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# Trust and Corporate Services Providers Regulatory Framework

**Presenter: Marc A. Morgan**

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# Your Presenter

**Name of Presenter:** Marc Anthony Morgan

**Academic Training:**

Norman Manley Law School

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**Professional Background:** Senior Legal Officer - Financial Services Commission

# The Objectives of the Presentation

- To Review the Objectives of the Trust and Corporate Services Providers Act (“TCSP Act”).
- To Review the Licensing and Registration Requirements Applicable to the Trust and Corporate Service Providers Regulatory Framework in Jamaica.
- To Review the Applicable Fees
- To Review the Consequences of Non-Compliance with the Regime

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# Objectives of the Trust and Corporate Services Providers Act

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# Objectives of the Trust and Corporate Services Providers Act

Section 3 of the Corporate and Trust Service Providers Act (the “TCPS Act”) states the following Objectives:

- (a) Protect the interests of entities and service providers through the licensing and supervision of service providers;
- (b) Maintain high standards of conduct, ethics and competence in the provision of services;
- (c) Ensure that service providers adhere to modern, internationally acceptable standards of best practice;

# Continued...

(d) Detect and prevent any illegal activity within the serves sector and in particular, money laundering, the financing of terrorist activity, illegal drugs, illegal firearms and other weapons;

(e) Provide for the establishment of procedures and policies to be followed by the service providers to enable service providers to-

- Know, identify and verify the identity of each client; and
- Exercise due diligence in the provision of services

# Objectives – FATF Recommendations

- *“Countries should require financial institutions and designated non-financial businesses and professions (DNFBPs) to identify, assess and take effective action to mitigate their money laundering, terrorist financing and proliferation financing risks.”* INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION, FATF Recommendations, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>
- DNFBPs per the recommendations include Trust and Company Service Providers and are people who as a business provide the following services:
  - acting as a formation agent of legal persons;
  - acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
  - providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
  - acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement;
  - acting as (or arranging for another person to act as) a nominee shareholder for another person.



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# Licensing and Registration Requirements



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# Trust and Corporate Services Providers

- Section 5(1) of the Trust and Corporate Services Providers Act, (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.

# Corporate Services – Section 14

<b>Corporate Service Provider</b>
Acting as a coordinator or an assistant in the formation, management or administration of a firm or company
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
Providing a registered office, business address, correspondence address or administrative address, for a company, firm, or any other person
Acting as (or arranging for another person to act as) a nominee shareholder for another person
Arranging the establishment of any legal entities not covered by any of the foregoing services and providing any of the foregoing services to such entities
Any other service that the Minister may, by order published in the Gazette, prescribe as a corporate service

# Trust Services – Section 15

<b>Trust Service Provider</b>
Creation of a trust
Acting as trustee, executor or administrator in relation to a trust
Arranging for any person to act as trustee in respect of the trust
Administration services in relation to a trust
Any other service that the Minister may, by order published in the Gazette, prescribe as a trust service

# Licensing and Registration Requirements

- Section 6 requires persons who propose to provide corporate service and trust services to apply to the Financial Services Commission (the “FSC”) for a licence to do so.
- The application is to be accompanied by such documents as may be required by the FSC from time to time and a non-refundable application fee.
- Before granting a licence the FSC is required to be satisfied that the person is a fit and proper person and must appoint a fit and proper person as principal representative of the applicant.
- The applicant is also required to meet any financial requirements that may be prescribed by the FSC.
- The applicant must meet all requirements for obtaining a licence set out in the Regulations and Guidelines.

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- Section 7 of TCSP Act speaks to fit and proper requirements. Section 7(2) provides that to determine fit and proper status regard should be had for:
  - Educational and professional qualifications.
  - Membership of relevant professional bodies and good standing within said body.
  - Knowledge of legal and other professional responsibilities.
  - Probity (morality, honesty, and decency)
  - Competence and soundness of judgment with respect to responsibilities for that position.
  - Diligence with which the person is fulfilling or likely to fulfil the responsibilities.
  - Whether the interests of clients or potential clients of the licensed service provider may be threatened by the person holding or continuing to hold that position.

# Continued...

- Section 7(3) provides that for fit and proper regard may be had for previous conduct and activities in business and financial matters including evidence that the person:
  - Engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper or which reflects discredit to the method of conducting business.
  - Contravention of any provision made under an enactment of the FSC designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in dealing in securities or in the provision of banking, insurance, investment or other financial services or in the management of a company or trust or due to bankruptcy.
  - Engagement or association with business practices or conduct in such a way as to cast doubt on competence or soundness of judgment.
  - Offences that were committed that involve fraud or other dishonesty.
  - Contravening any Act related to banking or a relevant Act within the meaning of the Financial Commission Services Act.

# Continued...

- Contravening any provision of the Proceeds of Crime Act or any regulations made under that Act.
- Contravening any enactment relating to the financing of terrorist activities.
- Contravening any enactment relating to illegal drugs, illegal firearms or other weapons.
- Contravening any provision of the United Nations Security Council Resolutions Implementation Act or any regulations made under the Act.

# Continued...

- Regulation 3(1) of the Trust and Corporate Services Providers (Licensing and Operations) Regulations requires applications to be accompanied by the following documents:
  - Where applicable, the constitutive documents that would permit the applicant to conduct the business for which the licence is being sought.
  - A business plan outlining the financial projection of the business for the next three years from after the last financial year of business.
  - A anti-money laundering, counter financing of terrorism and counter proliferation financing policies and procedures manual.
  - 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.
  - Where the audited financial statements are not available, the audited financial statements of shareholders (not being individuals) who exercise control of the affairs of the applicant.

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- Satisfactory evidence of professional indemnity insurance.
- Two references for each officer of the applicant (one character –reference and one reference verifying good financial standing).
- A criminal record report.
- Possession of employees, or intent to employ people with the competence to carry on the business of the applicant in an efficient manner and in accordance with the competency framework issued by the FSC

# Continued...

- Regulation 3(2) provides further detail about the required business plan.
  - The business plan is to be accompanied by an organizational chart
  - A description of the business proposed to be conducted.
  - A specification of the resources of the business, including the employees of the business.
  - Any outsourcing arrangements.
  - A description of the governance structure of the business.

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- The risk management framework of the business.
  - The internal control systems of the business.
  - The internal reporting arrangements of the business.
  - The current and intended external reporting arrangements of the business (inclusive of arrangements to report to the FSC).
  - Information on contracts and proposed contracts with agents, consultants and third parties to whom the licensee has outsourced or intends to outsource its services.
- Regulation 3(3) provides that where the applicant is part of a group the on the request of the FSC include in the application documents and information about the group.

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- Regulation 4 – Requires that the applicant furnish information to the FSC where there is a change in the documents or information for the application.
- Regulation 5 – Requires that a corporate governance framework be established which includes-
  - A conflict of interest policy for the licensee
  - A risk assessment of the licensee including a statement of risk appetite
  - Policies, procedures and control mechanisms to prevent inappropriate use of client moneys, for settlement of fees charged, and disbursement of client moneys.
  - Policies and procedures for training and professional development on an annual basis.
  - Policies, procedures, strategies, systems and controls 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. **Provision must be made for the annual update of said policies, procedures and control mechanisms.**
  - A code of ethics for employees

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- Regulation 6 – requires the appointment of an officer to be responsible for the implementation and monitoring of the corporate governance framework required by Regulation 5.
- Compliance is also required with the Guidelines: DOCUMENTS AND INFORMATION TO BE SUBMITTED BY SERVICE PROVIDERS, <http://www.fscjamaica.org/registration/content-1321.html>

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# Applicable Fees

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# Application for a Licence

- Persons (individuals and corporate entities) who have been providing corporate services and/or trust services as a business prior to April 25, 2022, may continue to do so until a determination is made by the FSC on their application, provided that they submit an application to the FSC on or before April 24, 2023 (**see Section 49**).
- Corporate entities that only provide trust services in respect of superannuation funds and retirement schemes, pursuant to **section 15(2)** of the TCSP Act are not required to apply for a licence.

# Applicable Fees

	<b>Application Fee</b>	<b>Licensing Fee Payable on First Grant of a Licence</b>	<b>Annual Renewal Fee</b>
Corporate Service Providers	Fifteen thousand dollars (\$15,000.00)	Three hundred and fifty thousand dollars (\$350,000.00)	Three hundred thousand dollars (\$300,000.00)
Trust Service Providers	Fifteen thousand dollars (\$15,000.00)	Five hundred thousand dollars (\$500,000.00)	Four hundred thousand dollars (\$400,000.00)
Trust and Corporate Services Providers	Fifteen thousand dollars (\$15,000.00)	Seven hundred thousand dollars (\$700,000.00)	Six hundred thousand dollars (\$600,000.00)
		<b>Registration Fee Payable on First Grant of a Registration</b>	<b>Annual Renewal Fee</b>
Principal Representative		One hundred and fifty thousand dollars (\$150,000.00)	Fifty thousand dollars (\$50,000.00)

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Principal Representative	One hundred and fifty thousand dollars (\$150,000.00)	Fifty thousand dollars (\$50,000.00)
<b>Other Fees</b>		
Replacement of lost, stolen, defaced, or destroyed licence	Fifteen thousand dollars (\$15,000.00)	
Intended change in status of licensee	Fifty thousand dollars (\$50,000.00)	
Late filing of documents, etc.	Twenty thousand dollars (\$20,000.00)	

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# Consequences of Non-Compliance with the Regime

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# Consequences of Non-Compliance with the Regime

- Section 5(2) – A person operating a trust or corporate services business without a licence commits an offence and is 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.
- Section 24 – Pretending to be a Licence – Is liable on summary conviction in 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.
- Section 16 – Records –A licensee who contravenes the Record Keeping Requirements of Section 16 commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding three million dollars or, in default of payment thereof, to a term of imprisonment not exceeding one year.

# Continued...

- Section 25 – Procurement of a Licence Fraudulently – Liable on summary conviction in a Parish Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.
- Section 26 – False or misleading statements in an application – liable on summary conviction in Parish Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.
- Section 27 – Destroying Documents – Liable on summary conviction in a Parish Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.
- Section 18 – Separation of Trust Funds – Contravention is liability for summary conviction in a Parish Court to a fine not exceeding three million dollars or, in default of payment thereof, to a term of imprisonment not exceeding twelve months.

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# Conclusion

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