



BULLETIN:
WHO SHOULD APPLY

**The Financial Services Commission
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March 2023



LEGISLATIVE REFERENCES: The Trust and Corporate Services Providers Act, 2017
Sections 2A, 5(1), 6(1)

1 PURPOSE

- 1.01** Section 2A of the Trust and Corporate Services Providers Act (the “TCSP Act”) stipulates that this Act applies to an individual, a firm or a company that provides a trust or corporate service as a business. This is so, irrespective of whether the services outlined in sections 14 and 15 of the Act are being offered by professionals such as Registered Public Accountants, Chartered Accountants, Attorneys-at-Law, Company Officers and Corporate Secretaries.
- 1.02** The term “as a business” as outlined in section 2A of the TCSP Act, is applied to mean “engaging in a particular activity for profit”. Therefore, all individuals, firms and companies providing the referenced services as a business or for profit must be licensed under the TCSP Act to do so.
- 1.03** Section 5(1) of the TCSP Act provides that, a person shall not provide or hold himself out as being capable of providing corporate services or trust services except where such a person is a licensee operating under and in accordance with a licence issued under the TCSP Act.
- 1.04** The purpose of this bulletin is to provide guidance regarding the applicability of the TCSP Act.

2 APPLICABILITY OF THE TCSP ACT

- 2.01** Under the TCSP Act a “corporate service” is defined as any service specified in section 14 of the said Act that is provided in or from Jamaica as a business. Similarly, a “trust service” means a service specified in section 15 that is provided in or from Jamaica as a business. The legislative remit therefore covers persons (individuals and corporate) who engage in any of the services delineated in sections 14 and/or 15 of the TSCP Act as the case may be, within or from Jamaica.
- 2.02** Pursuant to section 14 of the TCSP Act, corporate services are:
- (a) Acting as a coordinator or an assistant in the formation, management or administration of a firm or company;

- (b) Acting as (or arranging for another person to act as) a director or secretary of a company, an alternate director or a partner of a firm;
- (c) Providing a registered office, business address, correspondence address or administrative address, for a company or firm or for any other person;
- (d) Acting as (or arranging for another person to act as) a nominee shareholder for another person;
- (e) Arranging the establishment of any legal entities not covered by any of the foregoing paragraphs and providing any of the foregoing services to such entities; and
- (f) any other service that the Minister may, by order published in the Gazette, prescribe as a corporate service.

2.03 Under section 15 of the TCSPA, trust services are:

- (a) The creation of a trust;
- (b) Acting as a trustee, executor or administrator in relation to the trust;
- (c) Arranging for any person to act as trustee in respect of the trust;
- (d) Administration services in relation to the trust; and
- (e) any other service that the Minister may, by order published in the Gazette, prescribe as a trust service.

2.04 Under section 49 of the TCSP Act individuals and entities that were providing any of the aforementioned services in or from Jamaica as a business, prior to April 25, 2022, may continue to do so before the grant of the licence until a determination is made on their application as a service provider; provided that they submit an application to the Financial Services Commission ("FSC") for the appropriate licence on or before April 24, 2023. In the case of other individuals and entities who wish to commence doing business as a corporate service provider and/or trust service provider for the first time, an application for the appropriate licence must also be made to the FSC and the applicant must await the determination on that application before commencing business.

2.05 Persons who provide, or hold themselves out as capable of providing, a trust or corporate service in or from Jamaica but who are not licensed by the FSC to do so, commit an offence and are liable on summary conviction in a Parish Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

2.1 Professional Service Providers

2.1.1 Registered Public Accountants, Chartered Accountants, Attorneys-at-Law, Company Officers and Corporate Secretaries

The FSC's regulatory remit pursuant to the TCSP Act extends to professionals such as Registered Public Accountants, Chartered Accountants, Attorneys-at-Law, Company Officers, and Corporate Secretaries, **only if** their activities fall within the provisions of sections 14 and 15 of the TCSP Act; and section 2A which further qualifies these provisions by stipulating that the services must be provided as a business. Therefore, whilst the nature of services provided by certain professions may lend themselves to include the provision of "corporate" and/or "trust" services, the applicability of the TCSP Act to these professionals and the need for licensing under the TCSP Act, applies only if the services are captured under sections 14 and/or 15 of the TCSP Act and are being provided as a business.

2.1.2 For clarity, the following services are not regulated under the TCSP Act:

Services provided as/by:

- a director or company secretary that are not provided as a business or for profit;
- a director, company secretary or any other employee under a contract of employment;
- persons appointed to a board as director or company secretary (whether or not they are paid a stipend), and who are not providing such service as a business or for profit;
- a business that only rents out office premises or grants a right to occupy physical office space;
- a company as a company director, company secretary, or partner to another company who is a member of the same group;
- preparing and filing tax returns;
- preparing or drafting a will;
- preparation and filing of annual returns with the Companies Office of Jamaica ("COJ");
- preparing and filing Amended Articles of Incorporation with COJ;
- applying for Tax Registration Numbers;
- conduct of Board Evaluations, Director Assessments and Board Compensation Reviews;
- drafting Policies/Terms of Reference/Board Charters for consideration/approval by Management/ BOD;
- acting as a Scrutineer at Shareholders' Meetings;
- conducting corporate governance training and other related training services;
- preparation of Annual Reports;
- preparation and filing of the following Notices with the COJ:
 - (i) Notice of Change of Registered Office/Name;
 - (ii) Notice of Increase in Authorised Share Capital/Consolidation of Shares/Return of Allotment;
 - (iii) Notice of Registration of a Lien; and
- all of the following activities outlined respectively in the Proceeds of Crime (Designated Non-Financial Institution) (Attorneys-at-Law) Order, 2013 and the Proceeds of Crime (Designated Non-Financial Institution) (Public Accountants) Order, 2013:
 - (i) purchasing or selling real estate;
 - (ii) managing money, securities or other assets;
 - (iii) managing bank accounts or savings accounts of any kind or securities accounts; and
 - (iv) organizing contributions for the creation, operation or management of companies.
- legal services, being practise as a lawyer which pursuant to sections 5 and 31 of the Legal Profession Act of Jamaica ("LPA") can lawfully only be provided by an attorney-at-law and which involves the use of any legal document as defined pursuant to section 2 of the LPA; provided that if such services could be legally provided in Jamaica as a business by a person who is not an attorney-at-law as defined by section 5 of the LPA, they are not legal services;

- bookkeeping, cost accounting, installation of book-keeping, business or cost systems and preparation of financial statements;
- the following services outlined in section 15(3) of the Public Accountancy Act, which are carried out by a person who is defined as a registered public accountant pursuant to section 2 of the Public Accountancy Act:
 - (i) preparation or examination of financial, accounting or related statements; and
 - (ii) issuance of written opinion, report (including an audit report), or certificate concerning any such statement.

Questions regarding this bulletin may be directed to the:

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