THE

JAMAICA GAZETTE

EXTRAORDINARY

1152D[1]

Vol. CXLV **MONDAY, AUGUST 15, 2022** **No. 266A**

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 officer[1] 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).

---

[1]A 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

RCTS-GUI2022/06-0009

GUIDELINES:

ESTABLISHMENT OF INTERNAL CONTROLS BY SERVICE PROVIDERS

LEGISLATIVE REFERENCES : The Trust and Corporate Services Providers Act, 2017
Section 6(4)(d)

The Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022 — Regulation 5

1. PURPOSE

1.01 Section 6(4)(d) of the Trust and Corporate Services Providers Act, 2017 (the "TCSP Act") provides that, if a licence is granted to a corporate service provider or trust service provider, the licensee must comply with the standards set out in the Second Schedule and the guidelines issued from time to time, by the Financial Services Commission (the "FSC"). Further, section 46 of the TCSP Act empowers the FSC to issue guidelines in respect of the standards to be observed and the measures to be implemented by trust and corporate services providers in connection with their obligations under the Act.

1.02 These guidelines set out what is expected of a corporate and trust service provider and their staff concerning the establishment of internal controls; and seek to assist licensees under the TCSP Act in respect of their obligations under paragraphs 2(3) and 4(2) of the Second Schedule and regulation 6 of the Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022 to maintain adequate systems of control, and to develop and maintain policies, and procedures about its obligations under the TCSP Act as service providers.

1.03 These guidelines are issued 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*."

1.04 There may be other general obligations on service providers to maintain appropriate records and systems of control more widely concerning their business. These guidelines are therefore not intended to replace or interpret such wider obligations, if any.

2. GENERAL AND LEGAL OBLIGATION

2.01 A service provider is required to conduct its business in a prudent manner, by maintaining adequate accounting and other records of its business, have adequate systems of control and develop policies and procedures regarding its obligations under the TCSP Act as well as any other enactment. Moreover, a service provider also has an obligation to carry on its activities in a manner that will not bring Jamaica's reputation into disrepute. In so doing it must maintain adequate systems to assess the risks of its business and develop and maintain policies and procedures pertaining to its obligations under this Act and any other enactment.

2.02 A service provider's policies, procedures, and controls must be proportionate with regard to the size and nature of its business and must be approved by its senior management and kept under regular review. A written record of the policies, procedures and controls must be maintained.

2.03 A service provider must implement systems and controls that enable it to identify, assess, monitor, and manage the risks to which its business is exposed. Those systems and controls will vary by service provider depending on the nature and characteristics of the business. The factors which inform the extent of the systems and controls include:

- the nature, scale, and complexity of the service provider's business;
- the diversity of the service provider's operations;
- the degree of risk associated with each area of its operation;
- the degree to which outsourcing is done.

2.04 Where appropriate, having regard to the size and nature of its business, a service provider must:

(i) establish an independent internal audit function with the responsibility to examine and evaluate the adequacy and effectiveness of the policies, procedures, and controls adopted by the licensee to comply with the requirements of the TCSP legislation and other relevant enactments.

(ii) The internal audit function that is established should:

(a) make recommendations about those policies, procedures, and controls.

(b) monitor the service provider's compliance with those recommendations and ensure that when any innovative technology is implemented by the service provider, appropriate measures are taken to assess, and if necessary, mitigate, any attendant risks this may cause.

2.05 A service provider must establish and maintain systems that enable it to respond fully and quickly to queries from the FSC and other competent authorities.

2.06 A service provider's systems and controls should cover senior management accountability, including the allocation to a director or other senior manager of overall responsibility for the establishment and maintenance of effective systems and controls which should also address appropriate:

(i) documentation of the service provider's risk management policies and risk profile as well as changes in its business profile;

(ii) training of staff;

(iii) provision of regular and timely information to senior management.

2.07 Where a service provider outsources any of its systems and controls and/or processes to other persons within its group of companies or a third party, whether in Jamaica or other jurisdictions, this brings an additional dimension to the risks that the service provider faces which must be actively managed. Outsourcing of functions can lead to an increase in the risk of the service provider therefore the service provider should assess the risks associated with the outsourced functions, record the assessment, and monitor the risk on an ongoing basis. A service provider must obtain assurance that the entity to whom any system or control and or processing has been outsourced meets the standards or requirements set out in these guidelines and other relevant guidelines issued by the FSC.

2.08 It should be noted that a service provider cannot contract out of its statutory responsibilities. Consequently, a service provider remains responsible for systems and controls in relation to the activities outsourced, whether within Jamaica or to another jurisdiction. Given the foregoing, a service provider must therefore ensure that the person to which anything has been outsourced has in place satisfactory systems, procedures, and controls; and that those policies and procedures are kept up to date to reflect changes in Jamaica's requirements.

3. RISK- BASED APPROACH TO INTERNAL CONTROLS

3.01 Once a service provider has identified and assessed the risks it faces senior management must establish and maintain policies, procedures, and controls to mitigate and effectively manage the identified risks to which the business is exposed based on the risk assessment it has done. These policies, procedures, and controls should be designed to provide an effective level of mitigation using a risk-based approach buttressed by robust mechanisms to ensure compliance, the identification of weaknesses, and the implementation of measures to effect improvements wherever necessary.

3.02 Implementation of a risk-based approach to internal systems of control will depend on the operational structure of the service provider. For example, a service provider that has a single business will need a different approach from one that operates through multiple business units or branches.

3.03 Senior management should decide on the appropriate approach in light of the service provider's structure.

4. MONITORING EFFECTIVENESS OF CONTROLS

4.01 A service provider must undertake regular assessments of the adequacy of its systems and controls to ensure its business risks are effectively managed.

4.02 Having regard to the size and nature of its business, where appropriate a service provider must establish an independent internal audit function with responsibility for:

- examining and evaluating the adequacy and effectiveness of the policies, procedures, and controls used by the licensee;
- making recommendations concerning those policies, procedures, and controls;
- monitoring the service provider's compliance with those recommendations.

4.03 The effectiveness of systems and controls is therefore driven by a combination of factors, including:

- ensuring that policies and procedures reflect current legal and regulatory developments and requirements;
- the adequacy of resources available;
- trained staff, who are up to date with current developments;
- having appropriate monitoring processes, with timely follow-up of findings;
- appropriate monitoring of outsourced arrangements;
- having appropriate quality control/internal review processes
- appropriate management information made available to senior management and those with supervisory responsibilities.
- the work of any internal audit function
- record-keeping policies, practices and systems that are adequate

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

E-mail: Registration@)fscjamaica.org

RCTS-GUI2022/06-0010

GUIDELINES:

PROFESSIONAL INDEMNITY INSURANCE

LEGISLATIVE REFERENCES : The Insurance Regulations 2001: Regulation 35(2)

The Pensions (Superannuation Funds and Retirement Schemes) (Registration, Licensing and Reporting Regulations: Regulations 7(1)(c) and 7(2)

The Trust and Corporate Services Providers Act, 2017: Sections 21(1); 21(2) and 46

The Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022: Regulation 21

The Securities (Licensing and Registration) Regulations, 1996: Regulation 2(1)(c)

1. BACKGROUND

1.01 The Financial Services Commission (the "FSC") has established requirements for persons and entities (regulated entities) operating in the insurance, securities, private pensions as well as trust and corporate services providers industries ("regulated industries") in respect of professional indemnity insurance ("PII").

1.02 PII refers to insurance against legal liability towards third parties for injury, loss or damage, arising from a person's own professional negligence, error or omission or that of his employees.

1.03 The use of Pll is a universally accepted risk mitigation tool for providing protection to professional individuals and businesses.

1.04 The legislation governing the respective regulated industries outlines the minimum amount of coverage required to be maintained by regulated entities at all times.

2. OBJECTIVE

2.01 The objective of these guidelines is to set out the FSC's expectations of regulated entities regarding the maintenance of PII.

3. LEGISLATIVE REQUIREMENTS

3.01 Pursuant to Regulation 35(2) of the Insurance Regulations every broker who is a sole proprietor, partnership or corporation, and every corporate agent are required to maintain PII in an amount of at least $30 million in a form approved by the FSC in respect of any one occurrence.

3.02 A company that is licensed as an investment manager or administrator under the Pensions (Superannuation Funds and Retirement Schemes) Act is required under Regulations 7(1)(c) and 7(2) of the Pensions (Superannuation Funds and Retirement Schemes) (Registration, Licensing and Reporting) Regulations ("RLR"), 2006 to have PII which exceeds $5 million.

3.03 Regulation 2(1)(c) of the Securities (Licensing and Registration) Regulations, 1996 as amended in 2014 requires individual securities dealers and investment advisers to have a net worth of at least $10 million or acquire indemnity insurance for at least that amount.

3.04 Under section 21(1) of the Trust and Corporate Services Providers Act, 2017 (the "TCSP Act") a service provider[1] is required to maintain Pll of not less than the prescribed minimum to cover the risk of losses in respect of liabilities arising from the operation of the business. Regulations 3(1)(f) and 21 of the Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022 stipulate that the insurance coverage must be the aggregate of at least two times the annual gross income or projected gross income of the licensee and be submitted with an application for a licence.

3.05 These guidelines in respect of trust and corporate services providers are being issued pursuant to section 46 of the TCSP Act. Licensees under the TCSP Act should have regard to section 46(5) 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*".

4. OBTAINING COVERAGE

4.01 While the various statutes do not explicitly stipulate the type of organizations that can provide PII, coverage may be sourced from insurance companies in Jamaica that are registered pursuant to the Insurance Act or from a reputable insurance company in another jurisdiction.

4.02 Each business is unique and as such, there is no single coverage amount that is suitable for all businesses. While there must be compliance with the minimum level of coverage prescribed under the statute, it is therefore the responsibility of the board and senior management to make arrangements for additional Pll coverage that may be

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

commensurate with the business activities, business model and overall risk exposure and in compliance with the requirements of the applicable statutes.

4.03 In considering whether or not additional coverage will be required, a regulated entity may consider factors such as the types of services offered, the financial value of these services and the potential financial losses or damages that it may be exposed to as a result of the services offered.

4.04 Appropriate due diligence and research should be done on the potential providers of PII and associated costs/ benefits before entering into contractual arrangements with a provider of PII.

4.05 A regulated entity should ensure that accurate information is provided to insurers when sourcing PII coverage as failure to do so may result in insurers avoiding liability under the policy. The entity must also ensure that the proposal for insurance is carefully reviewed before entering into a contractual arrangement.

4.06 Coverage should extend to liabilities that the regulated entity may incur in other jurisdictions in which it carries on business and to liabilities of its staff who performs functions in their own names in the course of carrying out their duties; for example as an officer in the capacity of a director.

4.07 Before entering into any contractual arrangement a regulated entity should carefully examine and review the Pll policy documents to ensure that the language and terms contained therein are clear, accurate, complete and appropriate for the activities being undertaken by it. It must also ensure that adequate cover is provided for any claims for loss or damages that arise as a result of its acts or omissions and/or those acting on its behalf.

4.08 If there are uncertainties or ambiguities in the terms or language of the PII policy a regulated entity should seek written clarification and explanation from the provider of the PII coverage before sign-off.

4.09 A regulated entity may consider obtaining advice from experts, such as a legal practitioner, to scrutinize the draft PII policy before finalizing the policy contract. Where coverage is obtained from an overseas insurer care should be taken that the insurer is regulated and in good standing with its regulator.

5. COVERAGE FOR ENTITIES WITH MULTIPLE LICENCES/REGISTRATION

A regulated entity that carries on more than one regulated business or activity should determine the scope of its PII cover, taking into account the legislative requirements. Applicants who are applying for a licence in more than one regulated industry or capacity should also note that the amount of coverage specified in the applicable legislation applies to each licence or registration. For example, an entity that intends to operate as an administrator and investment manager under the RLR is required to have coverage that exceeds $5 million for each capacity.

6. ADEQUACY OF PII COVERAGE

6.01 The board and senior management of each regulated entity must ensure that there is continuing compliance with legislative requirements relating to PII.

6.02 The Pll should be periodically reviewed and assessed to ensure that the coverage and terms of the contract remain adequate and appropriate and in compliance with the applicable legislation, especially in light of any changes in the regulated entity's business model, business activities, and regulatory and business environment.

6.03 A regulated entity should conduct a comprehensive risk assessment to assist it in determining the adequacy of its Pll coverage. Consideration should be given to whether or not the PII coverage satisfactorily provides for potential losses related to a cyber-crime and any need to procure specific cyber-crime related insurance under a separate insurance arrangement. At a minimum, consideration should be given to the following non-exhaustive list of factors:

- Number and type of clients;
- Nature and volume of transacted business;
- Number of employees;
- Potential for multiple claims;
- Any impending or past legal actions or losses suffered;
- Proposed insurer's conditions of coverage;
- Worst-case loss scenario per client.

6.04 Having regard to the statutory requirements, additional coverage may be required as a business decision to address a reasonable estimate of potential losses.

6.05 The review and assessment of the PII coverage should be documented, including how the determination of the adequacy of the PII insurance coverage has been made. This documentation must be available for inspection by the FSC which may require submission of a justification of the coverage secured.

6.06 With the prevalence of cyber-crimes, licensees and registrants should carefully assess whether the scope of their existing PII policy provides robust protections against cyber-attacks and sufficiently provide for losses or damages incurred from the loss of data/fraudulent activity related to a cyber-crime. Consideration may need to be given to obtaining specific cyber-crime related insurance which is separate from the PII arrangements.

7. POLICIES AND PROCEDURES

7.01 A regulated entity should have documented policies and procedures which should be reviewed at suitable intervals by an independent function such as an internal audit.

7.02 The policies and procedures should be approved by the board or other governing body of the licensee/registrant.

7.03 The approved policies and procedures should be available for inspection by the FSC.

7.04 The policies and procedures should address matters relating but not limited to the following:

7.04.1 Obtaining and renewing Pll coverage

7.04.2 Continued compliance with legislative requirements and the terms of any Pll contract

7.04.3 Periodic assessment of the adequacy of the coverage

7.04.4 Reporting to the board/governing body and the FSC

8. POLICY LIMITATIONS AND EXCLUSIONS

8.01 In cases where limitations and exclusions are imposed in a PII policy, the regulated entity must ensure that coverage remains adequate.

8.02 Where there are any gaps in coverage licensees should maintain such financial resources as may be prescribed in the applicable legislation.

9. Pll INSURANCE POLICY DOCUMENT

9.01 A licensee should ensure that the insurer issues to it annually an insurance policy document or certificate of insurance upon payment of the relevant insurance premium.

9.02 The insurance policy document or certificate of insurance should specify the amount of insurance coverage provided, the expiration date, and any exclusions and/or limitations.

9.03 The FSC may, at any time, by notice in writing request a copy of the current insurance policy document or certificate of insurance or evidence that the licensee has access to PII insurance cover or other appropriate arrangements to cover risks.

10. BLANKET POLICIES

10.01 Where a Blanket Policy is used, the name(s) of the regulated entity or entities ("entities"), and the applicable coverage for each must be clearly stipulated in the policy.

10.02 In the case where a regulated entity is licensed/registered in more than one capacity, the coverage applicable to each capacity must be specifically stated in the policy. For example, if a regulated entity is licensed as a pensions administrator, investment manager, and corporate service provider, the PII policy should clearly stipulate all three capacities and the associated coverage for each capacity.

10.03 A regulated entity should give fourteen days prior written notice to the FSC where it intends to use a blanket policy to satisfy PII requirements.

11. GROUP COVERAGE

11.01 A regulated entity should give fourteen days prior written notice to the FSC where it intends to use a group policy to satisfy PII requirements.

11.02 The name of the regulated entity should be specifically stated in the group policy; otherwise, the regulated entity should obtain written confirmation that the entity is covered under the policy.

11.03 In cases where a regulated entity is covered under a group arrangement, it should satisfy itself that the limit of indemnity related to its business is sufficient and that it has access to the minimum level of indemnity, including any allowable excess or deductible.

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

RCTS-GUI2022/06-0011

GUIDELINES:

RECORD OF 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 provider[1].

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;

---

[1]A 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 sections 2(3) and 4(2) 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

Facsimile: (876) 906-3018

E-mail: Registration@)fscjamaica.org

RCTS-GUI2022/06-0012

GUIDELINES:

RISK ASSESSMENT FOR SERVICE PROVIDERS

LEGISLATIVE REFERENCES : The Trust and Corporate Services Providers Act, 2017
Section 6(4)(d)

The Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022 — Regulation 5

1. PURPOSE

1.01 These guidelines are issued under section 46 of the Trust and Corporate Services Providers Act, 2017 (the "TCSP Act"). 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*."

1.02 These guidelines outline what is expected of trust and corporate services providers and their staff concerning their conduct of risk assessments in the particular circumstances of their businesses as a service provider, and its products, services, transactions, and customers. There may be general obligations on service providers to maintain appropriate records and systems of control more widely concerning their businesses. These guidelines are not intended to replace or interpret these wider obligations, if any.

1.03 Pursuant to paragraph 4 of the Second Schedule of the TCSP Act, licensees are to carry on their activities in a manner that will not tend to bring Jamaica's reputation into disrepute. In order to fulfil that obligation, paragraphs 2(3) and 4(2) of the Second Schedule to the TCSP Act require licensees to maintain adequate systems to assess the risks of their businesses and to develop and maintain policies and procedures pertaining to their statutory obligations regarding those business activities.

2. BACKGROUND

2.01 Assessing business risk is useful in helping a service provider understand the risks of its business and how those risks may change in response to the mitigating actions taken by the service provider over time.

2.02 The Financial Services Commission (the "FSC") therefore considers it prudent to provide guidance to applicants and persons who will be licensed under the TCSP Act regarding the risk assessment they are required to undertake.

3. LEGAL OBLIGATION

3.01 A core element of the prudent management of a licensee's business is an effective risk assessment that clearly demonstrates the corporate and/or trust service provider's (hereinafter referred to as service provider) understanding of the risks and vulnerabilities it may face during the course of conducting business.

3.02 A licensee under the TCSP Act is required to comply with applicable guidelines published by the FSC and other information provided in relation to this Act and associated regulations.

3.03 Service providers have several obligations concerning the ongoing assessment of their business risk. The obligations include:

(i) identifying all of the risks reasonably expected during the operation of the business;

(ii) documenting the risk assessment completed, determining the level of risk involved in relation to pertinent obligations under the TCSP Act, and keeping the risk assessment current by updating it on an on-going basis to take account of any identified deficiencies and other necessary changes; and

(iii) submitting an annual compliance report to the FSC as specified.

3.04 A service provider is expected to develop adequate and effective risk assessment methods that best suit its business taking into account its size, nature, and complexity. Senior management of a service provider consequently has a responsibility to ensure that the licensee's policies, controls, and procedures are appropriately designed and implemented, and are effectively operated to manage the risks of the business.

4. RISK MANAGEMENT POLICIES

4.01 The policy and procedures of a service provider should incorporate a statement of the service provider's policies regarding its key risk exposures, and the controls and procedures to implement the policy should set out how the service provider's senior management intends to discharge its responsibility for the management of those risks. This will provide a framework of direction for the service provider and its staff and should identify individuals and functions responsible for implementation.

4.02 The policy statement should be tailored to the circumstances of the service provider and include, but not be limited to, such matters as:

(i) *Guiding principles*

- an unequivocal statement of the values and culture that will be adopted and promulgated throughout the business towards the management of risk;

- a commitment to ensuring that staff are trained and made aware of the law and their obligations under it, and for establishing procedures to implement these requirements;
- recognition of the importance of internal and prompt reporting by the staff to senior management and the FSC;

(ii) *Risk mitigation approach*

- a summary of the service provider's approach to mitigating and managing effectively identified key risks;
- a summary of the service provider's controls and procedures for carrying out appropriate monitoring using a risk-based approach;
- a summary of the appropriate monitoring arrangements in place to ensure that policies and procedures are being carried out;
- allocation of responsibilities to specific persons and function.

4.03 It is important that a service provider's policies, procedures, and controls are communicated widely throughout the business to increase the effectiveness of their implementation.

5. STEP 1: IDENTIFYING PERTINENT RISKS

The following steps provide a general guide regarding the process entailed in conducting a risk assessment.

5.01 A service provider must understand all the ways that its business can be exposed to risks and develop and implement systems to deal with those risks. A risk assessment is pertained to how such risks are identified. Consequently, the identification of the inherent risks to which the business operation is vulnerable is an important element in conducting a risk assessment. Inherent risks are risks that are intrinsic to the services and products that are offered, and activities undertaken concerning those services and products and arise from uncertainty about and exposure to external threats.

5.02 Consideration must be given all relevant factors, which include but are not limited to the following when identifying the vulnerability of a service provider's business:

- the nature, size, and complexity of the business;
- types of customers and transactions;
- products/services offered;
- IT infrastructure of the business.

5.02.1 *Nature, size, and complexity of the business*

(i) The size and complexity of a service provider's business play a key role in how attractive the business is for persons to use it for criminal purposes. The larger a business becomes the more likely it is for it to have customers that are not personally known by the service provider.

(ii) Business relationships with complex ownership or group structures, or with less transparency concerning beneficial ownership may pose different levels of risks than those with simpler legal/ownership structures or with greater transparency. Similarly, when a service provider conducts complex transactions, particularly across different countries, this could expose the business to greater risk in comparison to a business that is conducted entirely locally.

(iii) A service provider, therefore, needs to assess which parts of its business operations are vulnerable to risks and use all internal data it has such as the services/products that have been provided to customers, who those customers are, and where they are located to undertake the risk assessment.

5.02.2 *The* types *of customers and transactions*

(i) Some categories of customers pose a higher risk than others. The full range of circumstances associated with customers should be addressed when conducting a risk assessment of the business.

(ii) Consideration should be given to all relevant factors, such as whether client funds are being administered and the business model adopted.

5.02.3 *Products and services provided*

Many factors can contribute to the risk exposure of a corporate or trust service provider and it is the responsibility of a service provider to identify those factors associated with the services/products that are being offered. Consideration should be given to the conceptual, legal, operational, technological, and other complexities of a product or service, as those with greater complexity or dependencies on interactions between multiple systems and/or market participants may expose a service provider to different types and levels risk than others with lower complexity or fewer dependencies on multiple systems and/or market participants.

5.02.4 *IT infrastructure of the business*

Consideration should be given by a service provider to how well its technical infrastructure, including data management and management information reporting capabilities, is suited to its risk-mitigation requirements.

6. STEP 2: ASSESSING RISK

6.01 Having identified all the risks faced by the business, a service provider must now assess each risk and determine the level of the risk, making allowance for different situations that currently arise in the business or are likely to arise soon. The assessment must be done without considering the extent to which the risks identified are mitigated by the business' risk management programme.

6.02 Assessing the level of inherent risk is based on judgement taking into account all relevant factors such as the impact of new services/products, types of customers, technology used, and the likelihood and consequence of a risk event occurring, and whether or not the risk has been compounded across multiple factors. While determining the impact of certain risk events may prove challenging a service provider could, among other things, consider the following factors:

- nature and size of the business (domestic and international);
- economic impact and financial outcomes;
- potential financial and reputational consequences;
- political impact;
- negative press.

6.03 It should also be noted that there are different ways to assess risk. Whichever method is used, the service provider must be able to explain and demonstrate its adequacy and effectiveness and ensure the method is proportionate and appropriate to the needs of the business. Regardless of the methodologies adopted, the risk assessment processes, the methodologies, and the related rationale are to be well-documented, approved by senior management, and communicated at the appropriate levels of the organization.

6.04 Inherent risks of the business are to be classified as low, moderate, above average, or high in keeping with the risk-based approach adopted by the FSC. Likewise, a service provider must be able to show how they arrived at the rating assigned to each risk identified (direct experience, domestic guidance, international guidance, case studies, etc.).

6.05 A service provider should also have regard to the implication of emerging and new technology as well as any material changes for the risk assessment that is conducted.

7. STEP 3: APPLICATION OF RISK ASSESSMENT

7.01 Senior managers must put in place appropriate controls, policies, and procedures to reflect the degree of risk associated with the business The completed risk assessment must be used to prepare a comprehensive programme that will assist in compliance with relevant statutory obligations. It should also be used to direct and prioritize resources such that greater focus is given to areas identified with greater risk.

7.02 The risk assessment will assist in planning and establishing the scenarios, red flags, and triggers that can form a part of its monitoring arrangements. Regard should be had to situations that by their nature, can result in an increased level of risk exposure and enhanced measures implemented to address them. Essentially then, the risk assessment should underpin the nature of the measures taken to manage the risk exposures of the business.

8. STEP 4: REVIEW AND AUDIT

8.01 A service provider must review the completed risk assessment at least annually to ensure it remains current at all times, identify any deficiencies, and make any necessary changes that are identified in the review process. The review may however be done more frequently as a result of the occurrence of a specified trigger event. A trigger event could be, for example, new services the business is authorized by the FSC to provide or the use of new technology.

8.02 Regular assessments of the risk monitoring and management systems (and internal controls) must be done to make sure they are working. A service provider is expected to demonstrate that a review was periodically done,

8.03 The completed risk assessments must be independently audited at least every two years, or at such time as requested by the FSC. A copy of the auditor's report is to be submitted to the FSC within 14 days of it being received by the board, general partners or other senior management as the case requires.

8.04 The annual report that a service provider is required to submit to the FSC must take account of the findings and implications of the independent audit. The annual report must also provide information on how the findings will be satisfactorily addressed.

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

E-mail: Registration@)fscjamaica.org

RCTS-GUI2022/06-0013

GUIDELINES:

STANDARD OF CONDUCT FOR SERVICES 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; 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 conflict of interests 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

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

Facsimile (876) 906-3018

E-mail: Registration@)fscjamaica.org