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The following Notification is, by command of His Excellency the Governor-General, published for general information.

CLAUDINE HEAVEN, JP (MRS.)
Governor-General's Secretary and
Clerk to the Privy Council.

GOVERNMENT NOTICE

MISCELLANEOUS

GUIDELINES:

STANDARD OF CONDUCT FOR SERVICE PROVIDERS

LEGISLATIVE REFERENCES : The Trust and Corporate Services Providers Act, 2017
Sections 2(i), 3(d), 18, 22, 23 and 46(1)

1. BACKGROUND

- 1.01 The Financial Services Commission (the “FSC”) is responsible for the administration of the Trust and Corporate Services Providers Act, 2017 (the “TCSP Act”). Under section 3(d) of the TCSP Act the FSC seeks to ensure and maintain high standards of conduct, ethics, and competence, *inter alia*, among the providers of corporate and trust services.
- 1.02 A service provider is a person who engages in the business of providing a corporate or trust service in or from Jamaica as a business.
- 1.03 The FSC recognizes that service providers will have a varying degree of market and business conduct as it relates to, *inter alia*, their dealings with clients, the management of conflict of interest, and governance.

2. OBJECTIVE

- 2.01 These guidelines are not intended to be exhaustive but seek to summarize the FSC’s expectations relating to the minimum standard of conduct within the trust and corporate services providers industry and include *inter alia* matters relating to governance, integrity and ethics, confidentiality, competence, clients’ assets and client agreements, conflict of interest, cessation of a service, fitness and property, and complaints handling and outsourcing.
- 2.02 The guidelines aim to help ensure that clients of trust and corporate services providers are treated fairly and consistently with competence and integrity to protect the interest of clients and ensure that the industry in Jamaica is operating properly.
- 2.03 The guidelines are issued pursuant to the powers of the FSC under section 46 of the TCSP Act. Licensees under this Act should have regard to section 46(5) of the TCSP Act which provides that:

“A person who fails to comply with any guidelines issued pursuant to this section, commits an offence and is liable to summary conviction in a Parish Court to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding one month”.
- 2.04 This document is to be read in conjunction with all other relevant guidance issued by the FSC, including the guidelines on record keeping and the AML/CFT/CPF Guidelines dated October 31, 2019, and Supplemental Guidelines on CPF dated July, 2020. There may be other general and more wider obligations on service providers regarding the standards of conduct to be observed. These guidelines are not intended to replace or interpret such wider obligations, if any. In the event of a conflict between these guidelines and any relevant wider obligations, those wider obligations shall take precedence.

3.0 GOVERNANCE

- 3.01 A service provider should have a robust corporate governance culture and framework, commensurate with the size and complexity of its corporate or trust services business.
- 3.02 Every service provider must have documented policies, procedures, and systems in place to ensure that its business is organized and controlled effectively to enable it to comply with the TCSP Act and other applicable legislation. This includes anti-money laundering (“AML”), counter financing of terrorism (“CFT”), and counter financing of proliferation (“CFP”) legislation as well as guidelines issued by the FSC, Financial Investigations Division, and other relevant regulators at all times.
- 3.03 There should be periodic reviews of a service provider’s compliance and risk management functions, systems, internal controls, policies, and procedures by an independent oversight function such as an internal audit.
- 3.04 A service provider should ensure that at all times there are sufficient human, financial and other resources to provide the services agreed with its clients in an efficient, professional, and effective manner.
- 3.05 A service provider should take all reasonable steps to ensure that its staff complies with all applicable legislation and guidelines issued by the FSC and other relevant regulators.
- 3.06 A service provider should have documented policies, procedures, and systems relating to record-keeping in accordance with the guidelines on record keeping issued by the FSC.
- 3.07 An appropriate risk management framework, commensurate with the size, complexity, risk profile, objectives, structure, and business processes, must be implemented by a service provider to properly identify and manage inherent and emerging risks.
- 3.08 A service provider should have in place an effective business continuity and/or disaster recovery plan, which is regularly tested and updated as the environment dictates.

4.0 INTEGRITY AND ETHICS

- 4.01 A licensee under the TCSP Act must at all times conduct its service provider business with high standards of integrity, honesty, fairness, and professional standards.

- 4.02 A licensee must act with due skill, care, and diligence in the conduct of its service provider business.
- 4.03 A service provider's relationship with its clients should be one of trust and utmost good faith, acting in the best interests of its clients and placing clients' interests ahead of its own, in keeping with the terms of the client agreement.
- 4.04 Unethical business practices should be avoided and a service provider must not engage in any conduct involving fraud or dishonesty, or commit any act that reflects adversely on its honesty or trustworthiness or that compromises its integrity.
- 4.05 A service provider should implement policies to monitor the payment of bonuses and incentives, if applicable, to its employees and ensure that payments that are linked to sales targets do not encourage unethical behavior.
- 4.06 A service provider should mandate that all employees sign an annual code of ethics form which sets out, *inter alia*, values, principles, practices, and behavior. There should be appropriate sanctions and/or remedial actions for failure to abide by this code.

5.0 CONFIDENTIALITY

- 5.01 A service provider should keep the affairs of clients confidential except where disclosure of information is required or permitted by applicable law or by guidance published by the FSC or is authorized by the person(s) to whom the duty of confidentiality is owed. Confidentiality arrangements with clients must therefore include a proviso citing these exceptions to the obligation regarding confidentiality.
- 5.02 A service provider should make it mandatory for all employees to sign a confidentiality agreement in respect of all of the information they receive or to which they may have access in the course of their work at the licensee together with all materials of whatsoever kind to which they may have access in the offices of or in connection with the activities of the licensee. The confidentiality requirement should also be subject to any duty in law to disclose information to any relevant authority.
- 5.03 There should be consequences for breaches of confidentiality which must be communicated to all staff. At a minimum, confidentiality breaches should be reported to a designated senior officer of the service provider.
- 5.04 Instances of material breaches and events (such as fraud, misconduct, dismissal, lawsuits) by employees should be reported to the FSC and in any event, no more than two business days of the licensee becoming aware of a material breach.

6.0 COMPETENCE

- 6.01 A service provider should establish a robust human resource policy, which ensures that suitable persons are employed for its operations, especially for positions that deal directly with clients and client assets. This policy should also address remuneration to maintain an environment of honesty, integrity, and fairness.
- 6.02 A service provider should establish and maintain procedures to ensure that all its employees are appropriately trained and/or certified; and have the requisite skills, knowledge, and experience. Training should be ongoing for staff to be kept abreast of developments in corporate or trust services business.
- 6.03 A service provider should ensure that its staff is competent, qualified, and properly trained to effectively carry out corporate or trust services business. To this end, policies and procedures should be implemented to ensure that the staff keeps abreast of changes in applicable legislation, requirements by the FSC and other relevant regulators as well as new and emerging trends and best practices regarding corporate or trust services business.

7.0 CLIENTS' ASSETS

- 7.01 A service provider must ensure that a system is in place to protect and properly segregate all client assets from its own assets and the accounting records must reflect this. There should be clearly documented procedures relating to the segregation of assets and a system to ensure that the trust property is safeguarded and is subject to appropriate measures of control.
- 7.02 All client assets that are deemed to be in a Trust must comply with the terms and conditions of the requirements of the Trust as well as the applicable legislation and guidelines.
- 7.03 A service provider must keep safe, or arrange for the safekeeping of any documents of title relating to clients' assets and ensure that the location of such title documents is recorded in the client's records. Registrable investments that are bought or sold for a customer must be properly registered in that customer's name or, with the consent of the customer, in the name of an appropriate nominee.
- 7.04 Clients must be fully informed of where their assets are being held and must be provided with periodic statements of accounts.
- 7.05 A service provider should conduct periodic reconciliations, at least quarterly, on clients' assets.

8.0 CONFLICT OF INTEREST

- 8.01 A service provider must make all efforts to avoid conflicts of interest between itself and its customers or between one customer and another or others.
- 8.02 A service provider should manage conflicts of interest fairly and in a transparent manner, and should ensure that its action does not impair the interest of its clients.

- 8.03 A service provider should ensure that it has documented policies and procedures, appropriate for its size, business activities, and clientele, to identify, minimize, manage, and disclose actual and potential conflicts of interest and ensure the fair treatment of clients. At a minimum, the policies should:
- (i) identify activities and/or circumstances that could give rise to conflicts and how the conflicts would be resolved;
 - (ii) specify procedures and measures to manage conflicts;
 - (iii) prevent and control the exchange of information between the persons involved in a conflict;
 - (iv) prevent the exercise of inappropriate influence.
- 8.04 A service provider should act in the best interest of clients and should not place its own financial or other interest or the interest of other associated persons ahead of the interest of its clients.
- 8.05 Where conflicts of interest arise a service provider must at all times ensure that the circumstances are properly disclosed to those affected.
- 8.06 A service provider must take all reasonable steps to ensure that neither it nor any of its employees or agents offers, gives, solicits, or accepts any inducement that is likely to conflict with any duty owed to clients.

9.0 CLIENT AGREEMENTS

- 9.01 A service provider should put procedures in place to ensure that it does not enter into an agreement with any client unless a written agreement setting out the basis under which the services are provided is given to the client. This should include:
- (i) pertinent information about the licensee such as its legal name, licence number, business address, and contact information of officers of the licensee to whom clients can make inquiries or complaints;
 - (ii) a detailed description of the services to be provided by the licensee;
 - (iii) the obligations, expectations, and rights of the service provider and clients;
 - (iv) the fees that will be charged, the basis of calculation of the fees, and the method by which fees are to be collected;
 - (v) the notice period for changes to the terms of the contract, including fees; and
 - (vi) the grounds on which the contract may be terminated by either party, the consequences of the termination, and the notice period that is sufficient to allow for the orderly transfer of business in the event of cessation of services by the licensee.
- 9.02 A service provider should be able to demonstrate that adequate disclosure of the main risks and the relevant terms and conditions was made to its clients, to enable the client to make an informed decision before committing to the negotiated terms of business.
- 9.03 A service provider should provide information that is complete, accurate, and fair in all material respects, and must be presented in a clear, concise, and effective manner so that it is readily understood. The use of technical jargon and terms must be minimized and where used, must be explained or defined.
- 9.04 The client agreements governing the services to be provided by a service provider must be duly executed before the commencement of the provision of the services.
- 9.05 All client agreements must state the services the service provider is authorized by the FSC to provide.
- 9.06 All client agreements must also include a requirement that a customer shall notify the service provider, in advance, of any changes in beneficial ownership.

10.0 CLIENT ONBOARDING

- 10.01 A service provider must document and implement policies and procedures to govern its acceptance of a client. This includes, in particular, the taking of all reasonable steps to establish the true and full identity of each client and to ensure that the service provider complies with “know your customer” requirements in any applicable guideline or other document issued by the FSC concerning AML/CFT/CPF requirements.
- 10.02 A service provider is expected, in addition to undertaking Customer Due Diligence appropriate to the risk assessment of its business, to ensure at the start of a business relationship in respect of trust services that:
- 10.02.1 the documents setting out the terms of the trust are identified, read, and understood for proper administration of the trust;
 - 10.02.2 the trustees are familiar with the trust property and have made all appropriate arrangements for its management and security where applicable;
 - 10.02.3 the trust property, its value, and nature has been clearly ascertained and are understood; including the risks of holding and managing such property. All necessary formalities to secure the transfer of the trust property to or under the control of the trustees are to be observed;
 - 10.02.4 where it has been appointed as a trustee of an existing trust, reasonable enquiries to investigate any possible breaches that come to its notice are made;

- 10.02.5 the protector or enforcer, if any, has been determined by the trustees;
- 10.02.6 the trustees have established the identity of the beneficial owners of the trust;
- 10.02.7 the trustees are aware of any tax matters affecting the particular trust.

11.0 COMPLAINTS HANDLING

- 11.01 A service provider should have a robust and transparent complaints process, including documented complaints procedures that guide the process in dealing with complaints in a manner not prejudicial to its clients.
- 11.02 A service provider should designate an officer or unit to handle all complaints and all complaints must be handled in a fair, timely, and appropriate manner.
- 11.03 Clients should be made aware of the service provider's complaint handling procedures, the person or unit to whom clients should direct a complaint, and the mechanisms through which complaints can be made.
- 11.04 Upon receipt of a complaint, a service provider should formally acknowledge receipt of the complaints within two working days and advise the complainant of the approximate timeframe for responding. If a decision on the complaint cannot be reached by the initial timeframe given, a service provider should communicate the same to the complainant and explain the reason for the delay.
- 11.05 Complainants must be kept abreast about the progress of their complaint, including details of any actions being taken to resolve their complaint.
- 11.06 A service provider should establish a suitable complaint record-keeping system that includes the maintenance of a register to adequately document complaints noting such details as the name and address of the complainant, date the complaint was received, nature and description of the complaint, when and how the complaint was investigated by the licensee, whether the complaint includes a breach of a regulatory requirement, the date the complainant was informed of the decision regarding the complaint and the date the complaint was closed.
- 11.07 A service provider should review its complaints data to ascertain areas of its operations that may need improving. There may be a need for a service provider to consider updating or revising its market conduct-related policies and procedures or its policies and procedures generally, where applicable.

12.0 OUTSOURCING

- 12.01 A service provider may outsource some functions that it deems relevant to its management, compliance, and delivery of corporate or trust services. However, such outsourcing arrangements must be governed by appropriate duly executed written contractual agreements.
- 12.02 Before entering into an outsourcing arrangement, a service provider should perform due diligence on the third party to whom the functions will be outsourced to satisfy itself that the third party possesses adequate capacity (number of qualified, trained, and experienced staff) and resources (reliable and robust system and controls; solvency; appropriate insurance; access to capital or credit) as well as any necessary authorization required by law to perform the outsourced activities.
- 12.03 A service provider should have a contingency plan in place in the event of failure of the provider of the outsourced services.
- 12.04 Documented policies and procedures regarding outsourcing arrangements, including, due diligence, risk assessment (before and after outsourcing), approval, reporting, and monitoring must be implemented by a service provider and any outsourcing arrangement must allow for its termination without undue delay and appropriate management of the consequences of any such termination.
- 12.05 A service provider must develop criteria that enable it to assess a third party's ability to perform the outsourced duties and activities effectively and reliably and this *inter alia* should include:
 - a mechanism to ensure that the third party understands, and can meet the licensee's objectives;
 - a written representation from the third party regarding its capacity, resources, and authority;
 - an assessment of the economic, legal or political conditions that might adversely impact the third party's ability to perform, particularly if located in another jurisdiction.
- 12.06 A service provider should be able to provide upon request to the FSC, evidence that it has effective policies and procedures to assess the performance of the party to whom it has outsourced any of its duties and activities as a service provider.
- 12.07 A service provider must ensure that nothing in any outsourcing agreement and arrangements prevents or restricts the FSC's ability to exercise any of its statutory powers.
- 12.08 Written notice of a service provider's intention to outsource any functions related to its management, compliance, or delivery of services must be given to the FSC 14 days before doing so.
- 12.09 A person to whom any functions are outsourced, must not undertake sub-outsourcing without the written approval of the FSC.

13.0 ADVERTISING AND COMMUNICATION

- 13.01 A service provider should not engage in advertising and marketing practices that are misleading, false, or deceptive.

- 13.02 A service provider should ensure that its advertising and communication practices:
- (i) do not violate applicable laws;
 - (ii) do not violate standards of prudence and fairness;
 - (iii) are clear, ethical, and not misleading;
 - (iv) do not present or promote any services that they are not licensed to provide;
 - (v) do not contain any element that is in breach of laws or promotes the breach of any legislation;
 - (vi) disclose to its clients and prospective clients any foreseeable risk with any service it provides to them; and
 - (vii) do not obscure, hide or diminish important statements of warning or information regarding risk.
- 13.03 A service provider should maintain adequate records of any scripts used for telephone marketing campaigns or advice given to clients over the phone.
- 13.04 A service provider should ensure that:
- (i) clients are appropriately informed about products and services using a medium that is easily understood and language that is clear and comprehensible;
 - (ii) all reasonable steps are taken to ensure that any agreement, notification or information or other written communication that is provided to customers is presented fairly and clearly and that it sets out in adequate detail the basis upon which its services are provided;
 - (iii) all terms and conditions applicable to products and services are disclosed to the clients before an agreement is signed; and
 - (iv) websites and brochures are consistently updated to reflect changes and new information on product offerings.
- 13.05 A service provider must not publish, cause, or permit to be published any advertisement that might damage the reputation of Jamaica.
- 14.0 NOMINEE SERVICES
- Where a service provider provides or arranges for others to provide a nominee service, the service provider should ensure that the nominee and beneficial owners are identified in a written nominee agreement and that it retains a copy of the agreement as part of its records.
- 15.0 RELATIONSHIP WITH THE FSC
- A service provider is required to deal with the FSC openly and cooperatively, keeping the FSC promptly informed of all matters that concern the service provider that might reasonably be expected to be disclosed to the FSC having regard to its professional obligations and duties and those of its staff to its customers.
- 16.0 PROVISION OF DIRECTORSHIP
- (i) A service provider who acts as a director of a company must obtain and maintain adequate knowledge of the business and activities of each company for which it acts; be acquainted with the duties and responsibilities attached to such an appointment, and be aware of and accept the implications arising from that position and act in accordance with such obligations regardless of the jurisdiction in which the service provider is incorporated or registered.
 - (ii) A service provider who acts as a director or secretary of a company, or an alternate director, may take account of advice given to it by shareholders, fellow directors, or beneficial owners, but must not act in keeping with such advice where the advice would result in impropriety or illegality.
- 17.0 CESSATION OF THE PROVISION OF A SERVICE
- 17.01 Where a service provider intends to cease providing a service to a client for any reason, it must—
- (a) provide the client with written notice of the cessation of the service;
 - (b) preserve that client's records in a readily accessible format for at least seven years from the date on which the relevant financial business with the client was completed or the date on which the business relationship was terminated, whichever event occurred later;
 - (c) in the case of a trust, provide a formal, detailed account of its administration of the trust to the trustee(s).
- 17.02 A service provider shall give the FSC written notice, within seven days after an individual, company, firm, or other entity ceases to be its client.
- 17.03 Where a service provider intends to cease providing a service to a client or who is removed as a trust service provider, it must, where applicable, distribute the trust property, within a reasonable time, in accordance with the terms of the trust and any applicable legislation. Further, upon the completion of the distribution of the trust property as applicable, forthwith but in any event not later than seven days after inform the FSC of the distribution.

18.0 COMPLIANCE WITH APPLICABLE ANTI-MONEY LAUNDERING/COUNTER FINANCING OF TERRORISM AND PROLIFERATION FINANCING (“AML/CFT/CFP”) LEGISLATION

18.01 A service provider must ensure that at all times it is fulfilling its obligation to comply with all existing and future legislation for the prevention of money laundering and the financing of terrorism and proliferation financing, including the requirements under the following Acts and any amendments and regulations made thereunder:

- Proceeds of Crime Act;
- Terrorism Prevention Act;
- United Nations Security Council Resolutions Implementation Act.

18.02 A service provider must abide by any guidelines or directives issued by the designated authority or competent authority for AML/CFT/CFP.

19.0 QUALIFICATION AND EXPERIENCE OF SERVICE PROVIDERS’ STAFF

19.1 Staff employed by a service provider must have appropriate qualifications and experience.

19.2 A service provider must ensure that staff competence is kept up to date through training and continuous professional development as appropriate.

19.3 A service provider must ensure that all transactions or decisions entered into, taken by or on behalf of clients are properly authorized and handled by persons with an appropriate level of knowledge, experience, qualifications, and status according to the nature of the transactions or decisions involved.

19.4 A service provider must ensure that each of its officers and employees, agents, and persons acting with its instructions and persons it recommends or arranges to act as trustees have an appropriate understanding of the fiduciary and other duties of a trustee and any duties arising under the laws relevant to the administration and affairs of clients for which they are acting in the jurisdictions in which they are carrying on business and in which the assets being managed, if any, are held.

19.5 A service provider must ensure, in respect of persons it arranges to act as directors, secretaries, alternate directors, partners, or nominee shareholders, that these persons have an appropriate understanding of the duties pertaining to their role and any duties arising under the laws relevant to the administration and affairs of clients for which they are acting in the jurisdictions in which they are carrying on business.

20.0 DUE DILIGENCE

20.1 A trust service provider must, at all times, have verified documentary evidence of the settlors, trustees and principal named beneficiaries of trusts for which it provides trust services. In the case of discretionary trusts with the capacity for the trustee(s) to add additional beneficiaries, a trust service provider must also have verified, where reasonably possible, documentary evidence of any person who receives a distribution from the trust and any other person who is named in a memorandum or letter of wishes as being a likely recipient of a distribution from the trust.

20.2 A trust service provider must demonstrate that it has knowledge of the source of funds that have been settled into a trust for which it provides trust services or have been used to provide capital to companies or have been used in transactions with which it has an involvement.

21.0 FITNESS AND PROPRIETY OF PERSONS ACTING IN VARIOUS CAPACITIES

21.1 Where a trust service provider arranges for a person who is not its employee to act as trustee for any of its clients, the trust service provider must ensure that such person is suitably qualified to undertake the functions of the role. A service provider must inform the FSC of the appointment of the person, including the name, business address if applicable, and the date of commencement of the appointment.

21.2 Where a service provider arranges for a person to act as a director, secretary, alternate director, partner, or nominee shareholder, before the appointment the service provider must take reasonable steps to ensure that the person has the required skills, experience and resources to undertake the functions of the relevant role for any of its clients.

21.3 A service provider must notify the FSC immediately if the appointment of such a person is or is about to be terminated, or on the resignation of such person, giving the reasons for the termination or resignation and the measures which have been taken to ensure that a new trustee, director, secretary, alternate director, partner, or nominee shareholder as the case requires has been appointed as necessary.

Questions regarding these guidelines may be directed to the:

Registration, Corporate & Trust Services Division
The Financial Services Commission
39-43 Barbados Avenue
Kingston 5

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