



THE

JAMAICA GAZETTE

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

GUIDELINES:

RECORD KEEPING OF SERVICE PROVIDERS

LEGISLATIVE REFERENCES : The Trust and Corporate Services Providers Act, 2017
Sections 16, 17, and 18

The Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022
— Regulations 8 and 9

1. PURPOSE

- 1.01 All individuals and corporate entities that are licensed pursuant to the Trust and Corporate Services Providers Act, 2017 (the “TCSP Act”) have a duty under this Act to keep or cause to be kept adequate, accurate, and current records in respect of their business as a service provider¹.
- 1.02 These guidelines are published pursuant to the powers of the Financial Services Commission (the “FSC”) under section 46 of the TCSP Act and are designed to help trust and corporate services providers comply with their statutory obligations and should be read in conjunction with the Guidelines on the Prevention of Money Laundering and Countering the Financing of Terrorism and Proliferation - IER-GUID-19108-0001 (“GPMLCFT”) published by the FSC.
- 1.03 Licensees under the TCSP 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”.
- 1.04 There are general obligations on service providers to maintain appropriate records more widely concerning their business. These guidelines are not intended to replace or interpret these wider obligations. In the event of a conflict between these guidelines and other wider obligations, those wider obligations shall take precedence.

2. RECORDS TO BE MAINTAINED

- 2.01 Licensed corporate and/or trust service providers must maintain records, in English and in Jamaica that are appropriate for their functions. Section 16 of the TCSP Act specifies the requirements regarding records that are to be kept by service providers which will enable the provision of information to persons and entities entitled to timely information. Regulation 9 of the Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022 also stipulates that records must not be kept outside of Jamaica where access to such records may be impeded by confidentiality or data protection restrictions of another jurisdiction.
- 2.02 The records to be kept, *inter alia*, must include necessary information and documents:
- (i) to enable transactions/activities with clients to be readily reconstructed;
 - (ii) to ascertain the nature and purpose of a business relationship entered into;
 - (iii) to enable the nature of the evidence of identification and verification obtained;
 - (iv) to ascertain the financial position of any express trust;
 - (v) relating to all officers, shareholders, beneficial owners, and partners as the case requires;
 - (vi) to ascertain the financial affairs and position of the licensee;
 - (vii) relating to audits, risk assessments, and anti-money laundering and countering financing of terrorism.
- 2.03 The legislation stipulates that the following records (whether in hard copy or electronic form) must be kept for at least seven years from the date on which the relevant financial business with clients was completed or the date on which the business relationship was terminated, whichever occurs later:
- (i) The identity of a settlor, a trustee, a protector (if any), an enforcer, a beneficiary or class of beneficiaries, and any other person who has ultimate effective control of a trust for which the licensed trust service provider is providing its services under this Act;
 - (ii) In the case of a company or firm in a register:
 - (a) the name of the company and where the company is a part of a group, the companies within the group;
 - (b) the address of the registered office of the company;
 - (c) the names and addresses of the directors of the company;
 - (d) the names and addresses of the shareholders of the company;

¹A person who engages in the business of providing a trust service or corporate.

- (e) the number of shares held by each shareholder of the company; and
- (f) the category of shares issued by the company and the nature of the associated voting rights.

2.04 All electronic records should be routinely and regularly backed-up with off-site storage.

2.05 Licensees should take steps to document, implement, and maintain record-keeping policies and procedures to ensure that sufficient information is recorded and kept about the conduct of its business, taking into account its size, nature, and complexity. The policies and procedures should, among other things, set out how the retention and disposal of records will be managed.

2.06 Systems of control of the business and records must also be put in place to support on-going demonstration of compliance with all pertinent regulatory requirements, including these guidelines, and to provide information and documents to the FSC and other relevant agencies upon request within stipulated timeframes. Further, the policies, procedures, and systems of control should be periodically reviewed and updated to achieve consistency with current business practices.

The records should be retained in such a form and manner that allows easy access by the FSC at any stage (licensing, monitoring, and supervision) in the discharge of its regulatory functions.

(A) *Financial Records*

2.07 The records maintained by licensees must allow for the preparation of true and fair financial statements and convenient and proper auditing by the appointed auditor annually in accordance with generally accepted accounting principles promulgated by the Institute of Chartered Accountants of Jamaica. The auditor must be independent and not an employee or officer of the licensee.

2.08 Audited financial statements must be submitted to the FSC within three months after the end of each financial year of the licensee.

(B) *Clients' Records and Risk Assessment*

2.09 Licensees must keep a written record of the terms of their agreement with each customer, including evidence of the customer's agreement to those terms. That agreement at a minimum should include:

- (i) services to be provided and the related fees;
- (ii) a record of how and by whom requests for action are to be given;
- (iii) procedures for the handling of complaints;
- (iv) procedures for terminating the agreement.

2.10 Licensees must maintain evidence that speaks to their compliance with paragraphs 2(3) and 4(2) of the Second Schedule of the TCSP Act.

2.11 Further the records, for example, identification cards such as driver's licences or copies of the biographic page of passports that are held, should be reviewed periodically to ensure they are current for existing clients.

(C) *Conditions of Licencing*

2.12 All licensees are required to maintain sufficient records to be able to demonstrate compliance with any conditions of the licence it has been issued.

(D) *Outsourcing Arrangements*

2.13 Where a licensee relies on a third party to conduct due diligence for any client, the licensee should satisfy itself that the third party can and does comply with the requirements herein stated. Further, documentary evidence on which reliance is placed by the licensee should also be kept for seven years from the date on which the business relationship with the third party was terminated.

(E) *Risk Management and Disaster Recovery*

2.14 Licensees must take reasonable precautions to prevent the falsification of the records it is required to keep under the TCSP Act and to facilitate the discovery of any falsification of those records. Entries in the records of a licensee required to be kept will be deemed to have been made by or with the authority of the licensee.

2.15 Every licensee must formulate and document plans and strategies for disaster recovery and business continuity.

(F) *Staff Training*

2.16 Licensees should have evidence to show that steps have been taken to ensure that employees are made aware of their obligations under paragraphs 2(3) and 4(2) of the Second Schedule of the TCSP Act.

(G) *Trust Service Providers*

2.17 The FSC expects that a trust service provider who acts as a trustee, executor, or administrator will maintain and be able to produce, upon request, the following:

- (i) the trust documents (inclusive of any supplemental Deeds removing or adding beneficiaries and appointing or retiring trustees);

- (ii) the names, addresses, and contact details of the beneficiaries;
- (iii) the names and current addresses of the settlor(s);
- (iv) details about the relationship of the settlor(s) to the beneficiaries;
- (v) the names and current addresses of the trustee(s);
- (vi) the name and address of the relevant supervisory body that regulates the trustees;
- (vii) copies of management agreements, if more than one format is used, with third-party service providers, if applicable;
- (viii) copies of agreements (if more than one format is used) with ultimate beneficiaries, if applicable;
- (ix) details of any custodian arrangements;
- (x) details of the trust assets held where applicable;
- (xi) evidence of the decision-making process supported by clearly articulated rationale; and the
- (xii) Minutes of the meetings of the trustees.

2.18 For efficient administration, a trust service provider should consider maintaining the foregoing information in a register in respect of each trust administered.

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

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