

**BRITISH VIRGIN ISLANDS ASSOCIATION OF
COMPLIANCE OFFICERS
CODE OF ETHICS AND CONDUCT**



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1. Introduction

- The British Virgin Islands Association of Compliance Officers (the “BVI ACO”) members are required to observe proper standards of professional conduct.
- Those failing to observe the standards expected of them may be required to answer a complaint before the BVI ACO’s Ethics Committee.
- It is not possible to specify all those combinations of circumstances in which a member may be held by the Ethics Committee to have committed professional misconduct. However, this section sets out the BVI ACO’s ethical requirements in relation to those professional situations that most commonly arise.
- Where statutory and regulatory requirements are concerned, BVI ACO members are reminded that they must also refer to, and comply with, the legislation and regulatory requirements of the countries within which they conduct business.
- The Code of Ethics and Conduct applies to all members.

2. The relationship between the Code of Ethics and Conduct and other regulations

In the compliance field, members are subject to a variety of statutory and regulatory requirements. Where the Code of Ethics and Conduct imposes a more stringent requirement than statutory and regulatory requirements, or vice versa, the more stringent requirement will apply, unless prohibited by law or regulation.

3. Failure to comply with the Code of Ethics and Conduct

A BVI ACO member who fails to comply with the Code of Ethics and Conduct will be liable to disciplinary action. For further information on potential Disciplinary Action, refer to the Complaints Handling Procedures document on the BVI ACO’s website. These may include, a member being severely reprimanded, reprimanded or admonished (i.e. warned or cautioned) or excluded from membership.

4. Enforcement of the Code of Ethics and Conduct

The Ethics Committee has been appointed by the Executive Council to enforce the BVI ACO’s ethical standards.

5. The fundamental principles

The fundamental principles set out the obligations placed on all members, whether or not they are in practice. This section establishes the fundamental principles of professional ethics for members.

Members are required to comply with the following fundamental principles:

5.1 Integrity

Members should be straightforward and honest in all professional and business relationships.

- The principle of integrity imposes an obligation on all members to be straightforward and honest in professional and business relationships. Integrity also implies fair dealing and truthfulness.
- Members should not be associated with reports, returns, communications or other information where they believe that the information:
 - contains materially false or misleading statements;
 - contains statements or information furnished recklessly; or
 - omits or obscures information required to be included where such omission or obscurity would be misleading.

5.2 Objectivity

Members should not allow bias, conflicts of interest or undue influence of others to override professional or business judgments.

- The principle of objectivity imposes an obligation on all members not to compromise their professional or business judgment because of bias, conflict of interest or the undue influence of others. Members may be exposed to situations that may impair their objectivity. It is impracticable to define and prescribe all such situations. Relationships that bias or unduly influence professional judgment of members should be avoided.

5.3 Professional competence and due care

Members have a continuing duty to maintain professional knowledge and skill at a level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques. Members should act diligently and in accordance with applicable technical and professional standards when providing professional services.

- The principle of professional competence and due care imposes the following obligations on members:
 - to maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service; and
 - to act diligently in accordance with applicable technical and professional standards when providing professional services.
- Competent professional service requires the exercise of sound judgment in applying professional knowledge and skill in the performance of such service. Professional competence may be divided into two separate phases:
 - attainment of professional competence required by the BVI Legislation to act in the role of a Compliance Officer; and
 - maintenance of professional competence.
- The maintenance of professional competence requires a continuing awareness and an understanding of relevant technical, professional and business developments. Continuing professional development enhances and maintains the capabilities that enable members to perform competently within the professional environment.
- Diligence encompasses the responsibility to act in accordance with the requirements of an assignment carefully, thoroughly and on a timely basis.
- Members should take steps to ensure that those working under their authority in a professional capacity have appropriate training and supervision.

5.4 Confidentiality

Members should respect the confidentiality of information acquired as a result of professional and business relationships and should not disclose any such information to third parties without proper and specific authority or unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and business relationships should not be used for the personal advantage of members or third parties.

- The principle of confidentiality imposes an obligation on members to refrain from:
 - disclosing outside the firm or employing organisation confidential information acquired as a result of professional and business relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and
 - using confidential information acquired as a result of professional and business relationships to their personal advantage or the advantage of third parties.
- Members should maintain confidentiality even in a social environment. Members should be alert to the possibility of inadvertent disclosure, particularly in circumstances involving long association with a business associate or a close or immediate family member.

- Members should also maintain confidentiality of information disclosed by a prospective client or employer.
- Members should also consider the need to maintain confidentiality of information within the firm or employing organisation.
- Members should take all reasonable steps to ensure that staff under the member's control and persons from whom advice and assistance is obtained respect the member's duty of confidentiality.
- The need to comply with the principle of confidentiality continues even after the end of the relationship between a member and a client or employer. When members change employment or acquire new clients, members are entitled to use prior experience. Members should not, however, use or disclose any confidential information either acquired or received as a result of a professional or business relationship.
- The following are circumstances where members are or may be required to disclose confidential information or when such a disclosure may be appropriate:
 - disclosure is permitted by law and is authorised by the client or the employer;
 - disclosure is required by law, for example:
 - production of documents or other provision of evidence in the course of legal proceedings; or
 - disclosure to the appropriate public authorities of infringements of the law that come to light; and
 - there is a professional duty or right to disclose, when not prohibited by law:
 - to respond to an inquiry or investigation by the BVI ACO or other regulatory body;
 - to protect the professional interests of a member in legal proceedings; or
 - to comply with technical standards and ethical requirements.
- In deciding whether to disclose confidential information, members should consider:
 - whether the interests of any parties, including third parties whose interests may be affected, could be harmed if the client or employer consents to the disclosure of information by members;
 - whether all the relevant information is known and substantiated, to the extent it is practicable. When the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgment should be used in determining the type of disclosure to be made, if any; and
 - the type of communication that is expected and to whom it is addressed. In particular, members should be satisfied that the parties to whom the communication is addressed are appropriate recipients.

5.5 Professional behaviour

Members should comply with relevant laws and regulations and should avoid any action that discredits the profession.

- The principle of professional behaviour imposes an obligation on members to comply with relevant laws and regulations and avoid any action that may bring discredit to the profession. This includes actions which a reasonable and informed third party, having knowledge of all relevant information, would conclude negatively affects the good reputation of the profession.
- Members should behave with courtesy and consideration towards all with whom they come into contact in a professional capacity.
- In marketing and promoting themselves and their work, members should not bring the profession in disrepute. Members should be honest and truthful and not:
 - make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained; or
 - make disparaging references or unsubstantiated comparisons to the work of others.

6. Gifts and hospitality

- Accepting gifts or hospitality from a client of your employer or business may create self-interest and familiarity threats. When a compliance officer accepts gifts or hospitality, unless the value is clearly insignificant, the threats to independence cannot be reduced to an acceptable level by the application of any

safeguard. Consequently, a member should not accept such gifts or hospitality. Members are guided to exercise judgment and to comply with their employer's or business' policy in this regard.

7. Professional duty of confidence in relation to defaults and unlawful acts of clients and others

7.1 Introduction

- There are circumstances where members may disclose information to third parties without first obtaining permission. This would be where, for example, there is a statutory right or duty to disclose, or where members are served with a court order or some other form of witness summons, under which they are obliged to disclose information.
- This section looks at situations where members may be required to disclose information about their clients without first obtaining permission to do so.
- Members may suspect or encounter a number of criminal offences during the course of their work, most commonly occurring are:
 - money laundering;
 - drug trafficking or terrorism;
 - theft, obtaining by deception, false accounting, and suppression of documents;
 - fraud and forgery;
 - offences under company law;
 - perjury and offences under legislation for the prevention of corruption;
 - bankruptcy or insolvency offences, frauds on creditors, false trade descriptions, and offences arising out of relations between employers and employees;
 - conspiracy, soliciting or inciting to commit crime and attempting to commit crime;
 - tax evasion;
 - insider dealing.
- Members should note that in some jurisdictions money laundering will be a crime not only in relation to serious offences but in relation to all offences.
- In the case of unlawful acts which may amount to money laundering, members are required by local legislation to report the suspicion or knowledge internally or to the appropriate external authority. In such circumstances, members must avoid doing anything which might tip off the client that a report has been made.
- Members should note that references within this chapter to "client" include former clients.
- Members acquiring information in the course of their professional work in respect of non-clients (for example potential clients) should not disclose any such information to third parties without first obtaining permission from the individual or entity concerned, unless the information acquired is in relation to money laundering or terrorist financing in which case a suspicious activity report should be filed.
- Members should consider seeking legal advice before making any disclosure where uncertain, particularly when contemplating disclosing information to a third party.

8. The ethical responsibilities of members in business

8.1 Introduction

- Members working in the compliance field ("in business") owe a duty of loyalty to their profession.
- Members in business are bound by the same fundamental principles and the same standards of behaviour and competence as apply to all other members of BVI ACO. Members must therefore comply with the appropriate technical and professional standards relevant to their work.

- All members, whether employed or not, are liable to disciplinary action. The investigation, handling of complaints and disciplinary action are detailed within the Complaints Handling Procedures on the BVI ACO's website.
- Members have a responsibility to further the legitimate aims of their employing organisation. This Code of Ethics and Conduct does not seek to hinder members from properly fulfilling that responsibility, but considers circumstances in which conflicts may arise with their duty to comply with the fundamental principles.
- In some cases, members working in the public sector may, by law or public expectation, need to maintain a degree of independence greater than that normally expected of an employee, and where this applies the guidelines should be interpreted accordingly.
- Members often occupy senior positions within employing organisations. The more senior they become, the greater will be their ability and opportunity to influence events, practices and attitudes. Members in such positions are expected, therefore, to encourage an ethics-based culture in their employing organisations.

8.1.1 Independence

- Independence is not an end in itself, it is merely a means of securing a more important result, namely an objective approach to work. The requirement for objectivity is of equal importance to all members.
- Members in business cannot be fully independent of their employers and thus it is all the more important that they strive constantly to maintain objectivity in every aspect of their work.

8.1.2 Objectivity

- Objectivity is described above at "The fundamental principles", as the state of mind which has regard to all considerations relevant to the task in hand but no other. It presupposes intellectual honesty.
- It follows that the interests of a member's employer should no more affect the objectivity of a member's judgment in a professional matter than his/her own interests.

8.1.3 Integrity

- Members in business must observe the terms of their employment. These cannot, however, require them to be implicated in dishonest transactions.
- If members in business are instructed or encouraged to engage in any activity which is unlawful, they are entitled, and required, to decline. Such requests may even warrant communication by the member to the authorities.

9. Disclosing confidential information

- Members should observe the principle of confidentiality. Confidentiality is the duty to keep private another person's information given or obtained in confidence. The duty of confidentiality is not only to keep information confidential, but also to take all reasonable steps to preserve confidentiality. Members should not disclose confidential information acquired or received in the course of their work unless they have a right or obligation to do so or they have received informed consent from their employer to whom the duty of confidentiality is owed.
- The possession of confidential information may give rise to specific threats to confidentiality in certain circumstances. For example, the non-disclosure of confidential information in a member's possession may threaten compliance with the fundamental principles when members:
 - are required by law to disclose information to the appropriate public authorities or suspected infringements of the law that come to light, for example in connection with anti-money laundering or anti-terrorist legislation;
 - are required to produce documents or other provision of evidence in the course of legal proceedings;
 - are permitted by law to disclose;
 - have a professional duty or right to disclose, when not prohibited by law;

- to comply with technical standards and ethics requirements;
- to protect the professional interests of a member in legal proceedings;
- to respond to an inquiry or investigation by BVI ACO or a regulatory body.

10. Reporting any illegal or unethical behavior of members

Members are encouraged to communicate with the Ethics Committee about observed behavior of members or compliance practitioners in the BVI that they believe may be illegal or a violation of this Code of Ethics and Conduct or when in doubt about the best course of action in a particular situation. It is the policy of the BVI ACO not to allow retaliation for reports made in good faith by members of misconduct by others. Members are expected to cooperate in internal investigations of misconduct. Any information provided by a member in this regard will not be disclosed to the membership.

11. Whistleblowing

- Where required by law to disclose confidential information, for example as a result of anti-money laundering or anti-terrorist legislation, or in connection with legal proceedings involving either themselves or their employing organisation, members should always disclose that information in compliance with relevant legal requirements.
- In some circumstances, members may consider disclosing information outside the employing organisation, when not obligated to do so by law or regulation, because they believe it would be in the public's best interest. When considering such disclosure, members should, where appropriate, follow the internal procedures of the employing organisation in an attempt to rectify the situation. If the matter cannot be resolved within the employing organisation, members should consider the following:
 - legal constraints and obligations;
 - whether members of the public are likely to be adversely affected;
 - the gravity of the matter, for example the size of the amounts involved and the extent of likely financial or reputational damage;
 - the possibility or likelihood of repetition;
 - the reliability and quality of the information available; and
 - the reasons for the employing organisation's unwillingness to disclose the matter to the relevant authority.
- In deciding whether to disclose confidential information, they should also consider the following points:
 - when the employer gives authorisation to disclose information, whether or not the interests of all the parties, including third parties whose interests might be affected, could be harmed;
 - whether or not all the relevant information is known and substantiated, to the extent this is practicable; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgment should be used in determining the type of disclosure to be made, if any;
 - the type of communication that is expected and to whom it is addressed; in particular, members should be satisfied that the parties to whom the communication is addressed are appropriate recipients; and
 - the legal or regulatory obligations and the possible implications of disclosure for the member.

12. Money laundering

12.1 Introduction

- Money laundering is a global phenomenon that affects all countries to varying degrees. It is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activity, often with the unwitting assistance of professionals. If undertaken successfully, it allows them to maintain control over the proceeds and, ultimately, to provide a legitimate cover for their sources of income. Money laundering also encompasses the process by which terrorists attempt to conceal the destination and ultimate purpose of funds (legitimate or otherwise) which are likely to be used for the purposes of terrorism.
- Members shall be knowledgeable of and comply with the Anti-money Laundering and Terrorist Financing legislation applicable in the BVI or the country within which they operate.
- The guidance contained in the BVI legislation sets out the type of preventative measures that members should adopt and the circumstances in which they should consider reporting any knowledge or suspicions of money laundering activity to the authorities. Members should ensure that they and their staff are fully aware of their obligations under local legislation. In particular, members should be aware that failure to follow legislative requirements will be a criminal offence which is likely to lead to fines and/or imprisonment.
- Guidance as to the principles of law that govern anti-money laundering and terrorist financing issues can be found on the BVI ACO's website. Given the serious consequences of prosecution for money laundering offences, members are advised to take legal advice whenever they are uncertain as to their conduct. The legal position and its application to any given set of facts may not be straightforward.

12.2 Relationship with the local law

- Members must obey the laws of the British Virgins and any other jurisdiction within which they conduct business. It is the responsibility of members to familiarise themselves with the law that applies to them and ensure that they work within the law.

13. General Compliance Considerations

We must all work to ensure prompt and consistent action against violations of this Code of Ethics and Conduct. However, in some situations it is difficult to prove right from wrong. Since we cannot anticipate every situation that will arise, it is important that we have a way to approach a new question or problem. These are the factors to keep in mind and suggested steps that should be followed:

- Make sure you have all the facts. In order to reach the right solutions, we must be as fully informed as possible.
- Ask yourself: What specifically am I being asked to do? Does it seem unethical or improper? This will enable you to focus on the specific question you are faced with and the alternatives you have. Use your professional judgment and common sense; if something seems unethical or improper, it probably is.
- Discuss the problem with your peers, Managing Director, BOD or Compliance Committee (as applicable). This is the basic guidance for all situations. These persons may be more knowledgeable or may have experience with the particular question or situation and are likely to appreciate being brought into the decision-making process.
- You may report violations in confidence and without fear of retaliation. If your situation requires that your identity be kept secret, your anonymity will be protected. The BVI ACO does not permit retaliation of any kind against employees or officers for good faith reports of suspected violations.
- Always ask first, act later: If you are unsure of what to do in any situation, seek guidance before you act.
- All members are subject to the BVI ACO's Code of Ethics and Conduct. Procedures for the reporting of violations of the Code of Ethics and Conduct can be found in the Complaints Handling Procedures

document on the BVI ACO's website. All members must comply with those reporting requirements and promote compliance with them by others. Failure to adhere to this Code of Ethics and Conduct by any member will result in disciplinary action.

14. Conclusion

Members should abide by the following:

- Members shall conduct business utilising the highest levels of integrity, diligence and professionalism.
- Members 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 shall at all times maintain a high level of awareness of the regulatory compliance requirements in force in the jurisdictions in which they work and strive towards full compliance therewith.
- Members 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 shall work towards enhancing the level of competence and the depth of knowledge of compliance and anti-money laundering professionals globally.