

FINANCIAL SERVICES (EXEMPTIONS) REGULATIONS – SECTIONS 40C AND 62

(S.I.s 50/2007, 79/2007, 71/2008 and 13/2013)

Commencement

*[1 January 2008
1 August 2007]*

Short title

1. These Regulations may be cited as the Financial Services (Exemptions) Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

“Act” means the Financial Service Commission Act;

“Business Companies Act” means the BVI Business Companies Act;

“BVI company” means a company that is on the Register of Companies maintained under the Business Companies Act; and

“qualifying BVI company” means a company that is on the Register of Companies maintained under the BVI Business Companies Act, 2004 and which is not struck off or dissolved. *(Substituted by S.I. 13/2013)*

Banks and Trust Companies Act Exemptions

3. The exemptions specified in the Schedule shall have effect with respect to the Banks and Trust Companies Act.

4. (Omitted).

(Amended by S.I.s 79/2007 and 71/2008)

SCHEDULE

(Regulation 3)

**EXEMPTIONS APPLICABLE TO
THE BANKS AND TRUST COMPANIES ACT**

PART I

PRIVATE TRUST COMPANIES

Interpretation

1. For the purposes of this Part—

“Class I trust licence” means a Class I trust licence issued under the Banks and Trust Companies Act;

“connected person” has the meaning specified in paragraph 3;

“private trust company” means a company—

- (a) that is a qualifying BVI company;
- (b) that is a limited company within the meaning of the BVI Business Companies Act; and
- (c) the memorandum of which states that it is a private trust company;

“qualifying trust” means a trust where each beneficiary of the trust is—

- (a) a connected person in relation to the settlor of the trust; (*Amended by S.I. 13/2013*)
- (b) a charity; or (*Amended by S.I. 13/2013*)
- (c) its settlor; (*Inserted by S.I. 13/2013*)

“registered agent”, with respect to a private trust company, means the person appointed as its registered agent in accordance with section 91 of the Business Companies Act;

“related trust” has the meaning specified in paragraph 4;

“related trust business” means trust business provided in respect of—

- (a) a single qualifying trust; or
- (b) a group of related qualifying trusts;

“relevant trust”, with respect to a private trust company, means a trust with respect to which the private trust company is providing services that constitute trust business;

“specified exemption” means the exemption provided in paragraph 5; and

“unremunerated trust business”, in respect of a private trust company, has the meaning specified in paragraph 2.

Meaning of unremunerated trust business

2. (1) Trust business carried on by a private trust company is unremunerated trust business if no remuneration is payable to, or received by, the private trust company, or any person associated with the private trust company, in consideration for, or with respect to, the services that constitute the trust business.

(2) For the purposes of subparagraph (1)—

- (a) “remuneration” includes money or any other form of property; and
- (b) it is immaterial whether remuneration is payable or received—
 - (i) out of the assets, or underlying assets, of a relevant trust;
 - (ii) from the settlor or beneficiary of a relevant trust; or
 - (iii) from any other person pursuant to an arrangement with the settlor or beneficiary of a relevant trust.

(3) For the purposes of, but without limiting subparagraph (1), a person is associated with a private trust company if—

- (a) he has an interest, whether legal or beneficial, in the private trust company;
- (b) he is a director or former director of the private trust company; or

(c) he is an employee or former employee of the private trust company.

(4) Any remuneration payable to, or received by, a director of a private trust company as a director is remuneration payable to, or received by, a person associated with the private trust company within the meaning of subparagraph (1) unless payable to, or received by, the director by way of director's remuneration—

(a) with respect to professional director services provided to the private trust company; and

(b) where the director is not otherwise associated with the private trust company, whether by virtue of having a direct or indirect beneficial interest in the private trust company or otherwise.

(5) For the avoidance of doubt, payments made to a private trust company to indemnify it in respect of costs and expenses paid or incurred by the private trust company, shall not be regarded as “remuneration” within the meaning of subparagraph (1).

Meaning of “connected person”

3. (1) A person is a connected person in respect of any of the following relationships—

(a) his spouse;

(b) his descendants and their spouses;

(c) his parents, including step-parents;

(d) his grandparents and his spouse's grandparents;

(e) his parents-in-law, including step-parents-in-law;

(f) his brother, step-brother, sister, step-sister and their spouses and children;

(g) his spouse's brother, step-brother, sister, step-sister and their spouses and children;

(h) his parent's brother, step-brother, sister, step-sister and their spouses;

(i) children of the brother, step-brother, sister or step-sister of his parents, both present and future, including step-children and their spouses; and

(j) children of his brother, step-brother, sister or step-sister, both present and future, including step-children and their spouses.

(2) For any of the relationships specified in subparagraph (1) that may be established by affinity or consanguinity, that same relationship may be established by adoption.

Meaning of “related trust” and “group of related trusts”

4. (1) A trust (the first trust) is related to another trust (the second trust) where the settlor of the first trust is, or is a connected person with respect to, the settlor of the second trust. (*Amended by S.I. 13/2013*)

(2) A group of trusts are related trusts where each trust in the group is related to all of the other trusts in the group.

Exemption from requirement to obtain trust licence

5. (1) Subject to paragraph 6(2), a private trust company is exempt from the requirement to obtain a trust licence under the Banks and Trust Companies Act where its trust business consists solely of—

- (a) unremunerated trust business; or
- (b) related trust business.

(2) For the purposes of subparagraph (1), the business of a private trust company is deemed—

- (a) to consist solely of unremunerated trust business, notwithstanding that part or all of that unremunerated trust business is also related trust business; or
- (b) to consist solely of related trust business, notwithstanding that part or all of that related trust business is also unremunerated trust business.

Obligations on private trust company

6. (1) A private trust company shall—

- (a) ensure that, at all times, its registered agent is a person holding a Class I trust licence; and
- (b) not—
 - (i) carry on any business that is not trust business;
 - (ii) solicit trust business from members of the public; or
 - (iii) carry on any trust business other than either unremunerated trust business or related trust business, as the case may be.

(2) Subject to subparagraph (3), a private trust company shall not have the benefit of the specified exemption during any period in which it is in contravention of subparagraph (1).

(3) If, subsequent to its appointment as the registered agent of a private trust company, the registered agent ceases to hold a Class I trust licence, subparagraph (2) does not apply for the period of 4 weeks following the date on which the registered agent ceases to hold a Class I trust licence.

Private trust company not entitled to specified exemption

7. (1) Where a private trust company is not entitled to the specified exemption, it shall forthwith amend its memorandum to remove the statement that it is a private trust company.

(2) For the avoidance of doubt, a company carries on unauthorised financial services business for the purposes of the Act if—

- (a) without having the benefit of the specified exemption, it carries on any trust business; or
- (b) having the benefit of the specified exemption, it carries on trust business that is not unremunerated or related trust business, as the case may be.

Application of Banks and Trust Companies Act to private trust companies

8. (1) Where a private trust company has the benefit of the specified exemption, section 6 of the Banks and Trust Companies Act applies to the private trust company with respect to its unremunerated or related trust business, as the case may be.

(2) For the avoidance of doubt, section 16(1) of the Banks and Trust Companies Act applies to a private trust company, and section 16(2) applies with respect to a private trust company, notwithstanding that it is entitled to the benefit of the specified exemption.

Application of Act to private trust companies

9. (1) For the purposes of the Act, unremunerated and related trust business is deemed to be financial services business.

(2) Section 32 of the Act applies to a private trust company as if it were a licensee.

(3) Sections 36, 37, 37A and 40 of the Act apply to a private trust company, as if it was a licensee, with the following modifications—

- (a) the Commission may take enforcement action against a private trust company only where it is of the opinion that—
 - (i) the private trust company has contravened or is in contravention of the Act, the Banks and Trust Companies Act or these Regulations;
 - (ii) the private trust company is carrying on, or is likely to carry on, business in a manner detrimental to the public interest or the interests of beneficiaries of any trust with respect to which it provides, or has provided, trust services;
 - (iii) the private trust company has failed to comply with a directive given to it by the Commission; or
 - (iv) a liquidator is appointed in respect of the private trust company, whether by its directors, its members or the Court, or the private trust company is dissolved;
- (b) where the Commission is entitled to take enforcement action against a private trust company, it may—
 - (i) appoint an examiner to conduct an investigation under section 36 of the Act;
 - (ii) issue a directive to the private trust company under section 40 of the Act;
 - (iii) require the private trust company to pay such costs and expenses as are incurred by the Commission in the taking of enforcement action against it, as the Commission thinks fit.

(4) Where the Commission is entitled to take enforcement action against a private trust company under subparagraph (3), section 39 of the Act applies as if the private trust company was a licensee.

(5) For the avoidance of doubt, nothing in this paragraph limits the powers of the Commission to take action against a private trust company which is carrying on, or has carried on, unauthorised financial services business.

Duties of registered agent of private trust company

10. (1) A person holding a Class 1 trust licence shall not agree to act as the registered agent of a private trust company unless it has taken all reasonable steps to satisfy itself that the private trust company—

- (a) complies with paragraph 6(1)(b); or
- (b) where the private trust company is not at that time carrying on trust business, that the private trust company will, on commencing its trust business, comply with paragraph 6(1)(b).

(2) The registered agent of a private trust company shall on a periodic basis take all reasonable steps to satisfy itself that the private trust company continues to comply with paragraph 6(1)(b).

(3) The frequency with which the registered agent reviews the compliance of a private trust company with paragraph 6(1)(b) shall be determined by the registered agent on the basis of its assessment of the risk that the private trust company may fail to comply with that paragraph.

(4) The registered agent shall take all reasonable steps to ensure that up to date copies of the following records with respect to each private trust company for which it acts as registered agent are kept at its office in the Virgin Islands—

- (a) the trust deed, or other document creating or evidencing a trust and any deed or document varying the terms of the trust, for each relevant trust; and
- (b) the documentation and other information on which it has relied to satisfy itself that the private trust company complies with paragraph 6(1)(b).

(5) If at any time the registered agent of a private trust company forms the opinion that the private trust company does not comply with paragraph 6(1)(b), it shall immediately notify the Commission in writing of its opinion.

PART II**BARE TRUSTEES****Bare trustees**

11. (1) A company is not required to obtain a trust licence under the Banks and Trust Companies Act where it acts solely as a bare trustee.

(2) Any criteria specified in the Regulatory Code for determining whether a trustee acts as a bare trustee for the purposes of this Part shall apply accordingly.