

DRAFT 16/09/02

**FINANCIAL AND CORPORATE SERVICE PROVIDERS ACT, 2000
(No. 41 of 2000)**

**FINANCIAL AND CORPORATE SERVICE PROVIDERS
(GENERAL) REGULATIONS, 2002**

The Minister, in exercise of the powers conferred by section 21 of the Financial and Corporate Service Providers Act, 2000, makes the following regulations -

- Citation and commencement.** 1. These Regulations may be cited as Financial and Corporate Service Providers (General) Regulations, 2002 and shall come into operation on the day of _____, 2002.
- Interpretation.** 2. In these Regulations -
- No. 41 of 2000.** “the Act” means the Financial and Corporate Service Providers Act, 2000;
- “auditor” means a public accountant licensed under the provisions
- No. 8 of 1991.** of the Public Accountants Act, 1991;
- “key staff” means in the case of a financial and corporate service provider -
- (a) who is a sole trader, the financial and corporate service provider himself;
 - (b) which is a body corporate, any officer, director, or manager of that body corporate;
 - (c) which is a partnership, each partner;
- “licensee” means a person holding a licence under the Act;
- “professional associate” means a person other than an employee of the licensee, who under contract with

a licensee, agrees to act in or from within The Bahamas as a director or secretary of a client company;

“regulated activity” means any of those services referred to in the definition of “financial and corporate services” in section 2 of the Act.

Application.

3. These Regulations shall apply to all licensees under the Act.

Duty of licensees.

4. Every licensee shall -

- (a) know its clients;
- (b) act with due skill, care and diligence in providing any service which it provides or holds itself out as willing to provide;
- (c) act with a high standard of integrity and professional conduct in the performance of his duties as a licensee;
- (d) refrain from engaging itself or any of his employees in any illegal or improper conduct;
- (e) deal fairly with its clients in any transaction entered into or which it arranges to be entered into, on behalf of client; and
- (f) maintain adequate financial resources to continue as an on-going concern.

Licensee to know statutory obligations.

5.(1) Every licensee shall know its obligations under -

- (a) the Act;
- (b) the Financial Intelligence Unit Act, 2000;
- (c) the Financial Transactions Reporting Act, 2000;

- No. 41 of 2000.** (d) the International Business Companies Act, 2000;
- No. 40 of 2000.** (e) the Companies Act, 1992;
- No. 45 of 2000.** (f) the Exempted Limited Partnership Act, 1995; and
- No. 18 of 1992.** (g) any other relevant law applicable to the licensee in
- No. 10 of 1995.** force in The Bahamas.

- No. 10 of 1995.** (2) Every licensee shall comply with any statutory obligations -
- (a) when establishing new business relationships and verification procedures of identity;
 - (b) for the ongoing monitoring of business relations;
 - (c) for establishing controls and communications of procedures;
 - (d) in the reporting of suspicious transactions;
 - (e) in respect of record keeping; and
 - (f) in respect of the training and awareness of staff.

- Terms of business and client agreements.** 6.(1) A licensee shall ensure that every client, new or existing, be made aware of the terms upon which a licensee is providing its services.
- (2) A licensee shall ensure as soon as reasonably practicable that either a written client agreement is entered into between itself and the client, that the client has been notified in writing of the terms of business relating to the services the licensee provides.
- (3) A copy of the written client agreement signed by the client, or evidence of notification of the terms of business, shall be retained by the licensee.
- (4) A written client agreement or a licensee's term of business shall specify -
- (a) the fees to be charged;

- (b) the basis of the calculation of the fees;
- (c) the method by which such fees are to be collected, and the method by which increases in fees are notified to the client;
- (d) the conditions for the termination of services by the licensee, including, if applicable, the provisions for the refund of any fees due to the client as a result of the termination of services; and

(5) Where a licensee acts as, provides, or arranges for others to provide, a nominee shareholder (whether as a registered shareholder or the custodian of a share warrant) for the beneficial owner of a client's company, or otherwise holding the position as a member of a company on behalf of another, the licensee shall ensure that in all such cases a written nominee agreement or such other trust instrument as may be appropriate exists, and shall retain a copy of such in its records.

**Control
systems
and
procedures.**

7.(1) Every licensee shall have in place documented control systems and procedures, which are appropriate to the level and scope of its business, to enable it to comply with these Regulations.

(2) Every licensee shall if required to, demonstrate its compliance measures to the Inspector by producing relevant books, records or other documents of each client of the licensee.

(3) Every licensee shall make reasonable efforts to ensure that any company that it forms, sells, transfers or disposes of for a client, and each client company for which it provides regulated activities, comply with any statutory obligations under any relevant law as are applicable to the particular activity being provided.

(4) Every licensee shall ensure that its key staff and other employees who perform any regulated activities, carry out their duties in a diligent and proper manner in accordance with the systems, controls and procedures referred to in paragraph (1).

Annual on-site and off-site examinations. 8. (1) The Inspector shall in accordance with section 12 of the Act conduct on-site and off-site examinations of the business of each licensee at any time to ascertain whether the control systems and procedures are in place and that there is compliance with all statutory obligations..

(2) An annual off-site examination shall confirm the details contained in the Inspector's register of financial and corporate service provider and in addition shall require -

- (a) the business address of the instructing client of the licensee and (if any) other relevant addresses;
- (b) a contact name;
- (c) a telephone number;
- (d) a facsimile number;
- (e) an electronic mail address;
- (f) a website address (if applicable);
- (g) the names of all key staff;
- (h) the details of staff who act as directors or secretaries of client companies and of professional associates and how many directorships or secretaryships each holds;
- (i) the number of written complaints logged during the year if any;

(j) a declaration that the licensee is able to meet its liabilities taking into account contingent and prospective liabilities;

(k) the details of which regulated activities are being provided;

(l) the number of client companies for which services are provided; and

(m) a declaration of compliance with the regulatory guidelines.

**Licensee
to cooperate
with
Inspector.**

9.(1) A licensee shall cooperate in an open and honest manner with the Inspector and keep the Inspector informed of any material information the licensee may be reasonably expect to be considered relevant to the Inspector's functions or to his decision to grant or renew a licence.

(2) A licensee shall inform the Inspector within thirty days of any change in the particulars of a licensee as set out in the application.

(3) A licensee is not obligated to disclose any information subject to legal privilege.

**Provision of
directors.**

10.(1) Where a licensee provides directors for a client company, the licensee shall take reasonable steps to ensure that such persons, or in the case of a director which is a body corporate, its directors -

(a) are suitable and competent for the office;

(b) understand the statutory obligations duties and responsibilities of directors under any relevant laws within The Bahamas or in any other jurisdiction.

(2) Where a licensee's own member of staff or professional

associates act as director of a client company, the licensee shall take reasonable steps to ensure that such individuals effectively carry out their responsibilities and statutory obligations in respect of each client company in a diligent and proper manner.

(3) In assessing the ability of a person to fulfil his responsibilities as a director of a client company, a licensee shall take into consideration -

(a) the procedures and control systems which are in place;

(b) the competence of support staff available to those acting as directors for a number of client companies; and

(c) the complexity of the business and the level of activity of each of the client companies for which the person acts as director, as this may have an effect on the scope and extent of commitment required from that person to fulfil his responsibilities.

**Financial
resources going
concern and
reporting
requirements.
No. 18 of 1992.**

11.(1) A licensee shall meet its financial liabilities taking into account contingent and prospective liabilities and shall continue in operation as long as the licensee satisfies the going concern requirement.

(2) All licensee shall make a declaration as part of its annual compliance return, that its business meets the going concern requirement under paragraph

(1).

(3) The auditor of a licensee shall -

(a) submit to the Inspector within four months of the year end audit report a copy of the auditor's report for the proceeding year; and

(b) demonstrate to the Inspector that the licensee has systems in place to enable the licensee to comply with all statutory obligations.

**Auditor's
report.**

12. The auditor shall state whether, in his opinion -
- (a) the licensee has maintained throughout the financial year, systems adequate to enable the licensee to comply with all statutory obligations; and
 - (b) reconciliations of clients' money have been performed in accordance with the Financial and Corporate Service Providers (Clients' Money) Regulations, 2002.

**No. of 2002.
Circumstances
in which
Inspector
to be notified.**

- 13.(1) A licensee shall notify the Inspector as soon as reasonably practicable -
- (a) of any civil proceedings brought against the licensee or any group, company of the licensee in connection with the conduct of regulated activities by the licensee in any jurisdiction, where the amount claimed or disputed exceeds or is likely to exceed the sum of ten thousand dollars.
 - (b) of any convictions of the licensee or any of its employees or professional associates for any offence -
 - (i) relating to investment business, banking or other financial services, building societies, credit unions, consumer credit, friendly societies, insurance and industrial and provident societies;
 - (ii) under the Companies Act, 1992, the International Business Companies Act, 2000 or any legislation having equivalent or similar effect in any country or territory outside The Bahamas or any offence relating to the formation, management or administration of companies in any jurisdiction;
 - (iii) relating to insolvency; or

**No. 18 of 1992.
No. 45 of 2000.**

(iv) fraud or dishonesty;

No. 18 of 1992.

(c) of any order by the court under section 88 of the Companies Act, 1992 that a director is unfit to be concerned in the management of a public company or any provision having similar effect in any other jurisdiction;

No. 44 of 2000.

(d) of the making of any order under the Proceeds of Crime Act, 2000;

No. 42 of 2000.

(e) of the service of any summons or issue of any warrant under sections 3, 4 or 7 of the Criminal Justice (International Co-operation) Act, 2000;

No. 43 of 2000.

(f) of the making of any order under section 33 of Dangerous Drugs Act, 2000;

(g) of any matter, whether arising in The Bahamas or elsewhere, concerning the affairs of either the licensee or any of its client companies which the licensee considers material to the functions of the Inspector;

(h) of any indictment against, or the conviction of, a client company, any key staff of the licensee, any officer of the client company, or the beneficial owner of a client company in relation to any proceedings relating to that client company, or for any charges of drug trafficking or money laundering whether in The Bahamas or in any other jurisdiction;

(i) by notice in writing providing full details of any serious disciplinary action it takes against any of its key staff;

(j) full details of the action taken and copies of any notices or written warnings issued by the licensee to the relevant employee of which must be provided and copies of any such report should be

made available to the person concerned, and such person shall have the right to make representations to the Inspector with regard to the relevant circumstances surrounding the disciplinary action;

(k) of any serious or prolonged breakdown in its administrative systems as soon as it becomes aware that such breakdown could result in an inability to maintain proper records;

(l) if it is no longer able to comply with regulation 11 or make its annual compliance return declaration.

(2) For the purposes of paragraph (i), “serious disciplinary action” includes circumstances where the licensee suspects or has reasonable cause to believe that a member of staff -

(a) has been guilty of fraud, theft or other dishonesty; or

(b) has contravened any provision made by or under any enactment or any internal rule or regulation of the licensee designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice;

(c) has engaged in any business practice appearing to be deceitful or oppressive or otherwise improper or which casts doubt on his competence or soundness of judgement,

and which has resulted in the giving of a written warning as to the future conduct of the member of staff, which may result in the termination or suspension of employment, or which resulted in the termination of employment initiated by the member of staff.

(3) A licensee shall notify the Inspector forthwith of any of the following occurrences -

- (a) the presentation of a petition for the winding up of the licensee;
- (b) the appointment of a receiver, liquidator, provisional liquidator, administrator or trustee in bankruptcy to the licensee;
- (c) the making of any composition or arrangement with creditors of the licensee;
- (d) where the licensee is a partnership or unincorporated association, an application to dissolve the partnership or unincorporated association or the presentation of a petition for a bankruptcy order against a partner or an award of sequestration;
- (e) where the licensee is an individual, the presentation of a petition for a bankruptcy order against the individual or an award of sequestration;
- (f) the refusal or revocation of a licence in respect of any licence authorising the licensee to carry on investment, banking, money lending, insurance or fiduciary business in The Bahamas or in any other jurisdiction outside The Bahamas;
- (g) the appointment of an inspector by a statutory or other regulatory authority to investigate the affairs of the licensee.

(4) A licensee which decides voluntarily to stop carrying on business, shall notify the Inspector not less than thirty days before the decision and shall provide details of the arrangements it has made in order to ensure an orderly winding up or transfer of its client's business.

(5) A licensee shall notify the Inspector not less than thirty days in advance of a proposed merger of its business, a management buy-out, takeover or other similar transaction.

Complaints.

14.(1) A licensee shall ensure, in relation to any written complaint relating to the conduct of its business as a licensee, other than those relating to the level of fees charged in accordance with the client agreement or terms of business, that -

- (a) the complaint is recorded by the licensee;
 - (b) where appropriate, further details are requested from the complainant in writing with supporting evidence;
 - (c) the complaint is brought to the attention of a person, within the licensee, with the appropriate authority to deal with complaints;
 - (d) the complaint is investigated promptly and thoroughly; and
 - (e) appropriate action is taken and such action noted.
- (2) A licensee shall keep a register of complaints which shall contain -
- (a) the date when the complaint was made;

- (b) the date when the complaint was reported to the person with authority to deal with complaints;
- (c) details of the nature of the complaint including the address of the complainant; and
- (d) details as to how and when the complaint was investigated and what action was taken.

(3) The register of complaints may be in summary form provided that a full record is kept elsewhere.

**Avoidance
of conflicts
of interest.**

15. (1) A licensee shall ensure to avoid conflict of interests between itself and its clients and between one client and another.

(2) Where a conflict of interest arises, the licensee shall promptly notify each of the clients concerned of this fact.

(3) Unless all clients with conflicting interests in any matter agree to the licensee continuing its services to the other clients concerned, the licensee shall discontinue its services to all the clients concerned.

(4) Where it becomes necessary, due to conflict of interest, to discontinue services to a client company or to transfer the client company to another licensee, the licensee must comply with the provisions of regulation 17(2).

**Advertising
by licensees.**

16. (1) A licensee that advertises its services shall ensure that the advertisement that it publishes -

- (a) contains a fair and accurate indication of the services that the licensee provides;
- (b) does not contain any reference to business practices which are illegal, and which imply circumvention of the law in The Bahamas or in any relevant jurisdiction, or have any dubious implications which may be harmful to the reputation of The Bahamas;
- (c) does not promote its services in a manner which suggests that the provision of such services will be on a no questions asked basis;
- (d) identifies the regulatory authority of that licensee with whom it is registered; and
- (e) contains the name and address of the licensee who issued it or caused it to be issued.

(2) If a licensee is in doubt as to whether the contents of an advertisement would be accepted to the Inspector, a licensee should request guidance from the Inspector.

Resignation

17.(1) If a licensee wishes to resign from acting on behalf of a client

