



**OFFICE OF THE PARLIAMENTARY COUNSEL**

COMMERCE GATE  
61 CONSTANT SPRING ROAD  
KINGSTON 10

ANY REPLY OR SUBSEQUENT REFERENCE  
TO THIS COMMUNICATION SHOULD BE  
ADDRESSED TO THE OFFICE OF THE  
PARLIAMENTARY COUNSEL AND NOT TO  
ANY OFFICER BY NAME AND THE  
FOLLOWING REFERENCE QUOTED:-

No. **S/L/I 19** - 210

**July 22, 2021**

Financial Secretary  
Ministry of Finance and the Public Service

**Attention: Mrs. Terry-Ann Mills-Finnikin**

**Re: Trust and Corporate Services Providers (Licensing and Operation)  
Regulations, 2021**

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Reference is made to your memorandum dated June 30, 2021.

Please find attached, draft Trust and Corporate Services Providers (Licensing and Operation) Regulations, for consideration.

In relation your instructions at Item 8.4.2 where you are requiring that a penalty provision be inserted to make it an offence for including false and misleading information in a Register of Beneficial Owners, the custodial sentence of 12 months imprisonment may be inserted in the Regulations if there is an insertion in the Act of a penalty provision which ousts section 29 (b) of the Interpretation Act which states that -

"(b) ... regulations may provide in respect of a breach of any of the provisions thereof that the offender shall, unless the Act otherwise provides, be liable to such fine not exceeding one million dollars , or to such term of imprisonment with hard labour not exceeding three months, or to both such fine and imprisonment, as may be therein prescribed."

In other words, the insertion of such a provision in the Act would permit you to include a custodial sentence higher than 3 months, as is now stated in the Interpretation Act.

In relation to the insertion of a provision to address complaints, please note that the Attorney's General's Chambers produced an opinion that the Consumer Affairs Commission is empowered to address complaints related to financial services. The issue was raised during the drafting of the Microcredit Act. You may wish to solicit their opinion in relation to the powers of the Consumer Affairs Commission and service providers. You may also wish to examine the Consumer Affairs Commission Act and the pertinent provisions related to the protection of consumers that were incorporated in the Microcredit Act.

In relation to Item 10.2 of your instructions which requires the inclusion of a provision to indicate that the Data Protection Act applies to how licensees treat data and other information, by virtue of section 6 of the Data Protection Act, in light of the significance of such a provision, it may be prudent to include the provision in the primary legislation through an amendment of the International Corporate and Trust Services (Change of Name and Amendment) Bill which is now in train, rather than through Regulations made under the Act. Please note, however, that the Data Protection Act is not yet in operation, therefore it may not be advisable to include such a provision at this time.

In relation to 11.2 of your instructions, please clarify what is meant by the terms "business relationship" and "one-off transaction".

Additionally, it is advisable that the Commission take the opportunity to include in the Regulations the various forms referred to at regulations 8, 18, 19, 20 and 21.

A handwritten signature in black ink, appearing to read 'Dawn Douglas Shurland', with a large, stylized flourish at the end.

Dawn Douglas Shurland (Mrs.)  
*for* Chief Parliamentary Counsel

DDS/

Enc.

**THE TRUST AND CORPORATE SERVICES PROVIDERS  
(LICENSING AND OPERATION) REGULATIONS, 2021**

**ARRANGEMENT OF REGULATIONS**

1. Citation.
2. Interpretation.
3. Documents and information to be furnished on application for licence.
4. Change in documents or information.
5. Minimum capital requirement.
6. Corporate governance framework.
7. Officer responsible for implementation and monitoring of corporate governance framework.
8. Change in the licensee and form and manner of written notice of change.
9. Records to be kept by service provider.
10. Register of Beneficial Owners.
11. Outsourcing of services of licensee.
12. Provision of documents and information to the Commission.
13. Obligation of trust service provider to business in the regulated sector.
14. Penalty for failure to provide documents and information.
15. Reports of licensee.
16. Audit of the accounts of licensee.
17. Client moneys.
18. Liability of trust service provider.
19. Form and manner of notice of legal or other proceedings.
20. Notice on merger, take-over or cessation of business.
21. Form of professional indemnity insurance.
22. Declaration of compliance.

23. Complaints.

24. Forms.

# THE TRUST AND CORPORATE SERVICES PROVIDERS ACT

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## The Trust and Corporate Services Providers (Licensing and Operation) Regulations, 2021

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In exercise of the power conferred upon the Commission by section 47 of the Trust and Corporate Services Providers Act, the following Regulations are hereby made, with the approval of the Minister:-

**Citation.** 1. These Regulations may be cited as the Trust and Corporate Services Providers (Licensing and Operation) Regulations, 2021.

**Interpretation.** 2. In these Regulations –  
“business in the regulated sector” shall be construed in accordance with the Fourth Schedule to the Proceeds of Crime Act;

“client money” means [ ];

“conditional licence” means a licence granted to an applicant for the purpose specified in regulation 3(3);

“criminal record report” means a report based on a search of the records kept and maintained by the Criminal Records Office of Jamaica; an entity of a state that performs functions similar to the functions of the Criminal Records Office of Jamaica, or such other records as may be prescribed in relation to the conviction of any person for a criminal offence under the laws of Jamaica or of another state.

**Documents and information to** 3. – (1) An applicant for a licence pursuant to section 6 of the Act shall furnish with the application, the following documents

**be furnished and information –  
on applica-  
tion for  
licence.**

- (a) where applicable, the constitutive documents that would permit the applicant to conduct the business for which the licence is being sought;
- (b) a business plan outlining the proposed first three years of business of the applicant;
- (c) an anti-money laundering, counter financing of terrorism and counter proliferation financing policies and procedures manual, which accords with regulation 5 of the Proceeds of Crime (Money Laundering Prevention) Regulations, 2007, section 18 of the Terrorism Prevention Act and the United Nations Security Council Resolution Implementation Act;
- (d) where applicable, the audited financial statements for the last two years of operation of the applicant;
- (e) where the audited financial statements referred to in paragraph (d) are not available, the certified true copies of the audited accounts of the applicant for the last three years of operation (if any) including the audited financial statements of shareholders (not being individuals) holding 10 percent or more of the applicant;
- (f) satisfactory evidence of –
  - (i) the required minimum capital for the operation of the business of the applicant; and
  - (ii) professional indemnity insurance for the applicant;
- (g) two written references for each officer of the applicant, including one character-reference, and one reference

verifying the good financial standing of the officer; and

(h) a criminal record report for each officer of the applicant.

(2) A business plan under paragraph (1)(b) shall be accompanied by an operational chart indicating the reporting lines and the ownership structure of the business of the applicant, specifying certain key elements including –

- (a) a general description of the business proposed to be conducted;
- (b) a specification of the resources of the business, including the employees of the business;
- (c) any outsourcing arrangements (as referred to in regulation 10) that the applicant intends to put in place in relation to the business;
- (d) the financial projection of the business for the first three years of the business;
- (e) a description of the governance structure of the business;
- (f) the risk management procedures utilized by the business;
- (g) the internal control systems of the business;
- (h) the internal reporting arrangements of the business;
- (i) the current and intended external reporting arrangements of the business, including the reporting arrangements with the Commission;
- (j) information on contracts and proposed contracts with connected persons; and
- (k) such other key elements as the Commission may, from time to time, prescribe, by way of guidelines, published in the *Gazette*.

(3) Notwithstanding paragraph (1)(f)(ii), an applicant who

commences the operation of a business after the coming into operation of the Act, may be granted a conditional licence for a period of not more than three months, to facilitate the procurement of professional indemnity insurance.

(4) Where an applicant is part of a group, an application, pursuant to section 6 of the Act, shall, on the request of the Commission, include such documents and information about the group.

**Change in documents or information.**

4. Where there is a change in the documents or information of an application, the applicant shall, forthwith, inform the Commission.

**Minimum capital requirement.**

5. A licensee shall maintain net assets of a value, determined by the Commission, having regard to the financial projections provided in the business plan submitted by the applicant, pursuant to regulation 3, and based upon periodic reviews of the business of the applicant.

**Corporate governance framework.**

6. A licensee shall establish a corporate governance framework which is comprised of the following –

- (a) a conflict of interest policy for the licensee which sets out the standards of expected behavior of the licensee, including the results of non-compliance with the policy;
- (b) a risk profile of the licensee, including the production of a statement of the risk appetite of the licensee which indicates the type of business in which the licensee will be engaged and the risk tolerance of the licensee;
- (c) policies, procedures and control mechanisms to prevent the inappropriate use of client moneys, the settlement of the fees charged by licensees and the disbursement of client

moneys;

- (d) policies and procedures for the training and professional development of relevant persons, principal representatives and other employees, on an annual basis;
- (e) policies, procedures, strategies, systems and controls (as are appropriate, given the nature, size and complexity, structure and diversity of the business of the licensee and the degree of risk associated with each area of business) to prevent the business of the licensee from being used or detect whether the business of the licensee is being used, for fraud, money laundering, terrorism financing, the proliferation of weapons of mass destruction or other criminal activity;
- (f) an update of the policies, procedures, strategies, systems and controls referred to in paragraph (e) on an annual or needs basis; and
- (g) a code of ethics for employees.

**Officer responsible for implementation and monitoring of corporate governance framework.**

7. – (1) The licensee shall appoint an officer of the licensee who shall be responsible for the implementation and monitoring of the corporate governance framework referred to in regulation 6.

(2) The officer under paragraph (1) shall report to the board or a sub-committee of the board of the licensee in relation to the corporate governance framework referred to in regulation 6.

**Change in the licensee and form and manner of written notice of change.**

8. – (1) In accordance with section 12 of the Act, a change in the licensee includes –

- (a) in relation to a partnership, a change of the general partner;
- (b) the appointment of an officer of the licensee or a principal representative;

- (c) any action which a licensee proposes to take which would result in a material change in its capital adequacy or solvency;
- (d) any significant failure in the systems of internal control of the licensee (including those identified by an independent auditor under section 17 of the Act); and
- (e) any breach of a requirement under the Act or regulations made under the Act or any other enactment.

(2) The written notice of a change in a licensee, pursuant to section 12 of the Act, shall be given in the form and manner determined by the Commission and in accordance with the Guidelines issued pursuant to section 46 of the Act.

**[Records to be kept by service provider.]**

9. The records to be kept by a service provider, pursuant to section 16 of the Act, shall not be kept outside of Jamaica, where access to such records may be impeded by the confidentiality or data protection restrictions of another jurisdiction.]

**Register of Beneficial Owners.**

10. – (1) Pursuant to section 16 of the Act, a licensee shall keep a register of the beneficial owners of the licensee, to be known as the Register of Beneficial Owners, which shall contain the following particulars in relation to each beneficial owner –

- (a) the full name of the beneficial owner;
- (b) the date on which the individual became a beneficial owner;
- (c) where applicable, the date on which the individual ceased to be a beneficial owner;
- (d) a copy of a valid identification (including a driver's licence, a passport or any other national identification) of the beneficial owner;

- (e) the residential address of the beneficial owner, and if different, an address for service of documents;
- (f) the date of birth of the beneficial owner;
- (g) the nationality of the beneficial owner;
- (h) the occupation of the beneficial owner;
- (i) the particulars of the beneficial interest of the beneficial owner and how that beneficial interest is held; and
- (j) such other information as may be required by the Commission.

(2) Where there is a change in the beneficial ownership of a licensee, subject to the requirement of the licensee to notify the Commission, pursuant to section 12 of the Act and regulation 8, the licensee shall, forthwith, update the Register of Beneficial Owners, in relation to such change.

(3) A licensee who includes in the Register of Beneficial Owners, information which is false or misleading, commits an offence and is liable, on summary conviction in a Parish Court –

- (a) in the case of a person other than an individual, to a fine not exceeding one million dollars; or
- (b) in the case of an individual, to a fine not exceeding [five hundred thousand] dollars or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

**Outsourcing  
of services  
of licensee.**

11. – (1) A licensee may outsource any of the services that the licensee provides.

(2) Where a licensee intends to outsource any of the services of the licensee, the licensee shall give the Commission [seven days] notice, in writing, of such intention.

(3) A licensee shall enter into a written contract with a person to whom any services are outsourced.

(4) A licensee who intends to outsource the provision of any services to another person, shall first –

- (a) assess the risk of entering into an agreement for the outsourcing of the services;
- (b) assess the capability and suitability of the person to whom the services will be outsourced; and
- (c) design a contingency plan in the event of the inability of the person to provide the service or the breach or failure of the agreement.

(5) A person to whom any services are outsourced shall not sub-outsource the provision of the services without the written approval of the Commission.

**Provision of documents and information to the Commission.**

12. A licensee shall provide such documents and information (whether in a physical or electronic form) on a timely basis, in relation to any service provided by the licensee, at the request of the Commission.

**Obligation of trust service provider to business in the regulated sector.**

13. A trust service provider who, in the capacity as trustee, enters into [a business relationship], [a one-off transaction] or [an agreement] with a business in the regulated sector, shall –

- (a) inform the business in the regulated sector that the licensee is acting in the capacity of a trustee;
- (b) comply with a request by the business in the regulated sector for information on –
  - (i) the beneficial owners of the licensee; and
  - (ii) an individual referred to in any document relating to [the trust].

**Penalty for failure to provide documents and information.**

14. A licensee who fails to provide the documents and information requested under regulation 12 or 13 commits an offence and is liable, on summary conviction in a Parish Court –
- (a) in the case of a person other than an individual, to a fine not exceeding one million dollars; or
  - (b) in the case of an individual, to a fine not exceeding [five hundred thousand] dollars or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

**Reports of licensee.**

15. A licensee shall file with the Commission, in the form and manner determined by the Commission, quarterly reports and annual reports and quarterly financial statements of the licensee kept pursuant to section 16 of the Act.

**Audit of the accounts of licensee.**

16. – (1) An audit of the accounts of a licensee, pursuant to section 17 of the Act, shall include –
- (a) a review of the systems of internal control over the assets of the clients of the licensee; and
  - (b) a review of such other matters as may be specified by the Commission by notice published in the *Gazette*.
- (2) The audited financial statements of a licensee, required to be submitted to the Commission, pursuant to section 17 of the Act, shall be in the form and manner determined by the Commission.

**Client moneys.**

17. Pursuant to section 18 of the Act –
- (a) moneys held by a licensee for a client of the licensee, shall be held in the joint names of the licensee and the client;
  - (b) a licensee shall disclose, in writing, to a client, the terms on which moneys belonging to that client are held by the

licensee;

(c) a licensee shall promptly reconcile the accounts of the clients of the licensee;

(d) a licensee shall implement a procedure whereby at least two officers of the licensee endorse the disbursement of client moneys;

(e) a licensee shall formulate and implement written policies, procedures and controls to prevent the inappropriate use of client moneys.<sup>1</sup>

**Liability of trust service provider.**

18. A trust service provider who fails to comply with an obligation under these Regulations or who otherwise breaches a provision of these Regulations is liable for –

(a) any loss or depreciation in value of the trust property resulting from the breach; and

(b) any profit which would have accrued to the property, had there been no breach.

**Form and manner of notice of legal or other proceedings.**

19. The written notice of legal or other proceedings of a licensee, pursuant to section 19 of the Act, shall be given in the form and manner determined by the Commission.

**Notice on merger, take-over or cessation of business.**

20. – (1) The written notice to be submitted to the Commission by a licensee who is a company, on the intended merger or take-over of the business of the licensee or the intended cessation of operation of the business of the licensee, pursuant to section 20 of the Act, shall be given in the form and manner determined by the Commission.

(2) Where a licensee intends to cease the operations of the business of the licensee, the licensee shall, in accordance with

<sup>1</sup> Note that regulation 16(e) is similar to regulation 6(c).

the guidelines under section 46 of the Act, submit along with the notice referred to in paragraph (1) a written termination plan detailing the arrangements for the transfer of the business of the clients of the licensee to another service provider.

**Form of professional indemnity insurance.**

21. The evidence of the purchase and maintenance of professional indemnity insurance by each licensee, required pursuant to section 21 of the Act, shall be in the form and manner determined by the Commission.

**Declaration of compliance.**

22. A licensee shall file with the Commission, on an annual basis, a declaration of compliance, in the form and manner determined by the Commission, indicating that the licensee is operating its business in conformity with the Act and any regulations made under the Act.

**Complaints.**

23. – (1) A licensee shall establish a fair, timely and otherwise effective mechanism for the receipt, recording and handling of consumer complaints.

(2) The record kept in relation to each consumer complaint shall include –

- (a) the name of the complainant;
- (b) the date the complaint was received by the licensee;
- (c) the nature of the complaint;
- (d) when and how the complaint was investigated by the licensee;
- (e) whether the complaint included a breach of a regulatory requirement;
- (f) the date of response to the complaint; and
- (g) the date of resolution of the complaint.

**Forms.**

24. The Commission may, by notice published in the *Gazette*,

specify the form and manner in which an application, statement, notice, return or any other document, required to be filed with the Commission for the purpose of these Regulations, shall be made.

Dated this            day of            , 2021.

**Financial Services Commission**

**Approved by:**

**Minister of Finance and the Public Service**