

TRUST AND COMPANY SERVICE PROVIDERS

BELIZE:

STATUTORY INSTRUMENT

No. _____ of 2007

REGULATIONS made by the International Financial Services Commission pursuant to section 28 of the International Financial Services Commission Act, Chapter 272 of the Laws of Belize, Revised Edition 2000, and all other powers thereunto it enabling.

(Gazetted, 2007.)

PART I

PRELIMINARY

Short title. 1. These Regulations may be cited as the

**TRUST AND COMPANY SERVICE PROVIDERS (BEST PRACTICES)
REGULATIONS, 2007.**

Interpretation. 2. (1) In these Regulations, unless the context otherwise requires -

“Commission” means the International Financial Services
Commission established under section 3 of the International
CAP. 272. Financial Services Commission Act;

“Service Provider” means a person who carries on a business that involves the provision of company administration services or Trustee or fiduciary services and in the course of doing so, provides one or more of the following services:-

- (i) acting as a company or partnership formation agent;
- (ii) acting as (or arranging for another person to act as) a director or secretary of a company or a partner of a partnership;
- (iii) providing a registered office; business address or accommodation, correspondence or administrative address for a company, partnership or for any other person;
- (iv) acting as (or arranging for another person to act as) a trustee of a trust;
- (v) acting as (or arranging for another person to act as) a nominee shareholder for another person;
- (vi) arranging the establishment of, or providing services in relation to, any legal entities not covered by the foregoing (e.g., a foundation).

(2) Words and phrases used in these Regulations but not defined herein shall have the same meaning as those respectively assigned to them in the International Financial Services Commission Act or the

CAP. 272.

SI 94 of 2001 International Financial Services Practitioners (Code of Conduct) Regulations, 2001.

Source of Regulations and their importance

3. (1) These Regulations are based on the ‘**Statement of Best Practice**’ prepared by the Trust and Company Service Providers’ Working Group which had been set up by the Offshore Group of Banking Supervisors to make recommendations for minimum standards to be adopted as an international standard and implemented on a global basis. Compliance or non-compliance with the said ‘Statement of Best Practice’ will be used by international organization such as the International Monetary Fund, the Financial Action Task Force, or the Caribbean Financial Action Task Force when they are engaged in an assessment of individual jurisdictions in respect of their policy/ procedures/ practices from a financial regulatory/ anti-money laundering standpoint.

Relationship to the International Financial Services Practitioners (Code of Conduct) Regulations S.I. 94 of 2001.

4. These Regulations are supplementary to and not in derogation of the International Financial Services Practitioners (Code of Conduct) Regulations which will continue to apply to the Service Providers who also fall within the definition of “IFS Practitioner” as set out in those Regulations.

PART II

GENERAL DUTIES OF SERVICE PROVIDERS

Integrity and competency.

5. (1) All Service Providers shall ensure that the individuals holding key positions within their establishment are persons of integrity and have no relevant adverse business, professional or personal history; and for this purpose, the relevant considerations would include –

- (i) professional or administrative reprimand;

- (ii) regulatory directions/public statements;
- (iii) disciplinary findings;
- (iv) civil fines;
- (v) criminal convictions;
- (vi) declaration of bankruptcy;
- (vii) adverse personal credit rating;

and would extend to a person's involvement as a director or senior manager/officer within a company that has been the subject of such considerations.

(2) The Service Providers shall ensure that the individuals within their establishment providing the service have relevant and appropriate level of competency/capability; and for this purpose the relevant considerations would include -

- (i) professional or other relevant qualifications;
- (ii) knowledge and/or experience relevant to the business concerned and appropriate to the employment status/role of the individuals concerned.

Corporate
governance.

6. The Service Providers should be able to demonstrate, if required, that they are in -

- (i) compliance with recognized general standards of corporate governance in respect of both the business itself and each company, partnership, trust and other legal entity ("the client(s)");
- (ii) compliance with national regulations with respect to money laundering and the financing of terrorism;

- (iii) compliance with all relevant and applicable financial regulatory standards;
- (iv) compliance with all relevant and applicable domestic statutory requirements/obligations (e.g., companies law);
- (v) compliance with recognized standards in respect of directors/trustees responsibilities.

Customer due diligence.

7. (1) **The Service Providers shall adopt necessary measures to ensure that they are engaged** in effective customer due diligence - to satisfy the standards set out in the Basel Committee's Due Diligence Paper, published in October 2001, to the extent that the recommendations in that paper are relevant to non-banks. This should include proper procedures for -

- (i) customer identification;
- (ii) verification of identity of customer;
- (iii) risk profiling of customers (e.g. politically exposed persons);
- (iv) establishing the source of wealth;
- (v) establishing the source of funds;
- (vi) ongoing monitoring of a customer's activities;
- (vii) adequate documentation to meet KYC requirements.

(2) Specific issues on which attention should focus relate to information on the ultimate beneficial owner and/or controller of companies, partnerships and other legal entities, and the settler/protector/beneficiaries of trusts, which should be known to the Service Provider and be adequately documented.

Conduct of client business.

8. **The Service Provider should be able to demonstrate that client business is being properly conducted through the -**

- (i) identification and segregation of clients' assets and liabilities from the assets and liabilities of the Service Provider;
- (ii) effective handling of clients' assets covering safe custody and proper management of assets;
- (iii) maintaining adequate and orderly accounting records of clients' affairs;
- (iv) maintaining adequate client documentation (e.g., trust deeds);
- (v) ensuring that all transactions/decisions entered into, taken by or on behalf of clients are appropriately authorized/handled by persons with an appropriate level of knowledge, experience and status properly to effect such transactions or make the proper decisions according to the nature and status of the transaction/decisions involved; **for example -**

- (a) where discretion is exercised for or in relation to clients, all reasonable steps should be taken to obtain sufficient information in order to exercise that discretion or other powers in a proper manner and such discretion should only be exercised for a proper purpose;

- (b) any actual or perceived conflict of interest should be avoided or appropriately disclosed; and where conflicts arise and cannot be resolved by disclosure and, internal rules of confidentiality, or rules on when or when not to act, the Service Provider

should withdraw its services in an orderly manner;

(c) all business (including the establishing, transferring or closing of business relationships with its customers) should be transacted in an expeditious manner;

(vi) ensuring that, where appropriate, there is a full understanding of the duties arising under the laws relevant to the administration and affairs of clients for which they are responsible.

Financial
soundness.

9. The Service Provider should be able to demonstrate that it is financially sound by -

(i) maintaining adequate and orderly accounting records of -

(a) the business of the Service Provider itself;

(b) the affairs of the clients;

(ii) maintaining adequate financial resources including -

(a) paid up capital; and/or

(b) liquid capital;

to enable the business to continue as a going concern and for the affairs of each client to be managed properly for an appropriate period in the event of a trading difficulty being experienced;

- (iii) providing evidence of compliance with any relevant financial regulatory standards;
- (iv) providing evidence of compliance with international accounting standards; and
- (v) maintaining adequate professional indemnity insurance cover.

Systems and
Procedures.

10. The Service Provider should be able to demonstrate that the following systems, procedures and controls are adequately addressed -

- (i) effective compliance functions - where appropriate, a skilled and experienced person should be designated as a compliance officer;
- (ii) effective reporting procedures and effective systems to submit timely and accurate information to the appropriate authorities - where appropriate, a skilled and experienced person should be designated as an anti-money laundering reporting officer;
- (iii) an effective complaints handling system maintaining a record of complaints and the actions taken to resolve them;
- (iv) maintaining at an appropriate location in Belize adequate, orderly and up to date records of all business transactions of the Service Provider and instructions received from clients, including -
 - (a) the accounting records of the business;
 - (b) the accounting records of each client;

- (c) records of the internal organization and risk management systems;
 - (d) client documentation (e.g. client requirements, customer due diligence requirements);
 - (e) document retention policies appropriate to the business of the Service Provider and in compliance with relevant legal obligations;
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- (v) maintaining a manual of appropriate policies and procedures for the operation of the Service Provider's business and the provision of services to each client; including business acceptance procedures intended to safeguard the business and the clients and their assets and to ensure that all authorized and proper transactions are undertaken;
 - (vi) maintaining an adequate span of control with a sufficient number of appropriately skilled and experienced persons able to exercise independent judgment in relation to the running of the Service Provider's business;
 - (vii) ensuring that those engaged in the business have appropriate relevant experience and qualifications;

[Note: Exceptions to (vi) and (vii) above may apply in respect of sole practitioners where, for example, an individual trustee function is controlled by the Court];

- (viii) ensuring that continuous professional development requirements are satisfactorily met; and

- (ix) maintaining effective procedures to ensure that no false or misleading information is provided (including advertisements).

Access to and sharing of key information.

11. All Service Providers shall ensure that -

- (i) the information on the ultimate beneficial owner and/or controllers of companies, partnerships and other legal entities, and the trustees, settler, protector/beneficiaries of trusts is known to the Service Provider and is properly recorded;
- (ii) any change of client control/ownership is promptly monitored (e.g., in particular where a Service Provider is administering a corporate vehicle in the form of a “shelf” company or where bearer shares or nominee shareholdings are involved);
- (iii) there is an adequate, effective and appropriate mechanism in place for information to be made available to all the relevant authorities (i.e., law enforcement authorities, regulatory bodies, IFSC, FIU’s, etc.)
- (iv) KYC and transactions information regarding the clients of the Service Provider is maintained in Belize.

Appointment of Auditors.

12. (1) In order to ensure that the interests of the customer/client can be adequately safeguarded when the Service Provider is no longer able to carry on the business for any reason, the Service Providers who handle/manage the funds/assets of clients shall appoint external auditors with relevant experience and appropriate qualifications and track record to carry out a full audit of the Service Provider’s business in accordance with international standards.

(2) The external auditor so appointed shall include in his report any breaches of the relevant legislation by the Service Provider or other material concerns.

(3) A copy of the external auditor's report shall be supplied to the Commission within three weeks of the Service Provider's financial year.

PART III GENERAL

Sanctions for breach or non-compliance.

SI 94 of 2001

13. A breach of or non-compliance with any of these Regulations by a Service Provider shall constitute professional misconduct within the meaning of Regulation 33 of the IFS Practitioners' (Code of Conduct) Regulations, 2001 and may be dealt with under those Regulations.

Liability under Code of Conduct Regulations not affected.
SI 94 of 2001

14. Nothing contained in these Regulations shall be construed as affecting the liability of a Service Provider under the IFS Practitioners' (Code of Conduct) Regulations 2001, provided that where the conduct in question amounts to professional misconduct under both of these Regulations, the Service Provider will be liable to be proceeded against only under one of them.

Commencement

15. These Regulations shall come into force on the _____ 2007.

MADE by the International Financial Services Commission this ____ day of _____ 2007.

(SYDNEY CAMPBELL)
(CHAIRMAN)
International Financial Services Commission

APPROVED by the Minister responsible for International Financial Services this ___ day of _____ 2007.

(SAID W. MUSA)
Minister of Finance,
Minister responsible for
International Financial Services
