



THE
JAMAICA GAZETTE
SUPPLEMENT

PROCLAMATIONS, RULES AND REGULATIONS

437

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MONDAY, APRIL 25, 2022

No. 35

No. 57

Extract from the Minutes of the meeting of the Honourable House of Representatives held on Tuesday, April 12, 2022:

PUBLIC BUSINESS

The Honourable Nigel Clarke, DPhil, MP, Minister of Finance and the Public Service, moved:

THE TRUST AND CORPORATE SERVICES PROVIDERS ACT

THE TRUST AND CORPORATE SERVICES PROVIDERS (LICENSING AND OPERATIONS)
REGULATIONS, 2022, RESOLUTION

WHEREAS subsection (1) of section 47 of the *Trust and Corporate Services Providers Act* (hereinafter referred to as “the Act”) provides that the Commission may, with the approval of the Minister, make regulations providing for such matters as may be necessary or expedient for the purposes of this Act;

AND WHEREAS subsection (2) of section 47 of the Act provides that regulations made under subsection (1) of the section, shall be subject to affirmative resolution;

AND WHEREAS the Commission, with the approval of the Minister responsible for finance, on the 24th day of March, 2022, made the Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022;

AND WHEREAS it is desirable that the Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022, be affirmed:

NOW, THEREFORE, BE IT RESOLVED by this Honourable House as follows:

1. This Resolution may be cited as the Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022, Resolution.

2. The Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022, which were laid on the Table of the House on the 5th day of April, 2022, are hereby affirmed.

Mr. Mark Golding also spoke on the motion.

Seconded by: Mr. Robert Miller

Agreed to.

I certify that the above is a true extract from the Minutes.

VALRIE A. CURTIS, CD, BH(M), JP
Clerk to the Houses

No. 58

Extract from the Minutes of the meeting of the Honourable Senate held on Tuesday, April 22, 2022:

PUBLIC BUSINESS

Senator the Honourable Matthew Samuda, Minister without Portfolio in the Ministry of Economic Growth and Job Creation, having obtained suspension of the Standing Orders, moved:

THE TRUST AND CORPORATE SERVICES PROVIDERS ACT

THE TRUST AND CORPORATE SERVICES PROVIDERS (LICENSING AND OPERATIONS) REGULATIONS, 2022, RESOLUTION

WHEREAS subsection (1) of section 47 of the *Trust and Corporate Services Providers Act* (hereinafter referred to as “the Act”) provides that the Commission may, with the approval of the Minister, make regulations providing for such matters as may be necessary or expedient for the purposes of this Act:

AND WHEREAS subsection (2) of section 47 of the Act provides that regulations made under subsection (1) of the section, shall be subject to affirmative resolution:

AND WHEREAS the Commission, with the approval of the Minister responsible for finance, on the 24th day of March, 2022, made the Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022:

AND WHEREAS it is desirable that the Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022, be affirmed:

NOW, THEREFORE, BE IT RESOLVED by this Honourable House as follows:

1. This Resolution may be cited as the Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022, Resolution.

2. The Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022, which were laid on the Table of the Senate on the 22nd day of April, 2022, are hereby affirmed.

Senator Peter Bunting also spoke on the motion.

At 11:45 a.m., the Senate suspended its sitting.

At 11:55 a.m., the Senate resumed.

Senator the Honourable Matthew Samuda closed the debate on the motion.

THE TRUST AND CORPORATE SERVICES PROVIDERS ACT

THE TRUST AND CORPORATE SERVICES PROVIDERS (LICENSING AND OPERATIONS) REGULATIONS, 2022, RESOLUTION

WHEREAS subsection (1) of section 47 of the *Trust and Corporate Services Providers Act* (hereinafter referred to as “the Act”) provides that the Commission may, with the approval of the Minister, make regulations providing for such matters as may be necessary or expedient for the purposes of this Act:

AND WHEREAS subsection (2) of section 47 of the Act provides that regulations made under subsection (1) of the section, shall be subject to affirmative resolution:

AND WHEREAS the Commission, with the approval of the Minister responsible for finance, on the 24th day of March, 2022, made the Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022:

AND WHEREAS it is desirable that the Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022, be affirmed:

NOW, THEREFORE, BE IT RESOLVED by this Honourable House as follows:—

1. This Resolution may be cited as the Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022, Resolution.

2. The Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022, which were laid on the Table of the Senate on the 22nd day of April, 2022, are hereby affirmed.

Seconded by: Senator Ransford Braham, QC

Agreed to.

I certify that the above is a true extract from the Minutes.

VALRIE A. CURTIS, CD, BH(M), JP
Clerk to the Houses

THE TRUST AND CORPORATE SERVICES PROVIDERS ACT

THE TRUST AND CORPORATE SERVICES PROVIDERS (LICENSING AND OPERATIONS) REGULATIONS, 2022, RESOLUTION

WHEREAS subsection (1) of section 47 of the Trust and Corporate Services Providers Act (hereinafter referred to as “the Act”) provides that the Commission may, with the approval of the Minister, make regulations providing for such matters as may be necessary or expedient for the purposes of this Act:

AND WHEREAS subsection (2) of section 47 of the Act provides that regulations made under subsection (1) of the section, shall be subject to affirmative resolution:

AND WHEREAS the Commission, with the approval of the Minister responsible for finance, on the 24th day of March, 2022, made the Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022:

AND WHEREAS it is desirable that the Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022, be affirmed:

NOW, THEREFORE, BE IT RESOLVED by this Honourable House as follows:—

1. This Resolution may be cited as the Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022, Resolution.

2. The Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022, is hereby affirmed.

THE TRUST AND CORPORATE SERVICES PROVIDERS ACT**THE TRUST AND CORPORATE SERVICES PROVIDERS (LICENSING AND OPERATIONS)
REGULATIONS, 2022**

In exercise of the power conferred upon the Commission by section 47 of the Trust and Corporate Services Providers Act, the following Regulations are hereby made, with the approval of the Minister:—

Citation. 1. These Regulations may be cited as the Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022.

Interpretation. 2. In these Regulations—

“business in the regulated sector” shall be construed in accordance with the Fourth Schedule to the Proceeds of Crime Act;

“business relationship” means any arrangement between two or more persons where the purpose of the arrangement is to facilitate the carrying out of—

- (a) two or more transactions between the persons concerned; or
- (b) transactions between the persons concerned, on a frequent, habitual or regular basis;

“client money” means money received by a licensed service provider that belongs in whole or in part, to a client or that is held on a client's behalf or at the order of a client or another person;

“criminal record report” means a report generated after a search of—

- (a) the register of all persons convicted of a crime in Jamaica, kept pursuant to section 43 of the Criminal Justice (Administration) Act or such other records as may be prescribed in relation to the conviction of a person for a criminal offence under the laws of Jamaica; or
- (b) records, similar to those referred to in paragraph (a), kept pursuant to the laws of another country, state or territory;

“one-off transaction” means any transaction other than a transaction carried out in the course of a business relationship formed with a business in the regulated sector.

Documents
and informa-
tion to be
furnished on
application for
licence.

3.—(1) An applicant for a licence pursuant to section 6 of the Act shall furnish with the application, the following documents and information—

- (a) where applicable, the constitutive documents that would permit the applicant to conduct the business for which the licence is being sought;
- (b) a business plan outlining the financial projection of the business for the next three years after the date of the last financial year of the business;
- (c) an anti-money laundering, counter financing of terrorism and counter proliferation financing policies and procedures manual, which accords with regulation 5 of the Proceeds of Crime (Money Laundering Prevention) Regulations, 2007, section 18 of the Terrorism Prevention Act and the United Nations Security Council Resolutions Implementation Act;
- (d) where applicable, the audited financial statements for the last two years of operation of the applicant or a statement of the affairs of the applicant certified by an auditor;
- (e) where the audited financial statements referred to in paragraph (d) are not available, the audited financial statements of shareholders (not being individuals) who exercise control over the affairs of the applicant;
- (f) satisfactory evidence of professional indemnity insurance for the applicant, pursuant to section 21 of the Act;
- (g) two references for each officer of the applicant, including one character-reference, and one reference verifying good financial standing;
- (h) a criminal record report for each relevant person of the applicant;
- (i) that the persons whom the applicant employs or intends to employ, have the educational and professional qualification and the competence to carry on the business of the applicant in an efficient manner and in accordance with the competency framework issued by the Commission; and
- (j) any other documents and information that the Commission may, from time to time, specify in guidelines.

(2) A business plan under paragraph (1)(b) shall be accompanied by an organizational chart indicating the reporting lines and the ownership structure of the business of the applicant, and shall specify certain key elements including—

- (a) a general description of the business proposed to be conducted;

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- (b) a specification of the resources of the business, including the employees of the business;
 - (c) any outsourcing arrangements (as referred to in regulation 10) that the applicant intends to put in place in relation to the business;
 - (d) a description of the governance structure of the business;
 - (e) the risk management framework of the business;
 - (f) the internal control systems of the business;
 - (g) the internal reporting arrangements of the business;
 - (h) the current and intended external reporting arrangements of the business, including the arrangements for reporting to the Commission;
 - (i) information on contracts and proposed contracts with agents, consultants and third parties to whom the licensee has outsourced or intends to outsource its services; and
 - (j) such other key elements as the Commission may, from time to time, prescribe, by way of guidelines.

(3) Where an applicant is part of a group, an application, pursuant to section 6 of the Act, shall, on the request of the Commission, include such documents and information about the group.

Change in documents or information.

4. Where there is a change in the documents or information of an application, the applicant shall, no later than five days after such change, inform the Commission of such a change and the date on which the change occurred, in the form and manner determined by the Commission.

Corporate governance framework.

5. A licensee shall establish a corporate governance framework which is comprised of the following—

- (a) a conflict of interest policy for the licensee which sets out the standards of expected behavior of the licensee, including the results of non-compliance with the policy;
- (b) a risk assessment of the licensee, including the production of a statement of the risk appetite of the licensee which indicates the type of business in which the licensee will be engaged and the risk tolerance of the licensee;
- (c) policies, procedures and control mechanisms to prevent the inappropriate use of client moneys, for the settlement of the fees charged by licensees and the disbursement of client moneys;

- (d) policies and procedures for the training and professional development of relevant persons, principal representatives and other employees, on an annual basis;
- (e) policies, procedures, strategies, systems and controls (as are appropriate, given the nature, size and complexity, structure and diversity of the business of the licensee and the degree of risk associated with each area of business) to prevent the business of the licensee from being used, or to detect whether the business of the licensee is being used, for fraud, money laundering, terrorism financing, the financing of the proliferation of weapons of mass destruction or other criminal activity;
- (f) an update of the policies, procedures, strategies, systems and controls referred to in paragraph (e) on an annual or needs basis; and
- (g) a code of ethics for employees.

Officer responsible for implementation and monitoring of corporate governance framework.

6.—(1) The licensee shall appoint an officer of the licensee who shall be responsible for the implementation and monitoring of the corporate governance framework referred to in regulation 5.

(2) In the case of a body corporate or a firm, the officer under paragraph (1) shall, where applicable, report to the board or a sub-committee of the board of the licensee in relation to the corporate governance framework referred to in regulation 5.

Change in status of the licensee and form and manner of written notice of change.

7.—(1) In accordance with section 12 of the Act, a change in the licensee includes—

- (a) the appointment of an officer of the licensee or a principal representative;
- (b) any action which a licensee proposes to take which would result in a material change in its capital adequacy or solvency;
- (c) any significant failure in the systems of internal control of the licensee (including those identified by an independent auditor under section 17 of the Act);
- (d) a change in the beneficial ownership of the licensee;
- (e) the removal or resignation of the independent auditor of the licensee;
- (f) a change in the accounting year of the licensee; and
- (g) any breach of a requirement under the Act or regulations made under the Act or any other enactment.

(2) The written notice of a change in a licensee, pursuant to section 12 of the Act, shall be given in the form and manner determined by the Commission and in accordance with the guidelines issued pursuant to section 46 of the Act.

Records to be kept by service provider.

8. The records to be kept by a licensed service provider, pursuant to section 16 of the Act, shall not be kept in a manner which impedes access to such records by the Commission.

Register of Beneficial Owners.

9.—(1) Pursuant to section 16 of the Act, a licensee shall keep a register of the beneficial owners of the clients of the licensee, to be known as the Register of Beneficial Owners, which shall contain the following particulars in relation to each client—

- (a) the full name of the client;
- (b) the date on which the individual became a beneficial owner;
- (c) where applicable, the date on which the individual ceased to be a beneficial owner;
- (d) the unique identification number extracted from a valid identification (including a driver's licence, a passport or any other national identification) of the beneficial owner;
- (e) the residential address of the beneficial owner, and if different, an address for service of documents;
- (f) the date of birth of the beneficial owner;
- (g) the nationality of the beneficial owner;
- (h) the occupation of the beneficial owner;
- (i) the particulars of the beneficial interest of the beneficial owner and how that beneficial interest is held;
- (j) the Taxpayer Registration Number (TRN) or such other unique reference number of the beneficial owner; and
- (k) such other information as may be required by the Commission.

(2) Where there is a change in the beneficial ownership of a client, the licensee shall, forthwith, but in any event, not later than three days, update the Register of Beneficial Owners, in relation to such change.

(3) A licensee who includes in the Register of Beneficial Owners, information which is false or misleading, commits an offence and is liable, on summary conviction in a Parish Court—

- (a) in the case of a person other than an individual, to a fine not exceeding one million dollars; or

- (b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding three months.

Outsourcing of
services of
licensee.

10.—(1) A licensee may outsource any of the services that the licensee provides.

(2) Where a licensee intends to outsource any of the services of the licensee, the licensee shall give the Commission fourteen days notice, in writing, of such intention.

(3) A licensee shall enter into a written contract with a person to whom any services are outsourced.

(4) A licensee who intends to outsource the provision of any services to another person, shall first—

- (a) assess the risk of entering into an agreement for the outsourcing of the services;
- (b) assess and record the capability and suitability of the person to whom the services will be outsourced; and
- (c) design a contingency plan in the event of the inability of the person to provide the service or the breach or failure of the agreement.

(5) A person to whom any services are outsourced shall not sub-outsource the provision of the services without the written approval of the Commission.

(6) A licensee who fails to comply with paragraph (2), (4) or (5) commits an offence and is liable, on summary conviction, in a Parish Court—

- (a) in the case of a person other than an individual, to a fine not exceeding one million dollars;
- (b) in the case of individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

Provision of
documents and
information to
the
Commission.

11. A licensee shall provide such documents and information (whether in a physical or electronic form) in relation to any customer or service provided by the licensee, within the timelines specified by the Commission.

Obligation of
trust service
provider to
business in the
regulated
sector.

12. A trust service provider who, in the capacity as trustee, enters into a business relationship, a one-off transaction or any other agreement with a business in the regulated sector, shall—

- (a) inform the business in the regulated sector that the licensee is acting in the capacity of a trustee;

(b) comply with a request by the business in the regulated sector for information on—

- (i) the beneficial owners of the trust service provider; and
- (ii) an individual referred to in any document relating to the trust.

Penalty for failure to provide documents and information.

13. A licensee who fails to provide the documents and information requested under regulation 11 or 12 commits an offence and is liable, on summary conviction in a Parish Court—

- (a) in the case of a person other than an individual, to a fine not exceeding one million dollars; or
- (b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

Reports of licensee.

14. A licensee shall file with the Commission, in the form, manner and frequency determined by the Commission, reports or any record required to be kept pursuant to the Act or these Regulations.

Audit of the accounts of licensee.

15.—(1) An audit of the accounts of a licensee, pursuant to section 17 of the Act, shall include a review of such matters as may be specified by the Commission by notice published in the *Gazette*.

(2) The audited financial statements of a licensee, required to be submitted to the Commission, pursuant to section 17 of the Act, shall be in the form and manner determined by the Commission.

(3) An independent auditor appointed by a licensee under section 17(1) of the Act shall not be appointed for a term exceeding five years and shall report to the Commission any material breach committed by the licensee and any impairment to the licensee's ability to remain a going concern.

(4) A report provided by an independent auditor under paragraph (3) shall not be regarded as a contravention of any professional obligation to secrecy.

Client moneys.

16. Pursuant to section 18 of the Act—

- (a) moneys held by a licensee for a client, shall be held in a client trust account, in the joint names of the licensee and the client;
- (b) a licensee shall disclose, in writing, to a client, the terms on which moneys belonging to that client are held by the licensee;
- (c) a licensee shall promptly reconcile the accounts of the clients of the licensee;

	(d) a licensee shall implement a procedure whereby at least two officers of the licensee endorse the disbursement of client moneys.
Liability of trust service provider.	17. A trust service provider who fails to comply with an obligation under these Regulations or who otherwise breaches a provision of these Regulations is liable for— (a) any loss or depreciation in value of the trust property resulting from the breach; and (b) any profit which would have accrued to the property, had there been no breach.
Documents to be furnished with application to register principal representative.	18. An applicant for registration as a principal representative, pursuant to section 17A(2) of the Act, shall furnish with the application, the following documents— (a) the names and contact information of two referees; (b) confidential reports from two previous employers; (c) evidence of the academic qualifications of the applicant; (d) a credit report from a credit bureau; and (e) such other documents as may be required by the Commission.
Form and manner of notice of legal or other proceedings.	19. The written notice of legal or other proceedings of a licensee, pursuant to section 19 of the Act, shall be given in the form and manner determined by the Commission.
Notice on merger, takeover or cessation of business.	20.—(1) The written notice to be submitted to the Commission by a licensee that is a company, on the intended merger or take-over of the business of the licensee or the intended cessation of operations of the business of the licensee, pursuant to section 20 of the Act, shall be given in the form and manner determined by the Commission. (2) Where a licensee intends to cease the operations of the business of the licensee, the licensee shall, in accordance with the guidelines issued under section 46 of the Act, submit along with the notice referred to in paragraph (1) a written termination plan.
Professional indemnity insurance.	21. Satisfactory evidence of professional indemnity insurance shall be coverage of the aggregate of at least two times the annual gross income or projected gross income of the licensee, as the case may require.
Declaration of compliance.	22. A licensee shall file with the Commission, on an annual basis, and in the time specified by the Commission, a declaration of compliance, in the form and manner determined by the Commission, indicating that the licensee is operating its business in conformity with the Act and any regulations made under the Act.

Complaints. 23.—(1) A licensee shall establish a fair, timely and otherwise effective mechanism for the receipt, recording and handling of consumer complaints.

(2) The records to be kept in relation to each consumer complaint shall include—

- (a) the name of the complainant;
- (b) the date the complaint was received by the licensee;
- (c) the nature and description of the complaint;
- (d) when and how the complaint was investigated by the licensee;
- (e) whether the complaint included a breach of a regulatory requirement;
- (f) the date of response to the complaint; and
- (g) the date and summary of the resolution of the complaint.

Forms. 24. The Commission may, by notice published in the *Gazette*, specify the form and manner in which an application, statement, notice, return or any other document, required to be filed with the Commission for the purpose of these Regulations, shall be made.

Dated this 24th day of March, 2022.

JOHN ROBINSON, OD
Chairman
Financial Services Commission.

Approved by:

NIGEL CLARKE
Minister of Finance and the Public Service.