

DRAFT 16/09/02

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

**FINANCIAL AND CORPORATE SERVICE PROVIDERS
(OWNERSHIP AND STAFF REQUIREMENTS) 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 the Financial and Corporate Service Providers (Ownership and Staff Requirements) Regulations, 2002 and shall come into operation on the day of , 2002.

Interpretation. No. 41 of 2000. 2. In these Regulations -
“the Act” means the Financial and Corporate Service Providers Act, 2000;

“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;

“regulated activity” means any of the services referred to in the definition of “financial and corporate services” in

section 2 of the Act.

- Fit and proper criteria for key staff.**
- 3.(1) A person who holds a key staff position shall be required to meet the Inspector's fit and proper criteria.
- (2) The Inspector shall require the licensee and each key staff to disclose whether -
- (a) he is an undischarged bankrupt or has at any time been declared bankrupt;
 - (b) any money judgement has been made against him, and which has not been satisfied in full.
- (3) Where a licensee's whose sole regulated activity is to act as a director or alternate director for international business companies, the Inspector shall take into consideration -
- (a) the number of directorships held by that licensee and the nature of the activity of each of the companies concerned and whether the number of directorships held is within such licensee's competence; and
 - (b) the licensee's knowledge of and compliance with the statutory obligations and responsibilities of directors.
- (4) If a licensee provides directorship services for companies incorporated in any other jurisdiction, the licensee shall ensure that he knows the statutory obligations and responsibilities of directors under the relevant law of that jurisdiction.
- (5) Where the licensee is a company the Inspector shall on a case by case basis determine the fitness and properness of each person appointed as key staff.
- (6) The onus is on each person to satisfy the Inspector that they are fit and proper.

(7) Where the Inspector becomes aware of any instances of conduct which, if taken individually, may not be considered to demonstrate a lack of fitness and properness but which may cumulatively lead to that conclusion, the Inspector shall take account of the cumulative effect thereof.

Factors

4.(1) The Inspector shall in determining a person's fitness and properness have regard to -

considered

(a) any previous conduct of the person that the Inspector deems relevant;

when

(b) any conviction by a court in The Bahamas or in any other jurisdiction;

determining

(c) any failure to comply with a direction or order of a court in The Bahamas or in any other jurisdiction;

fit and properness.

(d) any refusal of an application by a regulator of a regulated activity, whether in The Bahamas or elsewhere;

(e) information received from any law enforcement or other supervisory agency, whether in The Bahamas or in any other jurisdiction;

No. 18 of 1992.

(f) any disqualification under section 87 of the Companies Act 1992 or any equivalent legislation in any other jurisdiction;

(h) personal references from previous employers and professional bodies;

(i) failure to supply information required in respect of a licence application including the personal and bankers questionnaire to be completed by key staff; and

(j) serious or repeated breaches of legislation or codes of conduct in The Bahamas or in any other jurisdiction.

(2) Where any legal or disciplinary investigations or proceedings are pending against a person, the outcome shall not be prejudged by the Inspector and the Inspector shall not form any opinion as to the fitness and properness of the person concerned until the matter has been determined.

(3) Notwithstanding paragraph (2), if the Inspector has reasonable grounds to believe that a person is not fit and proper to be appointed to or to continue in a key staff position, the Inspector shall advise the licensee in writing not to appoint or continue the appointment of that person.

**Ownership
of a
licensee.**

5.(1) Where a licensee is a company, the Inspector must be able to ascertain who controls and exercise significant influence over the management of the licensee and who are the ultimate beneficial owners of the licensee.

(2) The Inspector shall not grant a licence to a person unless the Inspector is satisfied that any person who exercises control over a licensee which is a body corporate and if different, the ultimate beneficial owners of the licensee, are fit and proper persons.

(3) No shares of a licensee shall be pledged without the consent of the Inspector and failure to obtain the Inspector's consent may result in the licensee being considered unfit and improper.

(4) Where there are one or more nominees holding shares in the capital of a licensee which is a body corporate, the Inspector shall require -

(a) a signed statement from each nominee or the director of each of the nominee corporate shareholders to the effect that the nominee holds the shares on trust for the beneficiary;

(b) a signed statement from each beneficiary to the effect that the nominee is holding shares on trust for them.

Trusts.

6.(1) The licensee shall provide the Inspector with full details of the use of a trust and its ownership structure.

(2) The Inspector may examine the deed of trust or other document relating to the establishment of the trust and any other documents he considers relevant.

(3) The Inspector must be able to identify all persons that control and exercise significant influence over a licensee in a trust.

(4) All influential parties within a trust shall meet the Inspector's fitness and properness criteria.

- (5) For the purpose of paragraph (4), “influential parties” mean
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- (a) the trustees of a trust which own a licensee, whether as the holder of shares in the capital of a licensee which is a body corporate or otherwise;
- (b) any person to whom a trustee seeks advice or to whom they are obliged, instructed or requested to turn to for advice or instruction, or in accordance with whose directions or instructions the trustee is accustomed to act in relation to the licensee; and
- (c) includes the settlor, protector, and beneficiaries of the trust.

Criteria for carrying on business outside 7. (1) A licensee wishing to establish an office for the purpose of carrying on any regulated activity outside The Bahamas shall notify the Inspector at least ninety days in advance of its intention to do so.

The Bahamas. (2) The Inspector shall look at the level of control the licensee will have over the operation of the overseas business and the effect or likely effect of the overseas business on the licensee’s local business and reputation of The Bahamas.

(3) If in the Inspector’s opinion the establishment of an overseas business may have a detrimental effect on the competence of or, by association with the licensee, a detrimental effect on the integrity of the licensee or The Bahamas, the Inspector shall advise the licensee in writing against the establishment of the overseas business.

Training 8. (1) The Inspector shall take into account the relevant training

of staff. and experience of all key staff of the licensee in relation to the regulated activities to be performed.

(2) The Inspector shall also consider the manner in which the regulated activities are performed, including compliance with any statutory requirements with regard to the specific services provided for client companies.

(3) Every licensee shall ensure that all key staff whose responsibilities include the performance of any of the regulated activities receive on an on-going basis, appropriate training to enable such staff to understand and fulfil their responsibilities competently.

(4) A record of staff training must be maintained for a period of two years by the licensee in order to prove to the Inspector that staff members are kept current with the law.

(5) All key staff should possess the appropriate experience, academic or professional qualifications relevant to the licensee's business.

(6) Any key staff who do not hold the relevant academic or professional qualifications, must be able to demonstrate that they have a sufficient knowledge of company law, company secretarial practice and related matters through relevant work experience, for at least a period of five years.

(7) In assessing the competence of key staff, the Inspector shall take into account the qualifications and experience of other key staff who provide technical support to that person and, where appropriate, the qualifications and experience of other support staff within the licensee's business.

(8) The Inspector may make it a condition of a licence that a person shall undertake a course of study or qualification relevant to his responsibilities within a specified period of time.

Made this day of , 2002

Minister responsible for Companies