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EXTRAORDINARY

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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

No. 313A

RCTS-GUI2022/06-0008

GUIDELINES:

APPOINTMENT OF AUDITORS BY SERVICE PROVIDERS

LEGISLATIVE REFERENCES : The Trust and Corporate Services Providers Act, 2017
Section 17(1)

The Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022

1. PURPOSE

1.01 A service provider under the Trust and Corporate Services Providers Act, 2017 (the "TCSP Act") means a person who engages in the business of providing a corporate service or a trust service. The TCSP Act applies to an individual, firm, or company which provides such services as a business, and is licensed by the Financial Services Commission (the "FSC").

- 1.02 These guidelines are issued pursuant to the powers of the FSC under section 46 of the TCSP Act and is designed to assist trust and corporate services providers to develop policies and procedures that will enable them to comply with their statutory obligations and expected standards of conduct. Licensees 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”.

- 1.03 The guidelines should be read in conjunction with the Guidelines For: Criteria for Auditors-GEN-ADVI-21/12-0004 published by the FSC. There may be other general and more wider obligations on service providers regarding the appointment of an auditor. 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.

2. APPOINTMENT OF AUDITORS

- (a) Under section 17 of the TCSP Act, the accounts of every licensee shall be audited annually by an independent auditor in accordance with generally accepted accounting principles promulgated by the Institute of Chartered Accountants of Jamaica from time to time and must be submitted to the FSC within three months of the end of the licensee’s financial year.
- (b) Pursuant to the powers of the FSC under section 6(2)(a) of the TCSP Act and Regulation 3(1)(e) of the Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022, applicants for licensing who were, prior to the operationalization of the TCSP Act, providing corporate services as specified under section 14 or trust services as specified under section 15 of the said Act are also required to submit audited financial statements for the last two financial years (or for the period since the applicant was established, if it is less than three years). A Statement of Affairs validated by an independent auditor must be submitted if the applicant firm, company, or other types of entity is new.
- (c) A person is qualified to conduct such an annual audit, in the capacity of an independent auditor if he is registered as a public accountant under the Public Accountancy Act, and holds a current practising certificate issued by one or more of the following bodies—
- (i) Institute of Chartered Accountants of Jamaica;
 - (ii) Association of Chartered Certified Accountants (ACCA) of the United Kingdom;
 - (iii) Institute of Chartered Accountants of Scotland;
 - (iv) Institute of Chartered Accountants of Ireland;
 - (v) Canadian Institute of Chartered Accountants;
 - (vi) American Institute of Certified Public Accountants;
 - (vii) Institute of Chartered Accountants in England and Wales;
 - (viii) any other Professional Body or Institute approved by the FSC.
- (d) A person is not eligible to act as an independent auditor of a licensee if there are factors that would reasonably call into question the independence of such a person. Therefore, a person is not eligible for appointment as an independent auditor of a licensee if the person is—
- (i) an officer¹ or employee of the licensee;
 - (ii) a partner of, or in the employment of any person falling within (i) above;
 - (iii) a close relative (a spouse, parent, step-parent, brother, sister, half-brother, half-sister, child or step-child) of any person falling within (i) above;
 - (iv) deemed ineligible by the FSC to act as an auditor of the licensee by virtue of any other factor affecting the auditor’s independence.
- (e) Pursuant to its powers under sections 47(1)(b) and (c), the FSC advises an applicant or licensee to ensure that before appointing a person as its independent auditor, that person is qualified and eligible to act in that capacity. The applicant should be able on request to provide the FSC with evidence of the knowledge, experience, and competence of the auditor or any person who it intends to appoint as its auditor. Where the FSC has reason to doubt the independent auditor’s good standing with the Public Accountancy Board, the FSC may refuse to accept the audited financial statements submitted by the licensee and request that the statements be prepared by another independent auditor meeting the criteria established in section 17 of the TCSP Act and any guidelines issued by the FSC. (Please refer to the Guidelines For: Criteria for Auditors -GEN-ADVI-21/12-0004 published by the FSC).

¹A director, secretary or senior executive, by whatever name called of the firm, company or entity.

3. NOTIFICATION TO THE FSC

- 3.01 All licensees under the TCSP Act must notify the FSC of the appointment of the independent auditor within five working days of the appointment being made. A notice must also be provided of the removal or resignation of an auditor and the reasons therefor within five working days of the removal or resignation of the auditor.
- 3.02 Where an auditor resigns or is removed by a licensee the auditor must provide to the FSC a statement stating whether there are any circumstances connected with their removal or resignation which the auditor considers should be brought to the attention of the FSC; and if so, the circumstances connected with the auditor ceasing to hold office. The statement must be submitted to the FSC within 10 working days of the auditor's resignation or removal.

4. DUTY OF SERVICE PROVIDERS

- 4.01 A licensee must at all times and in a timely fashion, give to its independent auditor its accounting and any other records necessary for the auditor to prepare the licensee's audited financial statements.

5. CONTENT OF AUDITED REPORTS

The auditor's report on the annual financial statements of a licensee must include (but not be limited to) exceptional matters regarding any failure to keep proper accounting records during the financial year to which the statements relate and be in all respects compliant with the standards issued by the International Auditing and Assurance Standards Board.

Questions regarding these guidelines may be directed to the:

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

Telephone: (876) 906-3010, (876) 818-0647

Facsimile (876) 906-3018

E-mail: Registration@fscjamaica.org