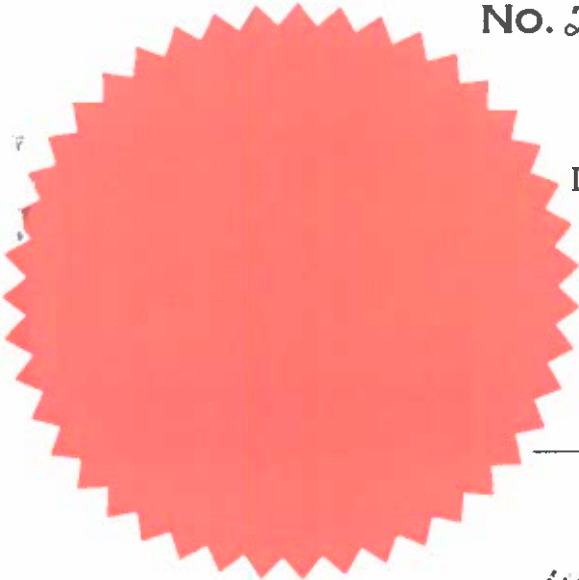


JAMAICA

No. 26 – 2021

I assent,



P. L. Allen

Governor-General.

16th day of December 2021

AN ACT to Amend the International Corporate and Trust Services Providers Act to regulate domestic trust service providers and domestic corporate service providers; to change the name of the Act to reflect the foregoing; to incorporate provisions which serve to deter the use of business operations under the Act for the purpose of money laundering, the financing of terrorism and the proliferation of weapons of mass destruction; to require service providers to observe customer due diligence requirements, maintain accurate records and systems of internal controls; and to provide for connected matters.

[24 December 2021]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the International Corporate and Trust Services Providers (Change of Name and Amendment) Act, 2021, Short title and construction.

and shall be read and construed as one with the International Corporate and Trust Services Providers Act (hereinafter referred to as the “principal Act”) and all amendments thereto.

Amendment
of long title
of principal
Act.

2. The principal Act is amended by deleting the long title and substituting therefor the following—

“An Act to Make provision for the regulation of the providers of trust services and corporate services; and for connected matters.”.

Amendment
of section 1
of principal
Act

3. Section 1 of the principal Act is amended by deleting the words “International Corporate and Trust Services Providers Act” and substituting therefor the words “Trust and Corporate Services Providers Act”.

Amendment
of section 2
of principal
Act.

4. Section 2 of the principal Act is amended—

- (a) by renumbering the section as subsection (1) of the section;
- (b) by inserting in section 2(1), as renumbered, the following definitions in the appropriate alphabetical sequence—

“beneficial owner”—

(a) in relation to a company, means—

- (i) the individual who exercises ultimate ownership or ultimate effective control over the management of the company; or
- (ii) an individual who by himself or together with another person, owns or controls (in each case, whether directly or indirectly) twenty percent or more of the shares of the voting rights in the company;

(b) in relation to a firm, means—

- (i) an individual who owns or controls twenty percent or more share of the capital or profits of the firm or twenty percent or more of the voting rights in the firm; or
- (ii) an individual who exercises control over the management of the firm;

(c) in relation to a trust, means—

- (i) the settlor;
- (ii) the trustee;
- (iii) the beneficiary, or where the beneficiary has not yet been determined, the class of persons in whose main interest the trust has been established or operates; or
- (iv) the person who has control over the trust;

“constitutive documents” means the statute, charter, memorandum of association, articles of association, articles of incorporation, rules and by-laws or other instruments, under or by which a licensee or other body is established, its governing and administrative structure and how the scope of its functions and business are set out, whether contained in one or more documents;

“corporate service” means any service specified in section 14 that is provided in or from Jamaica as a business;

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“corporate service provider licence” means a licence to provide a corporate service issued pursuant to section 6(5)(a);

“entity” means—

- (a) a company or other entity constituted under any enactment that the Minister may, after consultation with the Minister responsible for commerce, by order, published in the Gazette, prescribe;
- (b) an international company;
- (c) a trust;”.

“group” in relation to a company, means that company and—

- (a) any other company that is its holding company;
- (b) any other company that is a subsidiary of the holding company;
- (c) any company that directly or indirectly controls or is controlled, directly or indirectly, by any company referred to in paragraph (a) or (b);
- (d) any company that effectively controls or is effectively controlled by any company referred to in paragraph (a) or (b);
- (e) any company that is controlled by a person who directly or indirectly controls a company referred to in paragraph (a), (b) or (c);

“immediate relative” in relation to a person, means the person’s spouse, child (including step-child) and the spouse of a child or step-child, parent, brother or sister;

“service” means a corporate service or a trust service;

“service provider” means a person who engages in the business of providing a trust service or corporate service;

“trust and corporate service provider licence” means a licence to provide trust and corporate services issued pursuant to section 6(5)(a);

“trust service” means a service specified in section 15 that is provided in or from Jamaica as a business;

“trust service provider licence” means a licence to provide a trust service pursuant to section 6(5)(a);

“ultimate effective control” means the control exercised by an individual who—

- (a) is in a position to determine the policy of a company or firm or to make the final determination as to the decisions to be made by a company or firm; or
- (b) alone or together with a connected person within the meaning of subsection (2) is in a position to control twenty percent or more of the voting power in a company or firm or would hold interest in twenty percent or more of the issued shares of a company;

“ultimate ownership” means any situation in which ownership of a company or firm is exercised by means of control other than direct control, and includes any arrangement utilizing one or more persons through which beneficial ownership of a company or firm is established;

- (c) by deleting the word “affiliate” and its definition;

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- (d) in the definition of “client”, by deleting the words “an international service” and substituting therefor the words “a service”;
- (e) in the definition of “control”, by deleting the words “fifty percent” and substituting therefor the words “twenty percent”;
- (f) by deleting the definition of “firm” and substituting therefor the following—

“firm” means a general partnership within the meaning of the Partnership (General) Act or a limited partnership or a limited liability partnership within the meaning of the Partnership (Limited) Act;
- (g) by deleting the term “international corporate service” and its definition;
- (h) by deleting the term “international corporate service provider licence” and its definition;
- (ha) by deleting the term “international entity” and its definition;”.
- (i) by deleting the term “international service” and its definition;
- (j) by deleting the term “international service provider” and its definition;
- (k) by deleting the term “international trust service” and its definition;

- (l) by deleting the term “international trust service provider licence” and its definition;
- (m) by deleting the definition of “licence” and substituting therefor the following—

“licence” means a trust service provider licence, a corporate service provider licence or a trust and corporate services provider licence;”;

- (n) in the definition of “principal office” by deleting the words “an international service provider” and substituting therefor the words “a service provider”;
- (o) by deleting the definition of “principal representative” and substituting therefor the following—

“principal representative” means the person who is primarily responsible for the affairs of the licensee and who is appointed by the licensee under section 6(4)(b) to be accountable to the Commission; and”;

- (p) by inserting next after section 2(1) as amended, the following—

“ (2) For the purposes of subsection (1), the following persons shall be treated as being connected with a given person “A”, and the person with A, and shall be so treated notwith-

standing that at the relevant time
any of the persons in question
(not being individuals) had not
yet come into existence or
ceased to exist—

- (a) a holding company
or subsidiary of A;
- (b) a subsidiary of a
holding company
of A;
- (c) a holding company
of a subsidiary of
A;
- (d) any company or
firm of which A has
control;
- (e) any company or
firm of which A and
persons connected
with A together
have control;
- (f) any company
which together with
A constitutes a
group;
- (g) an individual who is
a director, manager
or a person who
has control of A or
any partner or any
immediate relative
of such director,

manager or person
aforesaid;

- (h) any company or
firm of which any of
the persons
referred to in sub-
paragraph (g) is a
director, manager
or has control.

(3) For the purposes of
subsections (1) and (2), a
company is a holding company
of any company that is its
immediate, intermediate or
ultimate subsidiary, whether the
holding company holds that
other company's shares on trust
or is the beneficial owner of
such shares.”.

5. The principal Act is amended by inserting next after section 2, the
following—

Insertion of
new section
2A in
principal Act.

“Application
of Act.

2A. This Act applies to an individual, a firm or a
company that provides a trust or corporate service
as a business.”.

6. Section 3 of the principal Act is amended—

Amendment
of section 3
of principal
Act.

- (a) by repealing paragraphs (a) and (b);
(b) by deleting paragraph (c) and substituting therefor the
following—

“(c) protect the interests of entities and service
providers through the licensing and supervision
of service providers;”; and

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- (c) in paragraphs (d), (e), (f) and (g) by deleting the word “international”, wherever it occurs.

Insertion of
new section
3A in
principal Act.

7. The principal Act is amended by inserting next after section 3, as amended, the following—

“Application
of
Proceeds
of Crime
(Money
Laundering
Prevention)
Regulations,
2007.

3A. The provisions of the Proceeds of Crime (Money Laundering Prevention) Regulations, 2007 shall apply *mutatis mutandis* to the provisions of this Act, unless the context otherwise requires.”

Amendment
of section 4
of principal
Act.

8. The principal Act is amended in section 4—

- (a) by deleting the word “international” from subsection (1), wherever it occurs;
- (b) by deleting paragraph (1)(b) and substituting therefor the following—

“(b) receive applications for, and issue trust service provider licences, corporate service provider licences and trust and corporate service provider licences;”;

- (c) in subsection (2)(b), by deleting the words “an international service” and substituting therefor the words “a service”.

Insertion of
new section
4A in
principal Act.

9. The principal Act is amended by inserting next after section 4, as amended, the following—

“Power of
Commission
to extend
time for
required act.

4A. Where a person is required to act within a specified period of time under this Act, the Commission may, if it sees fit, extend the period of time specified.”

10. The heading to Part III of the principal Act is amended by deleting the word “*International*”.

Amendment
of heading to
Part III of
principal Act.

11. Section 5 of the principal Act is amended—

Amendment
of section 5
of principal
Act.

- (a) by deleting from the marginal note, the word “international”; and
- (b) in subsection (1), by deleting the words “an international service” and substituting therefor the words “a service”.

12. Section 6 of the principal Act is amended—

Amendment
of section 6
of principal
Act.

- (a) by deleting from the marginal note, the word “international”;
- (b) by deleting subsections (1) and (2) and substituting therefor the following—

“ (1) A person who desires to obtain a trust service provider licence, a corporate service provider licence or a trust and corporate service provider licence, shall apply to the Commission, in the form and manner as may be determined by the Commission, for the appropriate licence.

(2) An application under subsection (1) shall be accompanied by—

- (a) such information and documents as may be required by the Commission, from time to time; and
- (b) the non-refundable application fee specified in the First Schedule.”;

First
Schedule.

(c) in subsection 4(c) by—

- (i) inserting next after the word “prescribed” the words “or otherwise specified by the Commission”; and
- (ii) deleting the word “international”;

- (d) by deleting subsection 4(d) and substituting therefor the following—

“
Second
Schedule.
(d) if the licence is granted, the service provider shall comply with the standards set out in the Second Schedule and the guidelines issued, from time to time, by the Commission;”;

- (e) by deleting subsection (4)(e) and substituting therefor the following—

“(e) if the applicant is—

- (i) an individual, that the applicant is a resident of Jamaica;
(ii) not an individual, that the applicant—

- (A) is incorporated under the Companies Act;
(B) is registered under Part X of the Companies Act;
(C) is otherwise registered by the Registrar of Companies;
(D) is otherwise incorporated or formed under the Laws of Jamaica; or
(E) is approved by the Minister, by order, published in the *Gazette*;”;

- (f) by inserting next after subsection 4(e) the following—

“(f) all other requirements for obtaining a licence as set out in the Regulations and guidelines, have been met.”;

- (g) by deleting subsection (5)(a) and substituting therefor the following—

“

First
Schedule. (a) upon being satisfied as to the matters specified in subsection (4) and upon payment of the fee specified in the First Schedule, within seven days of being notified of the grant of the licence, issue a licence in the form and manner as may be determined by the Commission, to the applicant authorizing the applicant to provide the service;”.

13. Section 7 of the principal Act is amended—

Amendment
of section 7
of principal
Act.

- (a) in subsection (1) by deleting the word “international”;
- (b) in subsection (2)(g) by deleting the word “international”;
- (c) in subsection (3) by—
- (i) deleting the word “or” at the end of paragraph (g);
 - (ii) deleting the fullstop at the end of paragraph (h) and substituting therefor a semicolon and the word “or”; and
 - (iii) inserting next after paragraph (h), as amended, the following—

“(i) contravened any provision of the United Nations Security Council Resolutions Implementation Act or any regulations made under that Act.”;
- (d) in subsection (4), by deleting the word “international”.

14. Section 8 of the principal Act is repealed and replaced by the following—

Repeal and
replacement
of section 8
of principal
Act.

“Duration
of licence. 8. A licence remains valid unless suspended, revoked
or surrendered.”.

Repeal and
replacement
of section 9
of principal
Act.

15. Section 9 of the principal Act is repealed and replaced by the following—

“Renewal
of licence.

First
Schedule.

9. In each year, on or before the anniversary of the grant of a licence, a licensee shall pay to the Commission a renewal fee, as specified in the First Schedule and submit along with such fee, a declaration in the form and manner as may be determined by the Commission.”.

Repeal and
replacement
of section 10
of principal
Act.

16. Section 10 of the principal Act is repealed and replaced by the following—

“Replacement
of lost,
stolen,
defaced or
destroyed
licence.

First
Schedule.

10. A licensee whose licence is lost, stolen, defaced, or destroyed, shall, in the form and manner specified by the Commission, by notice in the *Gazette*, and upon payment of the fee specified in the First Schedule, apply to the Commission for the replacement of the licence.”.

Amendment
of section 11
of principal
Act.

17. Section 11(1)(b) of the principal Act is amended by deleting the word “international”.

Amendment
of section 11
of principal
Act.

18. Section 12 of the principal Act is amended—

(a) in subsection (1)(a)—

(i) by deleting from subparagraph (i) the words “international” and “or”, respectively; and

(ii) by inserting at the end of subparagraph (ii) the word “or”;

(b) in subsection (1)(b) by inserting next after subparagraph (ii) the following—

“(iii) a relevant person,”;

(c) by deleting subsection (1)(c)(iii) and substituting therefor the following—

“(iii) beneficial owners”;

- (d) by deleting subsection (2) and substituting therefor the following—

“ (2) Subject to subsection (3), where a change is intended, the licensee shall, upon payment to the Commission of the fee specified in the First Schedule, give the Commission and every client of the licensee, written notice of the change, at least thirty days prior to the date of the change.”.

19. Section 13 of the principal Act is amended—

Amendment
of section 13
of principal
Act.

- (a) by deleting subsection (1) and substituting therefor the following—

“ (1) The Commission shall keep and maintain up-to-date registers to be known as the Register of Trust Service Providers, the Register of Corporate Service Providers and the Register of Trust and Corporate Services Providers, respectively, in which shall be recorded the particulars set out in subsection (2).”;

- (b) in subsection (2)—

- (i) by deleting the comma and all the words after the word “issued” in paragraph (c);
- (ii) by repealing paragraph (d);
- (iii) by deleting the word “and” at the end of paragraph (e);
- (iv) by renumbering paragraph (f) as paragraph (g); and
- (v) by inserting next after paragraph (e) as amended, the following as paragraph (f)—
 - “(f) any terms or conditions attached to the licence or any variation or amendment made to the licence in accordance with section 6(7); and”.

Amendment
of heading to
Part IV of
principal Act.

20. The heading to Part IV of the principal Act is amended by deleting the word "*International*".

Amendment
of section 14
of principal
Act.

21. Section 14 of the principal Act is amended—

- (a) in the marginal note by deleting the word "international";
- (b) in the chapeau, by deleting the words "A licensed international corporate service provider" and substituting therefor the words "A licensed corporate service provider"; and
- (c) in paragraph (f) by deleting the words "an international corporate service" and substituting therefor the words "a corporate service".

Amendment
of section 15
of principal
Act.

22. Section 15 of the principal Act is amended—

- (a) in the marginal note, by deleting the word "international";
- (b) in the chapeau to subsection (1)—
 - (i) by deleting the words "A licensed international trust service provider" and substituting therefor the words "A licensed trust service provider"; and
 - (ii) by deleting the words "an international trust" and substituting therefor the words "a trust";
- (c) in subsection (1)(e) by deleting the words "an international trust service" and substituting therefor the words "A trust service"; and
- (d) by inserting next after subsection (2) the following—

“ (3) Superannuation funds and retirement schemes are excluded from the provisions of this Act.”.

Amendment
of section 16
of principal
Act.

23. Section 16 of the principal Act is amended—

- (a) by deleting the marginal note and substituting therefor the following—

“Records and
Register
to be kept by
service
provider.”;

- (b) by deleting the chapeau to subsection (1) and substituting therefor the following—

“ (1) A licensed service provider shall keep or cause to be kept, at its principal office, accurate records in respect of business as a service provider, including constitutive documents, accounting records, a register on each client with prescribed particulars of information and other records on clients, that will—”;

- (c) by deleting the word “international” wherever it appears;
- (d) by inserting next after subsection (1) the following as subsections (1A), (1B) and (1C)—

“ (1A) Where the records of a licensed service provider are kept at a place, other than at the principal office of that service provider (provided that, that other place is in Jamaica), the licensed service provider shall forthwith, notify the Commission of the location of those records.

(1B) A licensed trust service provider shall keep or cause to be kept adequate, accurate and current records in respect of 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.

(1C) Where the licensed service provider is a company, a firm or a trust, that licensed service provider shall keep and maintain, an up-to-date register, in which shall be recorded the following particulars—

- (a) the name of the company or firm and where the company is a part of a group, the names of the companies within the group;

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- (b) the address of the registered office of the company or the principal office of the firm;
 - (c) the names and addresses of the directors of the company or firm;
 - (d) the names and addresses of the shareholders of the company or firm, as the case may be;
 - (e) the number of shares held by each shareholder of the company or firm, as the case may be; and
 - (f) the category of shares issued by the company or firm and the nature of the associated voting rights;
- (e) in subsection (3) by inserting immediately after the word “have” the word “been”;
- (f) by inserting next after subsection (3), as amended, the following as subsection (3A)—
- “ (3A) A licensee shall ensure that the records kept in accordance with subsections (1B) and (1C) are retained for at least seven years.”.

Amendment
of section 17
of principal
Act.

24. Section 17 of the principal Act is amended by deleting subsection (1) and substituting therefor the following—

“ (1) The accounts of every licensee shall be audited annually by an independent auditor who is registered as a public accountant under the Public Accountancy Act and in accordance with generally accepted accounting principles promulgated by the Institute of Chartered Accountants of Jamaica, from time to time.”.

25. The principal Act is amended by inserting next after section 17, the following as section 17A—

Insertion of
new section
17A in
principal Act.

"Principal
representa-
tive.

17A.—(1) A principal representative who is appointed by a licensee in accordance with section 6(4) shall—

- (a) in the case of a licensee that is a company, be an officer of the company;
- (b) in the case of a licensee that is a firm or other entity, be an officer of the firm or other entity, as the case may be; and
- (c) in the case of a licensee that is a sole proprietorship, be the sole proprietor.

(2) Every person appointed as a principal representative of a licensee shall, within thirty days after such appointment, apply to the Commission, in the form and manner as may be determined by the Commission and pay the fee specified in the First Schedule, to be registered as the principal representative of the licensee.

First
Schedule.

(3) A principal representative of a licensee shall, on an annual basis, pay the fee specified in the First Schedule, for the continued validity of his registration as the principal representative of the licensee.

First
Schedule.

(4) The principal representative shall—

- (a) do all acts, matters and things as are required for the licensee to be in compliance with the provisions of this Act and any regulations made under this Act and any guidelines issued by the Commission;
- (b) file reports to the Commission, at such times as may be determined by the Commission, relating to the compliance of

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the licensee with the provisions of this Act and any regulations made under this Act and any guidelines issued by the Commission; and

- (c) pay all fees required to be paid by the licensee under this Act or any regulations made under this Act.

(5) Where the Commission is satisfied that a principal representative has failed to carry out the duties of the principal representative under this Act, the Commission may—

- (a) issue a warning to the principal representative;
- (b) direct the principal representative to forthwith, or within such other period as may be specified by the Commission, comply with the provisions of this Act; or
- (c) cancel the registration of the principal representative.

(6) The Commission shall notify the licensee and the principal representative, in writing, of any action taken under subsection (5).

(7) Upon receipt of a notice under subsection (6) that the Commission has cancelled the registration of a principal representative, the licensee shall terminate the appointment of that person as principal representative and appoint a new principal representative, within seven days of the date of the notice from the Commission.

(8) Where a principal representative ceases to hold the position as principal representative, the licensee shall, within seven days of the cessation, notify the Commission, in writing.

(9) Notwithstanding subsection (5), a person who fails to comply with any provision of this section commits an offence and is liable, on summary conviction in a Parish Court, to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.”.

26. Section 18 of the principal Act is amended—

Amendment
of section
18 of
principal
Act.

- (a) by deleting from the marginal note the word “funds” and substituting therefor the word “assets”; and
- (b) in subsections (1) and (2) by deleting the words “an international trust service provider licence” and substituting therefor the words “a trust service provider licence, a corporate service provider licence or a trust and corporate service provider licence”.

27. Section 19 of the principal Act is amended—

Amendment
of section
19 of
principal
Act.

- (a) by deleting the word “International” in the marginal note;
- (b) by deleting the chapeau and substituting therefor the following—

“ A service provider shall give to the Commission, written notice, as soon as is practicable, but no later than seven days, after—”;

- (c) in paragraph (a) by deleting the word “international”;
- (d) in the chapeau to paragraph (b) by deleting the word “international”, wherever it appears;
- (e) in subparagraph (b)(i) by deleting the words “an international service” and substituting therefor the words “a service”;
- (f) in paragraphs (c), (d), (e), (f) and (g) by deleting the word “international”, wherever it appears;
- (g) by renumbering the section as subsection (1); and

- (h) inserting next after subsection (1), as renumbered, the following as subsection (2)—

“ (2) A service provider who fails to notify the Commission, in writing, of any legal or other proceedings, or the refusal of a licence or other legal authorization under this section, commits an offence and is liable, on summary conviction in a Parish Court, to a fine not exceeding five hundred thousand dollars or, in default of payment thereof, to a term of imprisonment not exceeding three months.”.

Amendment
of section 20
principal Act.

28. Section 20 of the principal Act is amended—

- (a) by deleting the marginal note and substituting therefor the following—

“Service
provider to
notify
Commission
of merger
and
cessation of
business,
etc.”;

- (b) by deleting the word “international”, wherever it appears;
- (c) in subsection (3)(b) by inserting immediately after the word “made” the words “and documents specified by the Commission”.
- (d) in subsection (5) by inserting next after the words “as soon as practicable,” the words “but no later than thirty days”; and
- (e) by inserting next after subsection (5) the following as subsections (6), (7) and (8)—

“ (6) A company licensed under this Act that passes a resolution for voluntary winding up shall cause a copy of the resolution to be published in the Gazette and in a daily newspaper printed and circulated in Jamaica.

(7) Upon the occurrence of an event which causes the dissolution and winding up of the business of a firm or other entity licensed under this Act, a director of the firm or other entity or any other person charged with the dissolution and winding up of the firm or other entity shall cause to be published in the Gazette and in a daily newspaper printed and circulated in Jamaica, a statement of the dissolution and winding up of the firm or other entity.

(8) A licensed service provider commits an offence and is liable, on summary conviction in a Parish Court, to a fine not exceeding five hundred thousand dollars its service business;

- (b) that the service provider is no longer able to continue to operate its service business;
- (c) that being a firm, company or other entity, action is initiated to dissolve or wind up the service provider; or
- (d) that a composition or arrangement is made with the creditors of the service provider.”.

29. Section 21 of the principal Act is amended—

- (a) in subsection (1) by deleting the word “international”;
- (b) in subsection (2) by deleting the words “an international service provider” and substituting therefor the words “a service provider”.

Amendment
of section
21 of
principal
Act.

30. The principal Act is amended by inserting next after section 21, the following as section 21A—

“Duty of
service
provider on
cessation of
business, etc.

21A.—(1) A licensed service provider who intends to cease providing a service to a client or is removed as a service provider shall—

- (a) in the case of a cessation, provide the client with a written notice of the cessation of the service;

Insertion of
new section
21A in
principal
Act.

- (b) take all reasonable steps to preserve the records of the client for the period specified in section 16(3A); and
- (c) in the case of a trust, provide a written, detailed account of his administration of the trust to the trustee, beneficiary, settlor or client.

(2) A licensed service provider shall give the Commission written notice, within seven days after a person ceases to be a client of the licensed service provider.

(3) The Commission shall be a party to any proceedings for the winding up or cessation of the business of the licensed service provider under this Act or any regulations made under this Act.

(4) A licensed trust service provider under subsection (3), shall, comply with any directions issued by the Commission in relation to the winding up or cessation of the business of the licensed service provider.”.

Amendment
of section
22 of
principal
Act.

31. Section 22 of the principal Act is amended by deleting the word “international” in the marginal note and wherever else it occurs.

Amendment
of section
23 of
principal
Act.

32. Section 23 of the principal Act is amended by deleting the word “international” in the marginal note and wherever else it occurs.

Amendment
of section
27 of
principal
Act.

33. Section 27 of the principal Act is amended by deleting the word “international” in the marginal note and wherever else it occurs.

Insertion of
new section
28A in
principal
Act.

34. The principal Act is amended by inserting next after section 28 the following as section 28A—

“Offence for
which no
penalty is
provided.

28A. Any person who commits an offence for which no penalty is provided for under this Act shall be liable, on conviction in a Parish Court, to a fine not

exceeding one million dollars or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.”.

35. Section 29(1) of the principal Act is amended by—

Amendment
of section
29 of
principal
Act.

- (a) deleting the words “, an international service provider,”; and
- (b) deleting the word “international”, wherever else it appears.

36. Section 30 of the principal Act is amended—

Amendment
of section
30 of
principal
Act.

- (a) in the chapeau to subsection (1) and in subsections (1)(a) and (b) by deleting the word “international”;
- (b) in subsection (2) by—
 - (i) deleting the words “an international service provider” and substituting therefor the words “a service provider”; and
 - (ii) deleting the word “international” where it occurs a second time in the provision.

37. Section 31 of the principal Act is amended—

Amendment
of section
31 of
principal
Act.

- (a) in subsection (1) by deleting the word “international”;
- (b) in subsection (2) by deleting the words “an international service provider” and substituting therefor the words “a service provider”;
- (c) in the chapeau to subsection (3) by deleting the words “an international service provider” and substituting therefor the words “a service provider”;
- (d) in subsection (3)(a) by deleting the word “international”;
- (e) in subsection (4) by deleting the word “international”.

38. Section 33 of the principal Act is amended—

Amendment
of section
33 of
principal
Act.

- (a) by deleting subsection (1) and substituting therefor the following—
 - “ (1) If it appears to the Commission to be desirable to do so in the interests of the clients of a

licensed service provider, the Commission may, on giving written notice to the service provider concerned, appoint one or more competent persons to investigate and report to the Commission on—

- (a) the nature, conduct or state of the service provider's business or any particular aspect of it; or
- (b) the ownership (whether directly or indirectly, beneficially or otherwise) or control of the service provider.”;
- (b) in subsection (2) by deleting the word “international”;
- (c) in subsection (4)—
 - (i) by deleting the words “an international service provider” and substituting therefor the words “a service provider”; and
 - (ii) by deleting the words “that international service provider” and substituting therefor the words “that service provider.”.
- (d) in subsection (5) by deleting the words “an international service provider” and substituting therefor the words “a service provider”; and
- (e) in subsection (7) by deleting the word “international”.

Amendment
of section
34 of
principal
Act.

39. Section 34 of the principal Act is amended—

- (a) in subsection (1) by deleting the words “an international service provider and substituting therefor the words “a service provider”;
- (b) in the chapeau to subsection (2) by deleting the word “international”;
- (c) in subsection 2(a) by deleting the word “international”; and
- (d) by deleting subsection (2)(b) and substituting therefor the following—
 - “(b) the ownership (whether directly or indirectly, beneficially or otherwise) or control of a service

provider at any time when it was licensed under this Act.”.

40. Section 35(2) of the principal Act is amended by deleting the words “an international service provider” and substituting therefor the words “a service provider”. Amendment of section 35 of principal Act.

41. Section 38 of the principal Act is amended by— Amendment of section 38 of principal Act.

(a) deleting from subsections (1) (a) and (b) and (2), the word “international”;

(b) deleting from subsection (1)(i) the words “as an international financial centre”.

42. Section 39 of the principal Act is amended— Amendment of section 39 of principal Act.

(a) in subsection (1)(a) by deleting the words “as an international financial centre”;

(b) in subsection (3) by deleting the words “international services” and substituting therefor the words “any services”.

43. Section 40 of the principal Act is amended by deleting subsection (1) and substituting therefor the following— Amendment of section 40 of principal Act.

“ (1) Where the Commission revokes the licence of a service provider pursuant to section 38(2)(e), the Commission shall, in writing, notify the service provider of the revocation.”.

44. Section 42(1)(b) of the principal Act is amended by deleting the word “international”. Amendment of section 42 of principal Act.

45. The principal Act is amended by inserting next after the heading “Part IX—Miscellaneous” the following— Insertion of new section 45A in principal Act.

“Payment of late fee. 45A. Where a person fails to file with the Commission any document, information, fee or otherwise do any act or satisfy any other obligation under this Act, for which a time is specified, that person shall pay the late fee specified in the First Schedule.”.

First Schedule.

Amendment
of section
46 of
principal
Act.

46. Section 46 of the principal Act is amended—

(a) in subsection (1) by—

- (i) inserting immediately after the words “issue guidelines”, the words “, approved by the Minister,”;
- (ii) deleting the word “international”; and

(b) by inserting next after subsection (4) the following—

“ (5) A person who fails to comply with any guidelines issued pursuant to this section, commits an offence and is liable on 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.”.

Amendment
of section
47 of
principal
Act.

47. Section 47 of the principal Act is amended by deleting the word “international”, from subsections (1)(b), (d) and (e).

Repeal and
replacement
of section
48 of
principal
Act.

48. Section 48 of the principal Act is repealed and replaced by the following—

“Power of
Minister to
amend
monetary
penalties
and
Schedules.

First and
Second
Schedules.

48. The Minister may by order, subject to affirmative resolution, amend—

- (a) any monetary penalty imposed by this Act or any regulations made under this Act; and
- (b) the First and Second Schedules to this Act.”.

Amendment
of section
49 of
principal
Act.

49. Section 49 of the principal Act is amended—

(a) by deleting subsection (1) and substituting therefor the following—

“ (1) A person who immediately before the appointed day was providing a trust service or a corporate service shall, within twelve months after the appointed day, make an application under section 5 for the appropriate licence.”;

(b) by deleting subsection (2) and substituting therefor the following—

“ (2) If an application is made by a person pursuant to subsection (1), the person may, in compliance with the provisions of this Act, continue to provide the relevant service, until the application of that person is determined.”;

(c) in subsection (3) by deleting the word “international”; and

(d) in subsection (4) by deleting the word “Minister” and substituting therefor the word “Commission”.

50. The principal Act is amended by inserting next after section 49, the following as the First Schedule—

FIRST SCHEDULE		(Sections 6(2), 6(5), 10, 12(2), 17A(2), 17A(3) and 45(A))
Licensing, Registration, Etc.		Fee
1. Application for trust service provider licence, corporate service provider licence or trust and corporate service provider licence		Fifteen thousand dollars (\$15,000.00)
2. First grant of—		
(a) trust service provider licence—		Five hundred thousand dollars (\$500,000.00)
(b) corporate service provider licence—		Three hundred and fifty thousand dollars (\$350,000.00)

Insertion of new First Schedule in principal Act.

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<u>Licensing, Registration, Etc.</u>	<u>Fee</u>
(c) trust and corporate service provider licence—	Seven hundred thousand dollars (\$700,000.00)
3. Renewal of—	
(a) trust service provider licence—	Four hundred thousand dollars (\$400,000.00)
(b) corporate service provider licence—	Three hundred thousand dollars (\$300,000.00)
(c) trust and corporate service provider licence—	Six hundred thousand dollars (\$600,000.00)
4. Registration as a principal representative of a licensee.	One hundred and fifty thousand dollars (\$150,000.00)
5. Renewal of registration as a principal representative of a licensee	Fifty thousand dollars (\$50,000.00)
6. Replacement of lost, stolen, defaced, or destroyed licence	Fifteen thousand dollars (\$15,000.00)
7. Intended change in status of licensee	Fifty thousand dollars (\$50,000.00)
8. Late filing of documents, etc.	Twenty thousand dollars (\$20,000.00)

..

51. The Schedule to the principal Act is amended—

Amendment
of Schedule
to principal
Act.

- (a) by renaming the Schedule as the Second Schedule;
- (b) in paragraph 1 by deleting the word “international”, wherever it occurs;
- (c) in paragraph 2(1) by deleting the word “international”;
- (d) in paragraph 2(2)—
 - (i) by deleting the word “international” on its first occurrence in the provision;
 - (ii) by deleting the words “an international service provider” and substituting therefor the words “a service provider”;
 - (iii) by deleting the words “the international service provider” and substituting therefor the words “the service provider”;
- (e) in paragraph 2(3)—
 - (i) by deleting the words “An international service provider” and substituting therefor the words “A service provider”;
 - (ii) by deleting the word “international” on its second occurrence in the provision;
- (f) in paragraph 2(4) by deleting the word “international”;
- (g) in paragraph 3 by deleting the word “international”; and
- (h) in paragraph 4—
 - (a) by deleting the words “An international service provider”, wherever they occur and substituting therefor, in each case, the words “A service provider”; and
 - (b) by deleting the words “as an international financial centre”.

Amendment
of
enactments
Schedule.

52. The enactments specified in the Schedule are amended in the manner specified in relation thereto—

SCHEDULE

(Section 48)

Financial Services Commission Act

1. In section 2, in the definition of “financial services”, insert next after paragraph (b) the following as paragraph (ba)—

“(ba) a trust service or a corporate service as defined under section 2 of the Trust and Corporate Services Providers Act.”.

2. Delete section 16(1)(d)(i) and substitute therefor the following—

“(i) to the designated authority under the Proceeds of Crime Act;”.

3. In the Fourth Schedule, insert the following penalties next after the penalties related to the Insurance Act—

**“ TRUST AND CORPORATE SERVICES
PROVIDERS ACT**

Section	Nature of Offence	Penalty
(1) Section 11	Failure to display licence	\$50,000.00
(2) Section 16	Failure of service provider to keep or cause to be kept accurate records ...	\$300,000.00
(3) Section 17A	Failure to comply with any provision of section 17A ...	\$30,000.00
(4) Section 18	Failure of trust service provider to keep trust assets distinct and separate from the assets of the licensee	\$200,000.00

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Section	Nature of Offence	Penalty
(5) Section 19	Failure to notify the Commission of any legal or other proceedings or refusal of a licence or other legal authorization ...	\$50,000.00
(6) Section 20	Failure of service provider to notify the Commission—	
	(a) of a merger or take-over of the service provider or its service business;	
	(b) that the service provider is no longer able to continue to operate its service business;	
	(c) being a firm or company, that action is initiated to dissolve or wind up the service provider; or	
	(d) that a composition or arrangement is made with the creditors of the service provider ...	\$200,000.00

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Section	Nature of Offence	Penalty
(7) Section 26	In respect of an application for the grant or renewal of a licence, knowingly or recklessly— (a) makes a false statement of a material fact; (b) omits to state a material fact; or (c) makes a statement that contains information that is misleading in light of the circumstances in which it is made ...	\$300,000.00
(8) Section 31	Failure of licensed service provider or other person to produce documents or information required by the Commission ...	\$300,000.00
(9) Section 40	Failure, without lawful excuse, of person, whose licence has been revoked, to surrender the licence to the Commission ...	\$150,000.00.”

Trusts Act

1. Section 2 of the principal Act is amended by inserting in the proper alphabetical sequence the following—

“designated non-financial institution” shall be construed in accordance with the Proceeds of Crime Act;

“financial institution” shall be construed in accordance with the Proceeds of Crime Act;

“trust service provider” shall be construed in accordance with the Trust and Corporate Services Providers Act;”.

2. The principal Act is amended by inserting next after section 30 the following as section 30A—

“Duty to keep records. 30A.—(1) A trustee shall keep or cause to be kept adequate, accurate and current records in respect of the identity of—

(a) a settlor, a protector (if any), an enforcer, a beneficiary or class of beneficiaries, any other trustee or other trust official and any person who has effective control of the trust;

(b) a trust service provider of the trust and any other agent of the trust including an investment advisor, manager, accountant and tax advisor of the trust.

(2) A trustee shall ensure that the records kept in accordance with subsection (1) are retained for at least seven years.

(3) A trustee who contravenes this section commits an offence and is liable, on summary conviction in a Parish Court, to a fine not exceeding fifty thousand dollars.”.

3. The principal Act is amended by inserting next after section 31, the following as section 31A—

“Duty to give information to financial institutions and designated non-financial institutions. 31A.—(1) A trustee shall inform any financial institution or designated non-financial institution at which the assets of the trust are kept, that the trustee is acting for the trust and shall provide full, accurate and up-to-date information on all the beneficiaries of the trust and on the assets of the trust being held or managed by the trustee.

(2) A trustee shall, at all reasonable times, at the request of a financial institution or a designated non-financial institution at which the assets of the trust are kept, provide full, accurate and up-to-date information on any change of status of a beneficiary under the trust and notwithstanding section 37, on any letter of wishes.

(3) A “change of status”, in relation to a beneficiary, means—

- (a) where the beneficiary is an individual—
 - (i) a change of name;
 - (ii) whether the individual is alive, unborn or dead;
- (b) where the beneficiary is a body corporate or a partnership—
 - (i) a change of business name;
 - (ii) a change to the articles of incorporation or, where applicable, the Memorandum of Association or constitutive documents;
 - (iii) a change of directors;
 - (iv) a change of address; or
- (c) a change in the type of partnership from a partnership without separate legal personality, to a partnership with separate legal personality.”.

Passed in the Honourable House of Representatives this 10th day of November, 2021, with seven (7) amendments.

JULIET HOLNESS, MP
Deputy Speaker.

Passed in the Senate this 19th day of November, 2021, with two (2) amendments.

THOMAS TAVARES-FINSON, OJ, CD, QC, JP
President.

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On the 30th day of November, 2021 the House of Representatives agreed to the amendments made by the Senate.

M. DALRYMPLE PHILIBERT, CD, MP
Speaker.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.


Clerk to the Houses of Parliament.