - m. Full details of Investment Fund Manager or of Investment Fund asset allocation decision maker.

### **SECTION 3: THE TRANSFER OF CLIENTS BETWEEN SERVICE PROVIDERS**

#### **Part 1: Procedures**

- 3.1.1 A Member should provide input in the proper procedures facilitating a speedy transfer of a company to the newly appointed service provider.

- 3.1.2 This should include a letter to that party enquiring whether there are any professional or ethical reasons why they should not accept the business. A Member should respond to another Member's reasonable requests on a timely basis.
- 3.1.3 A Member should provide the newly appointed service provider in a timely manner with a letter to the relevant authorities, and/or FSC and/or the Registrar of Companies stating that it has no objection to the transfer.
- 3.1.4 A Member should deliver promptly to the newly appointed Service Provider the relevant books and records of the transferee. The minimum documentation should consist of the information required to be maintained under section 2.4.4 above.
- 3.1.5 A Member should not accept appointment, file documents, pay government licence fees or restore struck off companies to the Registrar of Companies, correspond or file documents with the Financial Services Commission or transact any other business whatsoever for companies that they do not represent without the agreement of the Service Provider of record.

## **SECTION 4: DISCIPLINARY COMMITTEE, SANCTIONS AND PENALTIES**

### **Part 1: Disciplinary Committee**

- 4.1.1 Any Member, or other interested person (hereinafter referred to as the "Complainant") may make a complaint to the Council of the Association (the "Council") in respect of any alleged breach of this Code of Conduct by any Member (hereinafter called the "Respondent"). Upon receipt of any such complaint the Council shall forthwith constitute a Disciplinary Committee ('the Committee') comprised as follows:
  - a. two persons appointed by the Council;
  - b. one Attorney-at-Law appointed by the Council of the Bar Association of the B.V.I.;
  - c. one person appointed by the Director of Financial Services; and,
  - d. one person appointed by agreement between the Complainant and the Respondent.
- 4.1.2 Provided that where the Council, after reasonable attempts to do so, determines that it is viable to constitute the Committee in accordance with the foregoing provisions it may fill any vacancies with such independent persons as it deems fit.
- 4.1.3 The Committee shall act by majority vote and shall establish its own method of operation from time to time and as soon as is practicable shall appoint a

Chairman who shall not have a casting vote. The Committee shall hold such hearings and solicit such written and oral evidence as it sees fit and shall invite both the Complainant and Respondent (hereinafter referred to collectively as the "Parties") to appear before them and present their complaint and response respectively. The Parties may elect to be represented by counsel- and may elect to make representations either orally or in writing.

- 4.1.4 The Committee, shall after concluding its deliberations, issue a written report of its majority findings to the Parties and to the Council and may impose anyone or more of the sanctions authorised by this Code of Conduct or may issue recommendations and suspended sanctions which will only become effective if such recommendations are not followed.

### **Part 2: Sanctions**

- 4.2.1 The Committee shall be entitled to:

- a. terminate or suspend for any period, the membership of the Respondent;
- b. issue an admonition to the Respondent;
- c. impose a fine of up to \$5,000.00 on the Respondent subject to termination or suspension of membership in the event of non-payment in the time specified by the committee; and/or,
- d. make any recommendation to the FSC, the Government of the B.V.I. or any Ministry or Department or Agency thereof.

- 4.2.3 So long as membership of the Association is voluntary, disciplinary action may include suspension or termination of the membership of the offending Member. In the event that membership becomes a legal requirement under applicable regulatory legislation the sanctions hereby imposed shall be reviewed.

### **Part 3: Appeal**

- 4.3.1 Both Parties shall have the right to appeal against the findings of the Committee. Notice of such appeal and the grounds thereof shall be submitted to the Council of the Association which shall forthwith constitute an Appeal Body comprised as follows:

- a. one person appointed by the Council;
- b. one Attorney at Law appointed by the Director of the FSC; and,
- c. one person appointed by agreement between the Complainant and the
- d. Respondent.

- 4.3.2 Provided that where the Council, after reasonable attempts to do so, determines that it is unable to constitute the Appeal Body in accordance with the foregoing provisions it may fill any vacancies with such independent persons as it deems fit.

- 4.3.4 The Appeal Body shall act by majority vote and shall establish its own method of operation from time to time and as soon as is practicable shall appoint a Chairman who shall not have a casting vote.
- 4.3.5 The Appeal Body shall not enter into a rehearing of the matter and shall only have regard to the written report of the Committee, such written documents as were presented to the Committee, any written transcripts of any oral evidence presented to the Committee and any written arguments presented by the Complainant or Respondent in support of or against the Notice and Grounds of Appeal.
- 4.3.6 The Appeal Body, shall after concluding its deliberations, issue a written report of its majority findings to the Parties and to the Council and may uphold or vary, totally or in part, the sanctions or other actions imposed or taken by the Committee. The decision of the Appeal Body shall be final.

## **SECTION 5: MISCELLANEOUS**

### **Part 1: The establishment of a fund to be known as the ACOP fund**

- 5.1.1 The fund shall consist of:
- a. Donations, grants, bequests and gifts made by persons approved by the Council of the Association;
  - b. Contributions made by Members in accordance with rules made by the Association;
  - c. Returns realized from any investment made; and;
  - d. Any other monies that may vest in or accrue to the Fund, whether in terms of this Code or otherwise.
- 5.1.2 For the purpose of the Fund, the Council of the Association shall open an account with such funds in the BVI as the Council sees fit.
- 5.1.3 Where monies credited to the fund are not immediately required for the purposes of this Code, those monies may be invested in such a manner as the Council may determine.
- 5.1.4 Any expenses by the Council of the Association, or any sub-committee established by the Council in the performance of any function or the exercise of any power under this Code shall be paid out of the Fund.
- 5.1.5 The Council shall maintain proper books of account in which shall be recorded the financial transactions relating to the Fund.

- 5.1.6 A qualified auditor appointed for the purposes of the Fund shall audit the Fund annually.
- 5.1.7 This Code of Conduct shall be a public document and the Council shall arrange such publicity as the Council deems necessary for it to become generally known in the British Virgin Islands and abroad.
- 5.1.8 A Member may propose any modification to this Code in furtherance of the objectives stated in the Preamble, which may prove necessary or desirable in the light of experience. Modifications shall only be approved at a General Meeting of the Members.

## **APPENDIX A**

### **Code of Ethics**

Compliance Officer and Compliance Practitioner: An independent function that identifies, assesses, advises on, monitors, and reports on a firm's compliance risk, that is, the risk of legal or regulatory sanctions, financial loss, or loss to reputation a firm may suffer as a result of its failures to adhere with all applicable laws, regulations, codes of conduct and standards of good practice.

Members of the BVI Association of Compliance Officers and Practitioners, ("ACOP") shall abide by the following ethical practices:

Members of the ACOP shall conduct business utilizing the highest levels of integrity, diligence and professionalism.

- Members of the ACOP shall seek to protect the financial services sector and the legal and accounting professions from exposure to the proceeds of crime by avoiding involvement in arrangements concerning property derived from crime or property which may be used to fund crime including acts of terrorism.
- Members of the ACOP shall at all times maintain a high level of awareness of the regulatory requirements in force in the jurisdictions in which they work and strive towards full compliance therewith.
- Members of the ACOP shall wherever possible and without unduly compromising the duty of confidentiality owed to clients, co-operate with domestic and international regulatory and enforcement bodies.

Members of the ACOP shall work towards enhancing the level of competence and the depth of knowledge of compliance and anti-money laundering professionals both regionally and globally.