

**2<sup>nd</sup> Draft,**  
**For consultation Purposes Only**

ANGUILLA

A BILL FOR  
**TRUST AND CORPORATE SERVICES  
PROVIDERS ACT, 2022**

Published by Authority

2nd DRAFT, For Consultation Purposes Only

**TRUST AND CORPORATE SERVICES PROVIDERS ACT, 2022**

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I Assent

\_\_\_\_\_  
Governor

\_\_\_\_\_  
Date

ANGUILLA

No. /2022

A BILL FOR

**TRUST AND CORPORATE SERVICES PROVIDERS ACT, 2022**

An Act to repeal the Company Management Act; and to make provision for the licensing and regulation of trust and corporate services providers carrying on business in or from within Anguilla.

[Gazette Dated: \_\_\_\_\_, 2022] [Commencement: Assent under section 57 of the Constitution]

ENACTED by the Legislature of Anguilla

PART 1

PRELIMINARY

**Interpretation**

1. (1) In this Act, unless the context otherwise requires -

“actuary” means a person who has qualified as an actuary by examination of the Institute of Actuaries in England or the Faculty of Actuaries in Scotland or the American Academy of Actuaries in North America, and who is a current member of good standing of one of the above professional associations or another professional actuarial association which is recognised by the Commission as such for the purpose of this Act;

“affiliate” has the meaning given by section 5(a);

“associate”, in relation to a person, means -

- (a) the spouse, child or stepchild of that person,
- (b) a company of which that person is a director,
- (c) a person who is an employee or partner of that person;
- (d) if that person is a company -
  - (i) any director or subsidiary of that company, and
  - (ii) any director or employee of any such subsidiary; and
- (e) if that person has with any other person an agreement or arrangement as to the acquisition, holding or disposal of shares or other interests in a company or under which they undertake to act together in exercising their voting power in relation to a company, that other person;

“associated company”, in relation to a licensee or regulated subsidiary company, means -

- (a) a holding company or subsidiary company of the licensee or regulated subsidiary company;
- (b) a subsidiary company of a holding company of the licensee or regulated subsidiary company;
- (c) a holding company of a subsidiary of the licensee or regulated subsidiary company; or
- (d) a company in the case of which a shareholder controller of the licensee or regulated subsidiary company, alone or with associates, is entitled to exercise, or control the exercise of, more than 50% of the voting power in general meeting;

“attorney-at-law” means an attorney admitted to practise before the Eastern Caribbean Supreme Court in Anguilla;

“auditor” means a person who -

- (a) is in good standing as a member of an association of chartered or public accountants or other similar body approved by the Commission as a reputable auditing association; and
- (b) is permitted by such association or other similar body to provide auditing services;

“authorisation” means an authorisation to act as a managing trust company, issued by the Commission under section 28;

“board”, in relation to a company, means the board of directors, committee of management, council or other governing authority of the company;

“by way of business” shall be construed in accordance with subsection (2);

“capital base”, in relation to a licensee or regulated subsidiary company, means the capital base determined by the Commission after consultation with the licensee or regulated subsidiary company;

“Category” means a category of licence mentioned in section 7(1);

“Category A licence” means a licence issued in the category mentioned in section 7(1)(a);

“Category A, Type Family Office, licence” means a licence issued in the category mentioned in section 7(1)(b);

“Category A, Type Restricted, licence” means a licence issued in the category mentioned in section 7(1)(c);

“Category B licence” means a licence issued in the category mentioned in section 7(1)(d);

“Category C licence” means a licence issued in the category mentioned in section 7(1)(e);

“chief executive”, in relation to a company, means a person who, alone or jointly with other persons, is responsible under the immediate authority of the board for the conduct of the business of the company and, in relation to a company whose principal place of business is outside Anguilla, includes a person who, alone or jointly with other persons, is responsible for the conduct of its business in Anguilla;

“client” includes a person who has -

- (a) entered into an agreement for the provision of services by a licensee when carrying on fiduciary services business; or
- (b) received or may receive the benefit of services provided or arranged by a licensee when carrying on fiduciary services business;

“Commission” means the Financial Services Commission established under section 2 of the Financial Services Commission Act;

“company” means a body corporate wherever incorporated;

“company management” means -

- (a) incorporating or forming companies and establishing or registering partnerships;
- (b) providing the registered office for companies and partnerships;
- (c) acting as registered agent for companies and partnerships;
- (d) preparing and filing statutory documents on behalf of companies and partnerships;
- (e) acting as director, manager or officer of companies and partnerships; or

(f) acting as nominee shareholder of companies,

and includes offering or agreeing to carry out any of the activities referred to in paragraphs (a) to (f) with the intent to carry on business;

“contract of employment” means a contract of service or apprenticeship, or a contract personally to execute any work or labour, whether express or implied and whether written or oral;

“contravention” includes failure to comply;

“controlled” has the meaning given by section 5(b);

“controller”, in relation to a company, means -

- (a) a managing director or chief executive of that company or of any other company of which that company is a subsidiary; or
- (b) a shareholder controller or an indirect controller;

“Court” means a court of competent jurisdiction;

“data” means information that -

- (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose; or
- (b) is recorded with the intention that it should be processed by means of such equipment;

“director” includes any person who occupies or acts in the position of director and, in relation to an unincorporated body, any member of the committee or other similar governing body;

“documents” includes information recorded in any form (including in an electronic communication) and, in relation to information recorded otherwise than in legible form, references to its production include references to the production of a copy of the information in legible form;

“dollar” or “\$” means a dollar in the currency of the United States of America;

“employee” means an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment;

“exempted activities” has the meaning given by section 3;

“family office” means a privately held company which manages the wealth of ultra-high net worth families and which may be established to serve a single family or multiple families, typically via its role as a fiduciary to the family;

“fiduciary services business” has the meaning given by section 2;

“financial services enactment” has the meaning specified in section 1(1) of the Financial Services Commission Act;

“financial year”, in relation to a licensee, means a period of not more than 12 months for which the audited financial statements of a licensee are prepared in accordance with this Act;

“fit and proper” has the meaning given by section 4;

“foreign regulatory authority” means an authority in a jurisdiction outside Anguilla which exercises a regulatory function;

“former licensee” means a person who -

- (a) does not hold and is not deemed to hold a licence; but
- (b) has previously held a licence;

“group”, in relation to a company, means -

- (a) that company;
- (b) any of its affiliates that shares a common ownership or directorship of any other company;
- (c) any other company which is its holding company or subsidiary; and
- (d) any other company which is a subsidiary of its holding company;

“holding company” has the meaning given by section 5(c);

“indirect controller”, in relation to a company, means a person in accordance with whose directions or instructions any director of that company or of any other company of which that company is a subsidiary, or any controller of that company, is accustomed to act;

“licence” means a licence issued by the Commission under section 9;

“licensee” means the holder of a licence;

“liquid assets” means legal tender or assets that are available and capable of providing liquidity within a reasonable period;

“managed trust company” means a licensee whose licence is subject to the condition that its fiduciary services business is carried on or managed by a Category A licensee approved by the Commission;

“management accounts”, in relation to a licensee or regulated subsidiary company, means its internal financial reports, records, and accounts, signed by its directors;

“management agreement” means a contractual agreement between a managed trust company and a managing trust company;

“manager”, in relation to a company, means a person other than a chief executive who, under the immediate authority of a director or chief executive of the company -

- (a) exercises managerial functions; or
- (b) is responsible for maintaining accounts or other records of the company;

“managing trust company” means a Category A licensee approved by the Commission to carry on or manage the fiduciary services business of a managed trust company;

“non-regulated subsidiary company” means a company which is a subsidiary of a licensee but to which the licensee’s licence does not extend;

“officer”, in relation to a company, means a director, chief executive, manager, resident manager, recognised agent and secretary of the company, and includes a person purporting to act in any such capacity;

“partnership” means -

- (a) a partnership established under the Partnership Act; or
- (b) a limited partnership registered under the Limited Partnership Act;

“personal data” means data which relate to a person who can be identified from those data;

“prescribed” means prescribed by regulations;

“principal office” means the principal place of business in Anguilla from which a person engages in or carries on its trade or business in, or from within, Anguilla;

“prohibition order” means an order made by the Commission under section 48 prohibiting an individual from performing a function;

“protector” means a person appointed as protector under the terms of a trust and capable of enforcing it, whether or not the person has other functions conferred upon the person in relation to the trust;

“recognised agent” means an individual appointed under section 15(1)(b);

“Registry” means the Registry of Companies;

“regulated subsidiary company” means a subsidiary company to which a licensee’s licence extends;

“regulations” or “the regulations” means regulations made under this Act;

“resident manager” means an individual resident in Anguilla for a minimum period of ninety days in aggregate in any relevant year, who, under the immediate authority of the board of a licensee or regulated subsidiary company, supervises the conduct of the licensee’s or regulated subsidiary company’s fiduciary services business;

“senior officer”, in relation to a company, means -

- (a) the chairman, deputy chairman, president or vice-president of the company's board;
- (b) the company's managing director, general manager, comptroller, compliance officer, secretary or treasurer; or
- (c) any other person who performs for the company functions similar to those normally performed by the holder of any office specified in paragraph (a) or (b) and who is appointed by the board to perform those functions;

“shareholder controller”, in relation to a company, means a person who -

- (a) holds, directly or indirectly, 15% or more of the issued share capital of the company;
- (b) is entitled to exercise or control the exercise of 15% or more of the voting power in a general meeting of the company; or
- (c) has a holding in the company directly or indirectly which makes it possible to exercise significant influence over the management of the company;

“significant shareholder” means a person who either alone or with an affiliate or related or connected person, is entitled to exercise or control the exercise of 10% or more of the voting power in a general meeting of the licensee or another company of which the licensee is a subsidiary;

“Sub-category” means a sub-category of licence mentioned in section 7(7);

“subsidiary company” has the meaning given by section 5(d);

“transmitted” means transmitted by electronic communication, facsimile transmission or other similar means that produce a document containing the text of the communication;

“trust” means the legal arrangement that exists (by whatever name) where a person (the “trustee”) holds or has vested in the trustee or is deemed to hold or have vested in the trustee any property which does not form, or which has ceased to form, part of the trustee's own estate -

- (a) for the benefit of another person, whether or not yet ascertained or in existence; or
- (b) for any purpose which is not for the benefit only of the trustee;

and the expression “trust” includes a trust and any equivalent or similar structure or arrangement, whether established in or under the laws of Anguilla or elsewhere and however named;

“trust business” means carrying on the business of acting as trustee of trust property;

“trust company” means a company that holds a licence under this Act;

“trust property” means property for the time being held in a trust;

“trustee” includes a trust company.

(2) For the purposes of this Act a person who carries on any activity shall be deemed to do so by way of business if the person receives any income, fee, emolument or other consideration in money or money's worth for doing so.

(3) For greater certainty, a body corporate -

- (a) that is incorporated or continued under the Companies Act; and
- (b) that carries on fiduciary services business outside Anguilla,

is deemed to carry on fiduciary services business from within Anguilla.

### **Meaning of “fiduciary services business”**

**2.** The term “fiduciary services business” means, subject to section 3, the business of -

- (a) acting as a registered agent, with services including -
  - (i) the formation of companies,
  - (ii) post-incorporation services facilitated through the Registry, and
  - (iii) the restoration, dissolution and filing of other transactions with the Registry on behalf of companies;
- (b) providing company management and administration services, including -
  - (i) the provision of advice in relation to the formation, management or administration of companies, and
  - (ii) engaging with the principals of a company for the provision of day-to-day services, the preparation of contracts, and the filing of statutory documents;
- (c) providing, to companies, corporate or individual directors,
- (d) providing, to companies, individuals or companies to act as company secretary, with services including -
  - (i) registering shareholders and handling communications to shareholders,
  - (ii) paying dividends to shareholders,
  - (iii) recording and maintaining the minutes of board meetings and general meetings,
  - (iv) registering charges against the company's assets, and
  - (v) ensuring that the company is in compliance with all relevant statutory provisions;
- (e) providing individuals or companies to act in any capacity as officer of a company, other than as director or company secretary,
- (f) providing to companies, nominee services, including acting as or providing nominee shareholders, and addresses;

- (g) acting as director of a company;
- (h) providing company accounting services, including -
  - (i) preparing management accounts,
  - (ii) issuing invoices,
  - (iii) collecting payments,
  - (iv) preparing the payroll of employees, and
  - (v) paying trade licence fees and other statutory fees that may accrue in the conduct of the company's business activities;
- (i) acting as a trustee to trust structures established within or outside of Anguilla;
- (j) providing trust accounting services to ensure the proper preparation of accounts for trust assets; and
- (k) providing trust management and administration services, including -
  - (i) the formation of trusts,
  - (ii) the provision of advice in relation to the formation, management or administration of trusts,
  - (iii) the provision of services to manage and administer the affairs of a trust;
  - (iv) acting as corporate or individual trustee or protector for trusts, and
  - (v) the provision to trusts of corporate or individual trustees or protectors.

**Meaning of “exempted activities”**

3. (1) The following activities are exempted from the operation of section 2 and accordingly are not fiduciary services business for the purposes of this Act -

- (a) acting as a director of a company that has an established place of business whether within or outside Anguilla, provided that no services consisting of or comprising fiduciary services business are supplied to the company by the director (other than acting as director);
- (b) acting as company secretary of a company that has an established place of business whether within or outside Anguilla, provided that no services consisting of or comprising fiduciary services business are supplied to the company by the person concerned (other than acting as company secretary);
- (c) the acceptance of money on terms under which the money -
  - (i) is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services and is repayable in the event of the property or services not in fact being sold, hired or otherwise provided,

- (ii) is paid by way of security for the performance of a contract or by way of security in respect of loss that may result from the non-performance of a contract, or
- (iii) without prejudice to subparagraph (ii), is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise;
- (d) acting as guardian of a minor or person under legal disability where the appointment is made by, and where the discharge of the functions of guardian is subject to the supervision of, the Court;
- (e) acting as trustee of testamentary trusts created by the will of a person who was resident or domiciled in Anguilla at the time of the execution of the will or at the time of death, provided that the person so acting is an attorney-at-law;
- (f) any activity carried on under the authority of and in accordance with the conditions of a licence, registration or authorisation granted under any of the financial services enactments; and
- (g) any particular activity, transaction or appointment specifically exempted from the operation of section 2 by written instrument of the Commission.

(2) For the purposes of subsection (1)(g) -

- (a) an application for such an exemption shall be made in such form and manner, and shall be accompanied by such information and documents, as the Commission may require;
- (b) the application shall be accompanied by such fee as may be prescribed by regulations;
- (c) the application may be refused or granted subject to such written conditions as the Commission may consider necessary or expedient;
- (d) the Commission may at any time after receipt of the application require the applicant to furnish such additional information and documents as it considers necessary or desirable; and
- (e) the exemption may be revoked or varied at any time by the Commission by written notice to the person to whom it was granted.

(3) Notwithstanding section 2, a person does not carry on a fiduciary services business by reason only of the fact that the person acts as a director, manager or officer -

- (a) of not more than 12 companies in which the person does not have a significant interest;
- (b) of any company in which the person has a significant interest; or
- (c) of not more than one company by which the person is employed under a contract of service.

(4) For the purposes of subsection (3), a person has a significant interest in a company if the person is the holder and beneficial owner of shares in the company that entitle the person -

- (a) to exercise 25% or more of the voting rights of the company at a general meeting of the company;
- (b) to a share of 25% or more in dividends declared and paid by the company; and
- (c) to a share of 25% or more in any distribution of the surplus assets of the company.

(5) For the avoidance of doubt, an activity that is not exempted from the operation of section 2 by or under this section shall not, by reason of that fact alone, be deemed to be fiduciary services business; and, accordingly, the question of whether or not that activity is fiduciary services business shall be determined solely by reference to the provisions of section 2.

#### **Meaning of “fit and proper”**

**4.** (1) For the purposes of this Act “fit and proper”, in relation to a person, means a determination by the Commission taking into account -

- (a) the person’s probity, competence, experience and soundness of judgment for fulfilling the responsibilities of a licensee or regulated subsidiary company;
- (b) the diligence with which the person is fulfilling or likely to fulfil those responsibilities;
- (c) whether the interests of the person’s clients are, or are likely to be, in any way threatened by the person holding a licence;
- (d) the person’s educational and professional qualifications, membership of professional or other relevant bodies and any evidence of the person’s continuing professional education or development;
- (e) the person’s knowledge and understanding of the legal and professional obligations to be assumed or undertaken;
- (f) the person’s policies, procedures and controls for the vetting of clients; and
- (g) the person’s record of compliance with such relevant financial services enactments, and codes, as may be applicable.

(2) Without prejudice to the generality of subsection (1), regard may be had to the previous conduct and activities of the person concerned and, in particular, to any evidence that the person has -

- (a) committed an offence, whether within or outside Anguilla, and in particular an offence involving fraud or other dishonesty or involving violence;

- (b) contravened any provision contained in or made under -
  - (i) this Act, or
  - (ii) such relevant financial services enactments, and codes, as may be applicable;
- (c) engaged in any business practices, whether unlawful or not -
  - (i) appearing to the Commission to be deceitful or oppressive or otherwise improper, or
  - (ii) which otherwise reflect discredit on the person's method of conducting business or the person's suitability to carry on fiduciary services business; or
- (d) engaged in or been associated with any other business practices or otherwise behaved in such a way as to cast doubt on the person's competence and soundness of judgment.

**Meaning of “affiliate”, “controlled”, “holding company” and “subsidiary company”**

5. For the purposes of this Act -

- (a)(i) one company is an affiliate of another company if one of them is the subsidiary of the other, or both are subsidiaries of the same company, or each of them is controlled by the same person; and
- (ii) if two companies are affiliated with the same company at the same time, they are affiliated with each other;
- (b) a company is controlled by a person if any shares of the company carrying voting rights sufficient to elect a majority of the directors of the company are, except by way of security only, held directly or indirectly by or on behalf of that person;
- (c) a company is the holding company of another if that other company is its subsidiary; and
- (d) a company is a subsidiary of another company if it is controlled by that other company.

PART 2

REGULATION OF FIDUCIARY SERVICES BUSINESS

**Regulation of fiduciary services business**

6. (1) A person other than a company shall not carry on by way of business any fiduciary services business in or from within Anguilla.

(2) A company shall not carry on by way of business any fiduciary services business in or from within Anguilla except under the authority of and in accordance with the conditions of a licence.

(3) A licensee does not require a licence under the Trades, Businesses, Occupations and Professions Licensing Act in respect of its trust business or company management business.

(4) A subsidiary company of a licensed company shall not carry on by way of business any fiduciary services business in or from within Anguilla except under the authority of and in accordance with the conditions of the licensed company's licence.

(5) A person who contravenes subsection (1), (2) or (3) commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for a term of 2 years or to both.

#### **Category and extension of licence**

7. (1) A licence may be issued only to a company and shall be in one of the following categories -

- (a) Category A;
- (b) Category A, Type Family Office;
- (c) Category A, Type Restricted;
- (d) Category B; and
- (e) Category C.

(2) A Category A licence -

- (a) authorises the licensee, for the purposes of this Act and subject to the conditions of the licence, to carry on any fiduciary services business in or from within Anguilla without restrictions;
- (b) authorises the licensee to be eligible to act as a managing trust company; and
- (c) authorises any director, manager or employee of the licensee, for the purposes of this Act and subject to the conditions of the licence, to carry on any fiduciary services business in or from within Anguilla.

(3) A Category A, Type Family Office, licence -

- (a) may only be granted for the management or administration of trusts and companies in excess of 500 in the aggregate, which operate as a family office;
- (b) authorises the licensee, for the purposes of this Act and subject to the conditions of the licence, to carry on any fiduciary services business in or from within Anguilla; and
- (c) authorises any director, manager or employee of the licensee, for the purposes of this Act and subject to the conditions of the licence,

to carry on any fiduciary services business in or from within Anguilla.

(4) A Category A, Type Restricted, licence -

- (a) may only be granted for management or administration which is restricted to not more than 500 trusts and companies in the aggregate;
- (b) authorises the licensee, for the purposes of this Act and subject to the conditions of the licence, to carry on any fiduciary services business in or from within Anguilla; and
- (c) authorises any director, manager or employee of the licensee, for the purposes of this Act and subject to the conditions of the licence, to carry on any fiduciary services business in or from within Anguilla.

(5) A Category B licence -

- (a) authorises the licensee, for the purposes of this Act and subject to the conditions of the licence to carry on any fiduciary services business specified in section 2(a) and (b), in or from within Anguilla; and
- (b) authorises any director, manager or employee of the licensee, for the purposes of this Act and subject to the conditions of the licence, to carry on any fiduciary services business specified in section 2(a) and (b), in or from within Anguilla.

(6) A Category C licence -

- (a) authorises the licensee, for the purposes of this Act and subject to the conditions of the licence to carry on any fiduciary services business specified in section 2(i), (j) and (k), in or from within Anguilla; and
- (b) authorises any director, manager or employee of the licensee, for the purposes of this Act and subject to the conditions of the licence, to carry on any fiduciary services business specified in section 2(i), (j) and (k), in or from within Anguilla.

(7) An applicant for a licence may apply for the licence to extend to a wholly owned subsidiary company of the applicant in relation to any of the following Sub-categories or the applicant may apply for any of those Sub-categories to be included in the scope of the applicant's licence -

- (a) Sub-Category D;
- (b) Sub-Category F;
- (c) Sub-Category M;
- (d) Sub-Category N;
- (e) Sub-Category P;

- (f) Sub-Category T; and
  - (g) Sub-Category V.
- (8) The following provisions apply in respect of Sub-Categories -
- (a) Sub-Category D authorises the provision of directorship services;
  - (b) Sub-Category F authorises the provision of -
    - (i) management and accounting services for corporate entities, and
    - (ii) management and trust administration services for trust businesses,up to a maximum of 750 corporate entities and trust businesses (in the aggregate) in relation to the conduct of business as a family office;
  - (c) Sub-Category M authorises the provision of management and accounting services for corporate entities;
  - (d) Sub-Category N authorises the provision of shareholder services;
  - (e) Sub-Category P authorises acting as a protector for trust business;
  - (f) Sub-Category T authorises management, administration and accounting services for trust business; and
  - (g) Sub-Category V authorises the provision of other value-added services, including the provision of Registrar and transfer services, and any other fiduciary service that is not captured in the preceding Sub-Categories.

#### **Application for licence and extension of licence**

- 8.** (1) A company may apply to the Commission for a licence to carry on any fiduciary services business.
- (2) An application under subsection (1) shall -
- (a) contain such information as the Commission may direct; and
  - (b) be in the prescribed form.
- (3) The application shall be accompanied by -
- (a) a statement as to the applicant's proposed fiduciary services business;
  - (b) a letter from an attorney-at-law affirming that the attorney-at-law is acting as the applicant's attorney-at-law;
  - (c) the prescribed documentation, and such other information or documents as the Commission may reasonably require for the purpose of determining the application; and
  - (d) the prescribed fee;

but if the applicant is already the holder of a licence, the Commission may waive the requirements of paragraph (a) and require the applicant to provide a statement setting out the extent to which any statement or information provided by the applicant in connection with a previous application has changed.

(4) An application under section 7(7) for a licence to extend to a subsidiary company of the applicant in relation to a Sub-category, shall be made in writing to the Commission and shall be accompanied by -

- (a) a statement as to the name of the subsidiary company;
- (b) documentary proof sufficient to establish that the subsidiary company is wholly owned by the applicant;
- (c) a description of the type of fiduciary services business being, or to be, carried on by the subsidiary company;
- (d) a statement itemising each subsidiary company that is wholly owned by the applicant;
- (e) a statement specifying whether or not each non-regulated subsidiary company that is wholly owned by the applicant, is supervised by a foreign regulatory authority;
- (f) any other information or documentation that the Commission may reasonably require for the purpose of determining the application; and
- (g) the prescribed fee.

(5) Upon receipt of an application for a licence or extension of a licence and at any time thereafter, the Commission may, by written notice, require the applicant to provide such additional information or documents as the Commission may reasonably require for the purpose of determining the application.

(6) Any information or statement to be provided to the Commission under this section shall be in such form as the Commission may require; and the Commission may require -

- (a) the applicant to provide a report, in such form as may be specified in the notice, by an accountant or other qualified person approved by the Commission, on such aspects of that information or statement as the Commission may specify; and
- (b) a director or the chief executive of the applicant to attend at such time and place as may be specified in the notice in order to give an explanation of and to answer questions relating to any such information, statement or report or anything in them.

(7) The Commission's requirements under subsections (3), (4), (5) and (6) may differ as between different applications.

(8) A licensee shall give notice in writing to the Commission of any change to the facts set out in a letter provided under subsection (3)(b), within 3 days of becoming aware of the change.

(9) An application for a licence or extension of a licence, may be withdrawn by written notice to the Commission at any time before it is determined.

#### **Issue or refusal of licence**

9. (1) The Commission may issue a licence to an applicant subject to such terms and conditions as the Commission thinks fit, if the Commission is satisfied that -

- (a) the applicant is qualified to carry on fiduciary services business;
- (b) the criteria specified in the Schedule are fulfilled;
- (c) the applicant satisfies the requirements of this Act in respect of the application and will, upon issuance of the licence, be in compliance with this Act in respect of licensing; and
- (d) issuing the licence is not against the public interest;

and the Commission may, upon granting the licence to the applicant, extend the licence to include any subsidiary company referred to in an application under section 7(7), subject to such terms and conditions as the Commission thinks fit.

(2) The Commission shall, within 3 weeks of the issuance of a licence, cause notice of the issuance to be published in the *Gazette*.

#### **Notice of refusal of licence**

10. Where the Commission decides -

- (a) to refuse a licence; or
- (b) otherwise than with the agreement of the licensee -
  - (i) to revoke a licence, or
  - (ii) to impose, vary or rescind any condition in respect of a licence,

the Commission shall provide brief written reasons for its decision.

#### **Conditions of licence**

11. (1) The Commission may, when issuing a licence or at any time thereafter, impose such conditions in respect of the licence as it thinks fit.

(2) Such conditions may apply to licensees or regulated subsidiary companies generally, to any class of licensee or regulated subsidiary company or to any particular licensee or regulated subsidiary company.

(3) The Commission may, upon giving reasonable notice to the licensee or regulated subsidiary company -

- (a) vary or rescind any condition of a licence; or
- (b) impose new terms or conditions.

(4) Without prejudice to the generality of subsection (1), the conditions that may be imposed in respect of a licence may make provision as to the duration of the licence and for the protection of the clients of the licensee or regulated subsidiary company concerned; and such conditions may -

- (a) require the licensee or regulated subsidiary company to take certain steps, to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
- (b) impose limitations on the acceptance or carrying on of business;
- (c) prohibit the licensee or regulated subsidiary company from soliciting (whether at all or in any specified manner) business, either generally or from persons who are not already clients;
- (d) prohibit the licensee or regulated subsidiary company from entering into any other transaction or class of transactions;
- (e) require the removal of any director, controller, manager, partner or employee of the licensee or regulated subsidiary company;
- (f) specify requirements to be fulfilled otherwise than by action taken by the licensee or regulated subsidiary company;
- (g) require the furnishing to the Commission, at such times, intervals and places as may be specified by the Commission, of such information and documents, and of accounts of such description, in such form and containing such information and particulars, as may be so specified,
- (h) specify requirements as to the capitalisation and margin of solvency of the business of the licensee or regulated subsidiary company; and
- (i) require the licensee or regulated subsidiary company to obtain professional indemnity insurance in such amount and upon such terms and conditions as may be specified.

(5) The contravention of a condition of a licence shall, whether or not constituting an offence, be a ground for the revocation of the licence but shall not of itself invalidate any transaction completed under the authority of the licence before the date of revocation.

(6) In considering whether or not to impose, vary or rescind any condition in respect of a licence, the Commission may, without prejudice to the generality of the foregoing provisions of this section, have regard to any matter to which it may

have regard when considering whether or not to grant an application for a licence or to revoke a licence.

(7) A licensee or regulated subsidiary company that contravenes a condition of a licence commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for a term of 2 years or to both.

**Restrictions on licensee's use of certain terms**

12. (1) No person, other than a licensee, shall -
- (a) use any word, either in English or in any other language, in the description or title under which the person carries on business in or from within Anguilla that, in the opinion of the Commission, suggests fiduciary services business; or
  - (b) make any representation in any document or in any other manner that is likely to suggest that the person is carrying on fiduciary services business.

(2) The Commission shall prescribe words that, in its opinion, suggest fiduciary services business.

(3) The Commission may, by written notice, require a licensee who carries on fiduciary services business under a name that is -

- (a) identical to that of any other person, whether within or outside Anguilla, or which so nearly resembles that name as to be likely to deceive;
- (b) likely to suggest falsely the patronage of or connection with some person whether within or outside Anguilla; or
- (c) likely to suggest falsely that the person has special status in relation to or derived from the Government or has the official approval of, or acts on behalf of, the Government or of any of its departments or officials,

within 7 days of the notification, to change the name.

(4) A person, other than a licensee, who -

- (a) contravenes subsection (1)(b); or
- (b) uses a word prescribed by the Commission under subsection (2), either in English or in any other language, in the description or title under which the person carries on fiduciary services business in or from within Anguilla;

commits an offence and is liable on summary conviction to a fine of \$10,000.

(5) A licensee that fails to change its name within 7 days of the date of receipt of a written notice under subsection (3) commits an offence and is liable on

summary conviction to a fine of \$10,000 and, in the case of a continuing offence, to a further fine not exceeding \$100 for every day or part thereof during which the offence continues after conviction.

### **Surrender of licence**

**13.** (1) A licensee that ceases to carry on fiduciary services business may surrender its licence upon production of -

- (a) evidence that the licensee has repaid all deposits and has transferred all assets held or administered on behalf of companies managed by the licensee to or at the direction of those companies; or
- (b) if the licensee is a company being wound up, evidence that it is solvent and is able on demand to repay all deposits held by it and to pay all its other debts in full, and has transferred all assets held or administered on behalf of companies managed by it to or at the direction of those companies.

(2) In the case of the surrender of a licence under subsection (1)(b) or if a licensee is insolvent, the Commission may apply to the Court for an order that the licensee be wound up by the Court or subject to the supervision of the Court under the Companies Act.

### **Revocation of licence**

**14.** (1) The Commission may revoke a licence if it appears to the Commission that -

- (a) the licensee or regulated subsidiary company concerned has committed an offence under any provision of this Act or has otherwise contravened any prohibition, restriction, condition, requirement, direction or arrangement imposed by or under any such provision;
- (b) the Commission has been provided with false, misleading, deceptive or inaccurate information by or on behalf of the licensee or regulated subsidiary company;
- (c) the interests of clients of the licensee or regulated subsidiary company are in any way threatened, whether by the manner in which the licensee or regulated subsidiary company is conducting or proposes to conduct its affairs or for any other reason;
- (d) any prescribed fee payable by the licensee or regulated subsidiary company or in respect of the licence has not been paid; or
- (e) the licensee or regulated subsidiary company has not carried on fiduciary services business in Anguilla or elsewhere within a period of 12 months beginning on the day on which the licence was issued or granted or, having so carried on fiduciary services

business in Anguilla or elsewhere, has subsequently not done so for a period of more than 6 months.

(2) In considering whether or not to revoke a licence the Commission may, without prejudice to the generality of the foregoing provisions of this section, have regard to any matter to which it may have regard when considering whether or not to grant an application for a licence.

(3) A decision of the Commission to revoke a licence shall not, subject to subsection (4), have effect until the end of the period within which an appeal can be brought under the Financial Services Commission Act against the revocation or, if an appeal is brought within that period, until the appeal is determined or withdrawn.

(4) Where the Commission is of the view that it is necessary or desirable to do so -

- (a) in the interests of the clients of a licensee or regulated subsidiary company; or
- (b) for the protection or enhancement of the reputation of Anguilla,

the Commission may apply to the Court for an order under this subsection directing that its decision to revoke a licence should, without prejudice to any appeal in respect of the decision under the Financial Services Commission Act, have immediate effect; and the Court may make an order under this subsection on such terms as it thinks just.

(5) An application by the Commission for an order under subsection (4) may, with the approval of the Court, and on such terms as the Court may direct, be made ex parte.

### PART 3

#### OBLIGATIONS OF LICENSEES AND REGULATED SUBSIDIARY COMPANIES

##### **Principal office, resident manager and recognised agent**

- 15.** (1) A licensee and a regulated subsidiary company shall -
- (a) have a principal office in Anguilla; and
  - (b) appoint, as recognised agents, 2 individuals who comply with subsection (2).
- (2) For the purposes of subsection (1)(b) -
- (a) one recognised agent shall be resident in Anguilla for a minimum period of ninety days in aggregate in any relevant year and shall be appointed as the resident manager of the licensee or regulated subsidiary company;

- (b) one recognised agent shall be appointed as a senior manager of the licensee or regulated subsidiary company;
- (c) prior to appointment, each recognised agent shall -
  - (i) have consented in writing to act as a recognised agent, and
  - (ii) be approved in writing as a recognised agent by the Commission.

(3) Each licensee and regulated subsidiary company shall appoint its first recognised agents (who may be individuals acting for both the licensee and the regulated subsidiary company) not later than the day of the issue of the relevant licence and shall, within 5 days of the appointments, notify the Commission that the approved appointments have been made.

(4) A licensee and a regulated subsidiary company shall not change the address of its principal office or change a recognised agent without the prior written approval of the Commission.

(5) The Commission may in writing revoke an approval given under this section.

(6) Subject to subsection (7), a licensee or regulated subsidiary company that contravenes this section commits an offence and is liable on summary conviction -

- (a) in respect of a breach of subsection (1), to a fine of \$25,000; and
- (b) in respect of a breach of subsection (3) or subsection (4), to a fine of \$10,000.

(7) A licensee or regulated subsidiary company does not contravene subsection (1) when a recognised agent dies or resigns or has the approval revoked under subsection (5), if the licensee or regulated subsidiary company -

- (a) within 3 days of the death, resignation or revocation, submits to the Commission for approval the name of an individual to replace the recognised agent; and
- (b) appoints a recognised agent within 3 days after the agent is approved,

so long as the licensee or regulated subsidiary company has at least one recognised agent.

(8) The recognised agents of a licensee or regulated subsidiary company shall in their capacity as representatives of the licensee or regulated subsidiary company ensure compliance with any requirements under this Act.

### **Operation outside Anguilla**

**16.** (1) A licensee and a regulated subsidiary company shall not operate a branch, agency or office outside Anguilla without prior written approval granted by the Commission prior to the commencement of the operations.

(2) A licensee or regulated subsidiary company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for a term of one year or to both.

#### **Maintenance of capital**

**17.** (1) The holder of -

- (a) a Category A licence;
- (b) a Category A, Type Family Office, licence; or
- (c) a Category A, Type Restricted, licence,

shall ensure that its paid-up share capital is maintained in an amount not less than \$250,000, or the equivalent in another currency, or such greater sum as may be required by the Commission having regard to the nature of the fiduciary business being, or sought to be, undertaken.

(2) The holder of a Category B licence or a Category C licence and the licensee's regulated subsidiary company shall ensure that its paid-up share capital is maintained in an amount not less than \$25,000 or the equivalent in another currency.

(3) A licensee and a regulated subsidiary company -

- (a) shall disclose to the Commission a contingent liability within 30 days of becoming aware of it; and
- (b) shall, when required by the Commission, produce to the Commission such evidence as may be required as to the solvency or otherwise of its business and that the licensee or regulated subsidiary company has maintained the required minimum paid-up share capital.

(4) A licensee or a regulated subsidiary company that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of \$10,000.

#### **Insurance**

**18.** (1) The Commission may by written notice require a licensee and a regulated subsidiary company to effect and maintain a policy of insurance with an insurance company approved by the Commission.

(2) The policy of insurance shall insure against -

- (a) losses arising out of claims of negligence or breach of duty by the licensee or regulated subsidiary company or their employees;

- (b) the dishonesty of the licensee or regulated subsidiary company or their employees;
- (c) loss of documents; and
- (d) such other risks as the Commission may stipulate,

in such amount and of such nature as the Commission determines having due regard to the nature and type of business carried on by the licensee or regulated subsidiary company.

(3) The licensee and the regulated subsidiary company shall effect the policy of insurance within the time specified in the notice or any extension of the time given by the Commission, except that the licensee and the regulated subsidiary company shall not at any time carry on business without professional indemnity insurance coverage.

(4) The licensee and the regulated subsidiary company shall without delay give written notice to the Commission if -

- (a) it is unable to obtain insurance as required by the Commission; or
- (b) it ceases to maintain the insurance.

(5) A licensee or regulated subsidiary company that contravenes this section commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of one year or to both.

#### **Change of name**

**19.** A licensee and a regulated subsidiary company shall not change its name without the prior written approval of the Commission.

#### **Notification of insignificant changes to ownership**

**20.** (1) A licensee shall give written notice to the Commission of the following proposed events -

- (a) any issuance, transfer or disposal of shares that does not result in a change to the distribution of the licensee's beneficial ownership or voting rights;
- (b) any issuance, transfer or disposal of shares to an existing shareholder that does not result in a change in the licensee's ownership greater than 15%;
- (c) the redistribution of shares that does not result in a change of the licensee's ultimate beneficial ownership and the existing distribution of the licensee's ownership; and
- (d) any change of the licensee's beneficial ownership pursuant to an order of a Court.

(2) A licensee that submits to the Commission a notification of proposed events under subsection (1)(a), (b) or (c) shall, together with the notification, forward to the Commission a statement affirming that -

- (a) the proposed events have been assessed by the licensee's board; and
- (b) the persons concerned have been subjected to updated fit and proper checks to confirm that no circumstances exist that would bar them from holding beneficial ownership in the licensee.

(3) The Commission may, within a period of 14 days after receiving a notification and statement of proposed events under subsections (1) and (2), decide that the Commission does not approve the proposed events, and the Commission shall then serve upon the licensee concerned written notice of its decision and provide brief written reasons for its decision.

(4) In subsection (1) the reference to shares being transferred or disposed of includes not only the transfer or disposal of the legal interest in the shares but also the transfer or disposal of any beneficial interest in the shares.

(5) A licensee that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$50,000.

#### **Approval of significant changes to ownership**

**21.** (1) The following transactions shall not be carried out in relation to a licensee without the prior written approval of the Commission, namely -

- (a) any issuance, transfer or disposal of shares that results in a change to the distribution of the licensee's beneficial ownership or voting rights;
- (b) any issuance, transfer or disposal of shares to an existing shareholder that results in a change in the licensee's ownership greater than 15%;
- (c) the redistribution of shares that results in a change of the licensee's ultimate beneficial ownership and the existing distribution of the licensee's ownership.

(2) In subsection (1) the reference to shares being transferred or disposed of includes not only the transfer or disposal of the legal interest in the shares but also the transfer or disposal of any beneficial interest in the shares.

(4) A licensee that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$50,000.

#### **Significant regulatory impact disclosure**

**22.** (1) A licensee and a regulated subsidiary company shall disclose to the Commission any matter that might reasonably be expected to have a significant regulatory impact.

(2) Without limiting subsection (1), the following shall be regarded as matters that might reasonably be expected to have a significant regulatory impact -

- (a) any matter that could impact on the ability of the licensee or regulated subsidiary company to continue to carry on business substantially in accordance with its most recent business plan;
- (b) any matter that could result in significant financial consequences to other licensees or regulated subsidiary companies; or
- (c) any incidence of fraud or other criminal activity that is connected with, or may affect, the licensee's or regulated subsidiary company's business if the fraud or criminal activity is material to the safety, soundness or reputation of the licensee or regulated subsidiary company.

(3) In determining whether a disclosure should be made under this section, a licensee or regulated subsidiary company shall consider -

- (a) its business and activities that are not subject to supervision by the Commission; and
- (b) the business and activities of its associates.

(4) Disclosure under subsection (1) shall be made immediately after the licensee or regulated subsidiary company -

- (a) becomes aware of the matter concerned; or
- (b) has reasonable grounds for believing that the matter concerned has occurred or that it may occur in the foreseeable future.

#### **Required standard of disclosure**

**23.** (1) A licensee and a regulated subsidiary company shall use its best endeavours to ensure that all information and documents that it provides to the Commission are accurate and complete.

(2) If a licensee or regulated subsidiary company becomes aware that any information or documentation that it has provided to the Commission is not accurate or complete, the licensee or regulated subsidiary company shall -

- (a) immediately on becoming so aware, notify the Commission that it has provided inaccurate or incomplete information; and
- (b) within 7 days, or such shorter period as the Commission may require, provide the Commission with such information or documentation as is required to ensure compliance with subsection (1).

**Annual fee**

**24.** A licensee shall pay the prescribed annual fee on or before 31st January of each year and any penalties for late payment of such fee as may be prescribed by regulations.

**Display of licence**

**25.** (1) A licensee shall prominently display on the premises where its licensed business is carried on -

- (a) the licence issued by the Commission; or
- (b) a document certified by the Commission as a copy of the licence.

(2) A licensee that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$1,000.

**PART 4****MANAGED TRUST RELATIONSHIPS****Managing trust companies**

**26.** A person shall not act as a managing trust company unless -

- (a) authorisation has been obtained from the Commission; and
- (b) a written management agreement is filed with the Commission.

**Application for authorisation to act as managing trust company**

**27.** (1) A Category A licensee may apply in writing to the Commission for authorisation to act as a managing trust company.

(2) An application under subsection (1) shall be accompanied by -

- (a) a management plan submitted by the applicant which sets out the proposed fiduciary services business to be carried on or managed by the applicant;
- (b) a statement naming the managed trust companies whose fiduciary services business is intended to be carried on or managed by the applicant;
- (c) a statement confirming that the applicant is in compliance with such relevant financial services enactments, and codes, as may be applicable;
- (d) such other information or documents as the Commission may reasonably require for the purpose of determining the application; and
- (e) the prescribed fee.

(3) Upon receipt of an application under subsection (1) and at any time thereafter, the Commission may by written notice require the applicant to provide

such additional information or documents as the Commission may reasonably require for the purpose of determining the application.

(4) Any information or statement to be provided to the Commission under this section shall be in such form as the Commission may require, and the Commission may by notice require -

- (a) the applicant to provide a report, in such form as may be specified in the notice, by an accountant or other qualified person approved by the Commission, on such aspects of that information or statement as the Commission may specify; and
- (b) a director or the chief executive of the applicant to attend at such time and place as may be specified in the notice in order to give an explanation of and to answer questions relating to any such information, statement or report or anything in them.

(5) The Commission's requirements under subsections (2), (3) and (4) may differ as between different applications.

(6) An application may be withdrawn by written notice to the Commission at any time before it is determined.

#### **Issue or refusal of authorisation**

**28.** (1) The Commission may issue, to an applicant, an authorisation to act as a managing trust company if the Commission is satisfied -

- (a) that the applicant is a Category A licensee;
- (b) that, for the previous 3 years, the applicant -
  - (i) has been in compliance with such relevant financial services enactments, and codes, as may be applicable,
  - (ii) has been supervised by a foreign regulatory authority approved by the Commission, or
  - (iii) has so complied and has been so supervised, in the aggregate;
- (c) that the applicant will carry out its substantial functions in Anguilla;
- (d) that the proposed fiduciary services business will be carried on substantially in Anguilla;
- (e) that the applicant has adequate resources, systems and controls in order to dedicate sufficient human and physical resources to the managed trust company, including resources for its personnel and their skills, experience and training and for its premises and information technology capabilities;
- (f) that the applicant satisfies the requirements of this Part in respect of the application and will, upon issuance of the Commission's approval, be in compliance with this Part; and

(g) that issuing the authorisation is not against the public interest.

(2) The Commission shall not issue an authorisation to an applicant if the proposed managed trust company has previously operated as a non-managed trust company.

(3) The Commission may, when issuing an authorisation, impose such conditions in respect of the authorisation as it thinks fit, including requirements as to the capitalisation and margin of solvency of the fiduciary services business concerned.

(4) The Commission shall cause notice of the issue of the authorisation to be published in the *Gazette*.

#### **Notice of refusal of authorisation**

29. Where the Commission decides -

- (a) to refuse authorisation for a person to act as a managing trust company; or
- (b) otherwise than with the agreement of the managing trust company -
  - (i) to revoke an authorisation, or
  - (ii) to impose, vary or rescind any condition in respect of an authorisation,

the Commission shall provide brief written reasons for its decision.

#### **Obligations on managed trust companies**

30. (1) A managed trust company shall -

- (a) enter into a written management agreement with the licensee approved by the Commission as its managing trust company;
- (b) not commence to carry on business until the written management agreement referred to in paragraph (a) has been entered into and is in force;
- (c) name a director who is not also a director of the managing trust company, who shall be a liaison to the Commission; and
- (d) apply to the Commission for approval of its compliance officer.

(2) The written management agreement referred to in subsection (1)(b) shall comply with section 32.

(3) A managed trust company shall not change the licensee that carries on and manages its business without the prior written approval of the Commission.

#### **Obligations on managing trust companies**

**31.** A managing trust company shall, within 12 months of obtaining its authorisation, submit a report that sets out a medium-term assessment of the operation of the managed trust company, setting out -

- (a) details of the scope of fiduciary services business undertaken;
- (b) a review of the operation of the managed trust company;
- (c) the progress made against written strategic objectives;
- (d) forward-looking evaluations and readjustments to the managed trust company's future business outlook; and
- (e) a review of resourcing and any issues to be adjusted or otherwise subject to further review of the managed trust agreement concerned.

#### **Management agreements**

**32.** (1) A management agreement between a managed trust company and the licensee that will manage it shall -

- (a) specify the responsibilities of the respective parties;
- (b) state the responsibilities of the directors in the operation of the managed trust company; and
- (c) include provisions relating to -
  - (i) the nature of the services that will be provided by the managing trust company, and on what basis,
  - (ii) the fees and other costs to be charged by the managing trust company or the basis on which such fees and costs will be calculated and the basis of the costs, including common or joint costs, and revenues,
  - (iii) the responsibilities of the respective parties for ensuring compliance with such relevant financial services enactments, and codes, as may be applicable,
  - (iv) the operational arrangements for the management of the managed trust company, including risk management and contingency plans,
  - (v) the appointment of directors, officers and resident managers,
  - (vi) the duration of the management agreement, and
  - (vii) the transfer of the managed trust company's books and records on the termination of the management agreement.

(2) A management agreement shall not -

- (a) contain a provision that prevents the Commission's oversight of the operation of the managed trust company; or
- (b) be varied after it has been entered into, except with the prior written approval of the Commission.

(3) The Commission may review any tripartite management agreement prior to signature by the respective parties.

#### **Books and records of the managed trust company**

**33.** (1) The managing trust company shall keep the books and records of the managed trust company separately from -

- (a) its own books and records;
- (b) the books and records of its clients; and
- (c) the books and records of any other managed trust company for which it acts as managing trust company.

(2) The books and records of a managed trust company that are kept in Anguilla shall be kept at the principal office of the managing trust company in Anguilla.

#### **Corporate governance and resource requirements**

**34.** (1) A managed trust company shall have -

- (a) at least one director who is resident in Anguilla;
- (b) at least one resident manager (who may also be the director specified in paragraph (a)); and
- (c) sufficient human and physical resources to undertake those functions that -
  - (i) in accordance with this Act, cannot be outsourced, and
  - (ii) the managing trust company is not responsible for under the management agreement.

(2) A managing trust company shall ensure that -

- (a) the business and activities of the managed trust company are segregated from its own business and activities and from the business and activities of any other managed trust companies that it manages; and
- (b) it maintains separate financial records and prepares separate financial statements for each managed trust company that it manages.

(3) The Commission may, having regard to the nature, scale, complexity and diversity of the business of a managed trust company require the managed trust company to -

- (a) increase the number of its resident managers;
- (b) increase the number of its directors that are resident in Anguilla;
- (c) have one or more resident managers that are employed by the managed trust company under a contract of service; and
- (d) increase the human, physical and other resources available to it.

## PART 5

## REGULATION OF OUTSOURCING

**Outsourcing**

**35.** (1) The Commission shall specify those functions of a licensee that shall not be outsourced, with a view to ensuring that a licensee does not delegate so many of its functions as would leave an inadequate presence in Anguilla.

(2) The terms of an outsourcing agreement shall include a contractual requirement for the provider of the outsourcing services to give to the Commission the right to have direct access to material which that provider holds in relation to the business of a licensee, so as to ensure that outsourcing does not hamper the supervision of the licensee by the Commission.

(3) Where a licensee proposes outsourcing, the Commission shall require the licensee to -

- (a) assess the risk of the proposal;
- (b) document the capability and suitability of the proposed provider of the outsourced services;
- (c) establish a clear responsibility within the licensee for monitoring the conduct of the outsourced services, and for reporting to the board;
- (d) consider the risks that could arise from the failure of the provider of outsourced services or other breakdown in the provision of services; and
- (e) have in place a contingency plan in case of the failure of the provider of outsourced services or other breakdown in the provision of services.

(4) The Commission shall require that -

- (a) a licensee notify the Commission before outsourcing functions that are relevant to the licensee's management or compliance or to the delivery of the licensee's services;
- (b) there is a written outsourcing agreement between a licensee and the provider of the outsourcing services;
- (c) if the outsourcing is of any fiduciary services business, then the provider of the outsourcing services shall be a licensee or other person regulated by the Commission; and
- (d) there shall be no sub-outsourcing without the prior written approval of the Commission.

(5) The Commission shall require a licensee that maintains its accounting records and other records with a provider of outsourced services (whether or not in a location outside Anguilla), to ensure that -

- (a) the records are kept secure and pose no operational risk;
- (b) the records are maintained so as to be readily accessible;
- (c) there is compliance with such relevant financial services enactments, and codes, as may be applicable; and
- (d) the Commission has ready and reasonable access to the records at all times.

**Data security**

**36.** The Commission shall require a licensee to ensure that data (whether in a physical or digital format) is held in a secure manner and that reasonable steps have been taken to ensure -

- (a) security against theft or unauthorised access;
- (b) security against loss or destruction;
- (c) compliance with the statutory requirements that apply to the licensee; and
- (d) suitable backup and disaster recovery arrangements.

**Data protection**

**37.** (1) Personal data shall be -

- (a) used fairly and lawfully;
- (b) used for specific and lawful purposes, in a manner that is compatible with those purposes;
- (c) adequate, relevant and not excessive;
- (d) accurate and, where necessary, kept up-to-date;
- (e) kept for no longer than 5 years;
- (f) used in accordance with the rights of individuals; and
- (g) kept secure to avoid unauthorised or unlawful use, accidental loss, or damage.

(2) The Commission shall require a licensee to comply with subsection (1) and to -

- (a) not transfer data to a jurisdiction out of Anguilla unless that jurisdiction subscribes to the principles in subsection (1) or there exists between the licensee and the person transferring the data an agreement providing an equivalent level of protection;
- (b) document the capability and suitability of the provider of outsourced services;
- (c) establish a clear responsibility within the licensee for monitoring the conduct of the outsourced services, and for reporting to the board;
- (d) consider the risks that could arise from the failure of the provider of outsourced services or other breakdown in the provision of services; and

- (e) have in place a contingency plan in case of the failure of the provider of outsourced services or other breakdown in the provision of services.

## PART 6

### DIRECTORS

#### **Approval of resident managers, directors and senior officers**

**38.** (1) No licensee or regulated subsidiary company shall, without obtaining the prior written approval of the Commission, appoint a person as -

- (a) its resident manager;
- (b) its director where, upon appointment, the person -
  - (i) resides or is to reside in Anguilla, whether or not the person is directly responsible for the licensee's or regulated subsidiary company's fiduciary services business in Anguilla or any part thereof, or
  - (ii) is directly responsible for the licensee's or regulated subsidiary company's fiduciary services business in Anguilla or any part thereof, whether the person resides in Anguilla or elsewhere; or
- (c) a senior officer.

(2) Without prejudice to any other matter that the Commission may consider relevant, the Commission may, in determining whether to grant its approval under subsection (1), have regard to such requirements as may be prescribed.

(3) The Commission shall not refuse an application for approval under subsection (1) without giving the licensee or regulated subsidiary company a reason for the refusal, except where the person proposed to be appointed -

- (a) is an undischarged bankrupt, whether in Anguilla or elsewhere; or
- (b) has been convicted, whether in Anguilla or elsewhere, of an offence -
  - (i) involving fraud or dishonesty or the conviction for which involved a finding that the person had acted fraudulently or dishonestly, and
  - (ii) punishable with imprisonment for a term of 3 months or more.

(4) Where the Commission refuses an application for approval under subsection (1), the Commission shall give the person who was proposed to be appointed an explanation for the refusal.

(5) A licensee or regulated subsidiary company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$50,000.

**Notification of change of director, etc.**

**39.** (1) Subject to subsection (3), where a person has become or has ceased to be a director, controller, partner or manager of a licensee or regulated subsidiary company, the licensee or regulated subsidiary company shall give written notice to the Commission of the fact.

(2) A notice required to be given under subsection (1) shall be given within 14 days of the licensee or regulated subsidiary company becoming aware of the relevant fact.

(3) The Commission may waive any requirement of subsection (1), either wholly or in part, in respect of any licensee or regulated subsidiary company whose principal place of business is outside Anguilla.

(4) A licensee or regulated subsidiary company that fails to give notice in accordance with this section commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for a term of 2 years or to both.

**Powers to be exercised for proper purpose**

**40.** A director shall exercise his or her powers as a director for a proper purpose and shall not act, or agree to the company acting, in a manner that contravenes this Act.

**Standard of care**

**41.** A director of a company, when exercising powers or performing duties as a director, shall exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account all relevant matters, including -

- (a) the nature of the company;
- (b) the nature of the decision; and
- (c) the position of the director and the nature of the responsibilities undertaken by the director.

**Reliance on records and reports**

**42.** (1) Subject to subsection (2), a director of a company, when exercising powers or performing duties as a director, is entitled to rely upon the register of members and upon books, records, financial statements and other information prepared or supplied, and on professional or expert advice given, by -

- (a) an employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;

- (b) a professional adviser or expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence; and
  - (c) any other director, or committee of directors upon which the director did not serve, in relation to matters within the director's or committee's designated authority.
- (2) Subsection (1) applies only if the director -
- (a) acts in good faith;
  - (b) makes proper inquiry where the need for the inquiry is indicated by the circumstances; and
  - (c) has no knowledge that the director's reliance on the register of members or the books, records, financial statements and other information or expert advice is not warranted.

### **Disclosure of interest**

**43.** (1) A director of a company shall, within 3 days after becoming aware of the fact that the director is interested in a transaction entered into or to be entered into by the company, disclose the interest to the board of the company.

(2) The regulations may prescribe circumstances in which a director is interested in a transaction for the purposes of this section and such circumstances may include a director's relationship with another person who will or may obtain a benefit from the transaction.

(3) A director of a company is not required to comply with subsection (1) if -

- (a) the transaction or proposed transaction is between the director and the company; and
- (b) the transaction or proposed transaction is or is to be entered into in the ordinary course of the company's business and on usual terms and conditions.

(4) For the purposes of subsection (1), a disclosure to the board to the effect that a director is a member, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.

(5) The failure by a director to comply with subsection (1) does not affect the validity of a transaction entered into by the director or the company.

(6) For the purposes of subsection (1), a disclosure is not made to the board unless it is made or brought to the attention of every director on the board.

(7) A director who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000.

PART 7  
ADMINISTRATION

**Directions to licensees and regulated subsidiary companies**

44. (1) The Commission may -
- (a) at any time after a licensee has served a notice surrendering its licence (whether or not with immediate effect); or
  - (b) in the case of a licensee whose licence is subject to a condition as to its duration, upon the expiry of the licence or at any time thereafter,

give the licensee and any regulated subsidiary company concerned such directions as appear to the Commission to be desirable in the interests of the clients of the licensee or regulated subsidiary company, whether for the purpose of safeguarding assets or otherwise.

(2) Without prejudice to the generality of subsection (1), directions thereunder may -

- (a) require the licensee or its regulated subsidiary company to take certain steps or to suspend the conduct of certain functions and actions;
- (b) prohibit or impose limitations upon the carrying on of fiduciary services business and other business;
- (c) prohibit the licensee or its regulated subsidiary company from soliciting business either generally or from persons who are not already clients;
- (d) prohibit the licensee or its regulated subsidiary company from entering into any other transaction or class of transactions; or
- (e) require the removal of any director, controller, partner, manager or employee.

(3) No direction shall be given by virtue of paragraph (c) of subsection (2), and any direction given by virtue of that paragraph shall cease to have effect -

- (a) if the Commission allows the licensee to withdraw the surrender of the licence; or
- (b) in cases where the Commission decides not to allow the licensee to withdraw the surrender of the licence, if the Commission's decision is set aside on appeal under the Financial Services Commission Act.

(4) A contravention by a licensee or regulated subsidiary company of a direction under subsection (1) shall not of itself invalidate any transaction completed under the authority of the licence concerned.

(5) Where a direction under subsection (1) requires the removal of a person as director, controller, partner, manager or employee of a licensee or regulated subsidiary company, the Commission shall serve upon that person a copy of the direction (which copy may omit any matter which does not relate to that person) together with particulars of the right of appeal conferred by the Financial Services Commission Act.

(6) The Commission may vary or rescind any direction under subsection (1) by written notice served upon the licensee concerned.

(7) Directions under subsection (1) shall give particulars of the right of appeal conferred by the Financial Services Commission Act.

(8) A licensee or regulated subsidiary company that contravenes any provision of a direction under subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for a term of 2 years or to both.

#### **Directions for reporting of information**

45. (1) The Commission may, by notice published in the *Gazette*, issue directions to licensees or regulated subsidiary companies for the making of returns, or the furnishing of documentation, to the Commission for regulatory purposes.

(2) A notice under subsection (1) shall specify the period within which returns shall be made or documentation furnished.

(3) Directions issued under subsection (1) may make different provision in relation to different persons, circumstances or cases.

(4) A licensee or regulated subsidiary company that fails, within the period specified, to make a return or furnish documentation to the Commission in accordance with directions issued under subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000.

#### **Verification of information**

46. The Commission may direct that any information, document or statement provided to it in compliance or purported compliance with any requirement imposed by or under any provision of this Act or the regulations shall be verified in such manner as the Commission may reasonably specify; and any information, document or statement which is not verified in accordance with a direction given under this section shall be deemed for the purposes of that provision not to have been provided in accordance with the said requirement and the said requirement shall accordingly be deemed not to have been complied with.

**Publication of names of licensees and regulated subsidiary companies**

**47.** (1) The Commission shall cause to be published, in such manner as it thinks fit (including on its official website), a list of -

- (a) all licensees and regulated subsidiary companies; and
- (b) all non-regulated subsidiary companies of a licensee that carry on by way of business any business other than fiduciary services business in or from within Anguilla;

and the list shall state, in relation to each person mentioned, the category of licence held by the licensee and the business carried on by the licensee's non-regulated subsidiary company.

(2) The Commission shall make available to any person, on request and on payment of such charge (if any) as the Commission may reasonably demand to cover the cost of preparation, a list of all persons holding licences.

(3) The Commission shall publish the fact that a person has ceased to hold a licence, whether by virtue of the revocation, surrender or expiry of the licence or otherwise.

(4) Any list or publication under this section may contain such information (if any) in respect of all or any of the persons named therein as the Commission may think desirable or expedient.

**Power to make prohibition orders**

**48.** (1) If it appears to the Commission that an individual is not a fit and proper person to perform functions in relation to a fiduciary services business carried on by a licensee or regulated subsidiary company, the Commission may make an order prohibiting that individual from performing any function, any specified function or any specified description of function.

(2) A prohibition order made under subsection (1) may relate to -

- (a) any fiduciary services business, any specified fiduciary services business or any specified description of fiduciary services business; and
- (b) licensees and regulated subsidiary companies generally or any specified class of licensee or regulated subsidiary company.

(3) A licensee and a regulated subsidiary company shall take reasonable care to ensure that none of its functions, in relation to the carrying on of a fiduciary services business, is performed by a person who is prohibited from performing that function by a prohibition order.

(4) The Commission may, on the application of the individual named in a prohibition order, vary or revoke it.

(5) An individual who performs or agrees to perform a function in breach of a prohibition order commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for a term of 2 years or to both.

(6) In this section “specified” means specified in a prohibition order.

#### **List of prohibition orders**

**49.** (1) The Commission shall maintain a list of all individuals to whom a prohibition order applies.

(2) The list referred to in subsection (1) shall specify the functions or description of functions which the individual concerned is prohibited from performing.

(3) The Commission shall make available to any person, on request and on payment of such charge (if any) as the Commission may reasonably demand to cover the cost of preparation, a copy of the list referred to in subsection (1).

(4) The Commission may publish -

- (a) the list referred to in subsection (1); and
- (b) the fact that a person has been named in a prohibition order or that a prohibition order has been varied or revoked.

(5) Any list or publication under this section may contain such information (if any) in respect of all or any of the persons named therein as the Commission may think desirable or expedient.

#### **Right to make representations as to prohibition orders**

**50.** (1) If the Commission proposes to make a prohibition order against an individual, it shall serve on the individual a written notice -

- (a) stating that the Commission is proposing to make a prohibition order against the individual;
- (b) stating the terms of, and the grounds for, the proposed prohibition order;
- (c) stating that the individual may, within a period of 28 days beginning on the date of the notice, make written representations to the Commission in respect of the proposed prohibition order in such manner as the Commission may determine; and
- (d) giving particulars of the right of appeal which would be exercisable if the Commission were to make the prohibition order.

(2) The Commission shall consider any representations made in response to a notice served under subsection (1) before giving further consideration to the proposed prohibition order.

(3) The period of 28 days mentioned in subsection (1)(c) may be reduced in any case in which the Commission considers it necessary to do so in the public interest or in the interests of the reputation of Anguilla as a financial services centre.

(4) Where, having considered any representations made in response to a notice served under subsection (1), the Commission decides to make a prohibition order against an individual, the Commission shall serve on the individual written notice of the decision -

- (a) stating the terms of, and the grounds for, the prohibition order; and
- (b) giving particulars of the right of appeal conferred by the Financial Services Commission Act.

#### **Disclosure of reasons for decision**

**51.** (1) Where the Commission makes a decision in respect of which a right of appeal is conferred by the Financial Services Commission Act, the person upon whom the right of appeal is conferred may, whether or not the person institutes an appeal, but subject to subsection (2), require the Commission to furnish the person with a written statement of the reasons for the decision.

(2) Subsection (1) shall not require the Commission to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to -

- (a) a criminal or regulatory investigation (whether in Anguilla or elsewhere);
- (b) co-operation or relations with investigatory, regulatory or prosecuting authorities in any other place; or
- (c) a third party.

(3) Where, pursuant to subsection (2), the Commission omits any matter from a statement of reasons, the Commission shall inform the person concerned of the fact that there has been such an omission and give particulars of the right of appeal conferred by the Financial Services Commission Act.

#### **Investigation of suspected offences**

**52.** (1) Where the Commission has reasonable grounds for suspecting that a person has committed an offence under this Act, the Commission may by written notice require that person or any other person -

- (a) to furnish, at such place as may be specified in the notice and either immediately or at such time as may be so specified, such information, documents or description of documents as may be specified and as may reasonably be required for the purpose of investigating the suspected offence; and
- (b) to attend at such place and time as may be specified in the notice and answer questions relevant for determining whether such an offence has been committed.

(2) An officer, servant or agent of the Commission may, on production if required of evidence of authority -

- (a) take copies of or extracts from, and require an explanation of, any document furnished in accordance with the requirements of a notice under subsection (1); and
- (b) in the case of any document which is not furnished as required by a notice under subsection (1), require the person on whom the notice was served to state to the best of the person's knowledge and belief the whereabouts of that document.

(3) A person who without reasonable excuse fails to comply with a requirement of a notice under subsection (1) or obstructs or fails to comply with any requirement of a person exercising or purporting to exercise any right conferred by subsection (2) commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for a term of 2 years or to both.

(4) Nothing in this section shall compel the production or divulgence by an attorney-at-law of a communication subject to legal professional privilege.

(5) Where a person claims a lien on a document, its production under this section shall be without prejudice to the person's lien.

(6) A notice under subsection (1) shall give particulars of the right of appeal conferred by the Financial Services Commission Act.

## PART 8

### AUDIT

#### **Appointment of auditors**

**53.** (1) The annual accounts of a licensee and a regulated subsidiary company shall be audited by an auditor -

- (a) who has consented in writing to carry out the audit; and
- (b) whose appointment as auditor has been approved in writing by the Commission;

and where, for any reason, the auditor ceases to act for the licensee or regulated subsidiary company, the licensee or regulated subsidiary company shall, as soon as practicable thereafter, appoint another auditor pursuant to paragraphs (a) and (b).

(2) Notwithstanding any other provision of this Act or any other written law, the Commission may, if it is not satisfied with the performance of duties by an auditor appointed by a licensee or regulated subsidiary company -

- (a) at any time direct the licensee or regulated subsidiary company to remove the auditor; and
- (b) direct the licensee or regulated subsidiary company, as soon as practicable thereafter, to appoint another auditor pursuant to subsection (1)(a) and (b),

and the licensee or regulated subsidiary company shall comply with the direction.

(3) A licensee or regulated subsidiary company that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of \$50,000.

#### **Annual accounts**

**54.** (1) Within 3 months after the end of each financial year, a licensee and a regulated subsidiary company shall prepare annual accounts on an accrual basis and in accordance with generally accepted accounting principles acceptable to the Commission.

(2) The annual accounts shall contain -

- (a) a statement of the assets and liabilities of the licensee or regulated subsidiary company at the end of the financial year;
- (b) a statement of the revenue and expenditure of the licensee or regulated subsidiary company during the financial year;
- (c) such other financial statements for the financial year as may be specified by the Commission; and
- (d) proper and adequate explanatory notes to the financial statements.

(3) A licensee and a regulated subsidiary company shall not change its auditor without the prior written approval of the Commission and, where a licensee changes its auditor, the licensee shall, when required by the Commission, authorise the former auditor to disclose the circumstances that gave rise to the change, and when so authorised, the auditor shall disclose such circumstances.

(4) A licensee and a regulated subsidiary company shall forward the audited accounts to the Commission within 6 months after the end of the financial year unless prior written approval for an extension has been granted by the Commission; and, upon receipt of the audited accounts, the Commission may require the licensee

or regulated subsidiary company to forward to the Commission such additional records, financial statements and documents as the Commission may consider relevant.

(5) A licensee or regulated subsidiary company that contravenes subsection (1) or (4) commits an offence and is liable on summary conviction to a fine of \$50,000.

#### **Reports by auditor to Commission in certain cases**

**55.** (1) Where the auditor of a licensee or regulated subsidiary company, in the performance of duties as such auditor, becomes aware of -

- (a) any matter which, in the auditor's opinion, adversely affects or may adversely affect the financial position of the licensee or regulated subsidiary company to a material extent;
- (b) any matter which, in the auditor's opinion, constitutes or may constitute a contravention of any provision of this Act or an offence involving fraud or dishonesty; or
- (c) any irregularity that has or may have a material effect upon the accounts, including any irregularity that may affect or jeopardise the moneys or other assets of any protected party of the licensee or regulated subsidiary company,

the auditor shall immediately thereafter send a written report of the matter or irregularity to the Commission.

(2) An auditor who contravenes subsection (1) commits an offence.

#### **Power of Commission to appoint auditor**

**56.** (1) Where -

- (a) a licensee or regulated subsidiary company fails to lodge an auditor's report under section 55; or
- (b) the Commission receives a report under section 55,

the Commission may, without prejudice to its powers under section 58, if it is satisfied that it is in the interests of the licensee or regulated subsidiary company, any protected party of the licensee or regulated subsidiary company or the public, appoint in writing an auditor to examine and audit, either generally or in relation to any particular matter, the books of the licensee or regulated subsidiary company.

(2) Where the Commission is of the opinion that the whole or any part of the costs and expenses of an auditor appointed by the Commission under subsection (1) should be borne by the licensee or regulated subsidiary company, the Commission may by written notice, direct the licensee or regulated subsidiary

company to pay a specified amount, being the whole or part of such costs and expenses, within such time and in such manner as may be specified in the direction.

(3) Where a licensee or regulated subsidiary company fails to comply with a direction under subsection (2), the amount specified in the direction may be recovered by the Commission as a civil debt.

(4) An auditor appointed under subsection (1) shall, on the conclusion of the examination and audit, submit a report to the Commission.

(5) An auditor who contravenes subsection (4) commits an offence.

**Restriction on auditor's and employee's right to communicate certain matters**

**57.** (1) Except as may be necessary for the carrying into effect of the provisions of this Act or so far as may be required for the purposes of any legal proceedings, whether civil or criminal, an auditor appointed under section 56 or carrying out any duty imposed under section 58, and any employee of such an auditor, shall not disclose any information which may come to their knowledge or possession in the course of performing duties as such auditor or employee, as the case may be, to any person other than -

- (a) the Commission; and
- (b) in the case of an employee of such auditor, the auditor.

(2) An auditor who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$50,000.

(3) Any employee of an auditor who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000.

**Additional powers of Commission in respect of auditors**

**58.** (1) The Commission may impose all or any of the following duties on an auditor of a licensee or regulated subsidiary company -

- (a) a duty to submit to the Commission such additional information in relation to the audit as the Commission considers necessary;
- (b) a duty to enlarge or extend the scope of the audit of the business and affairs of the licensee or regulated subsidiary company;
- (c) a duty to carry out any other examination or establish any procedure in any particular case; and
- (d) a duty to submit a report to the Commission on any of the matters referred to in paragraphs (b) and (c),

and the auditor shall carry out such additional duty or duties.

(2) A licensee and a regulated subsidiary company shall remunerate the auditor in respect of the discharge of such additional duty or duties as the Commission may impose under subsection (1).

(3) An auditor who contravenes subsection (1) commits an offence.

(4) A licensee or regulated subsidiary company that contravenes subsection (2) commits an offence.

#### **Books and records of licensees and regulated subsidiary companies**

**59.** (1) A licensee and a regulated subsidiary company shall -

- (a) maintain and keep within Anguilla such books and records as accurately reflect the business of the licensee or regulated subsidiary company;
- (b) maintain such books and records as may be required by this Act and such relevant financial services enactments, and codes, as may be applicable;
- (c) take reasonable precautions to prevent falsification of any such books and records; and
- (d) take reasonable precautions to facilitate the discovery of falsification of any such books and records.

(2) A licensee or regulated subsidiary company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000.

#### **Inspection by Commission**

**60.** (1) The Commission may, for the purpose of ensuring that the provisions of this Act have been or are being complied with, from time to time inspect, under conditions of secrecy, the books and records in the possession, custody or control of a licensee or regulated subsidiary company and of any branch, agency or office outside Anguilla opened by a licensee or regulated subsidiary company that is incorporated in Anguilla.

(2) For the purposes of an inspection under this section -

- (a) the licensee or regulated subsidiary company, or any person who is in possession of the books or records of the licensee or regulated subsidiary company, shall produce such books or records to the Commission and give such information or facilities as may be required by the Commission;
- (b) the licensee or regulated subsidiary company shall procure that any person who is in possession of its books or records produce the books or records to the Commission and give such information or facilities as may be required by the Commission; and
- (c) the Commission may -
  - (i) make copies of, or take possession of, any of such books or records,
  - (ii) use, or permit the use of, any of such books or records for the purposes of any proceedings under this Act, and

- (iii) retain possession of any of such books or records for so long as is necessary -
  - (A) for the purposes of exercising a power conferred by this section (other than subsection (4)),
  - (B) for a decision to be made on whether or not proceedings should be commenced under this Act in relation to such books or records, or
  - (C) for such proceedings to be commenced and carried on.

(3) No person shall be entitled, as against the Commission, to claim a lien on any of the books or records, but such a lien is not otherwise prejudiced.

(4) While the books or records of a licensee or regulated subsidiary company are in the possession of the Commission, the Commission -

- (a) shall permit another person to inspect at all reasonable times such of the books or records as the other person would be entitled (whether under any written law, rule of law or contract) to inspect if they were not in the possession of the Commission; and
- (b) may permit any other person to inspect any of the books or records.

(5) The Commission may require a person who produced any book or record to the Commission to explain, to the best of the person's knowledge and belief, any matter about the compilation of the book or record or to which the book or record relates.

(6) A person who, without reasonable excuse, contravenes subsection (2) or any requirement of the Commission under subsection (5) commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for a term of 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

## PART 9 OFFENCES AND PENALTIES

### **Falsification, etc., of documents during investigation**

**61.** A person who falsifies, conceals, destroys, removes or otherwise disposes of, or causes or permits to be falsified, concealed, destroyed, removed or otherwise disposed of, documents which the person knows or has reasonable grounds to suspect are or would be relevant for the purposes of section 56, commits an offence and is liable on summary conviction to a fine of \$100,000 or to imprisonment for a term of 2 years or to both.

### **False or misleading information**

- 62.** (1) A person who -
- (a) in connection with an application for a licence;
  - (b) in purported compliance with a requirement imposed by or under this Act or the regulations; or
  - (c) otherwise than as mentioned in paragraph (a) or (b) but in circumstances in which the person intends, or could reasonably be expected to know, that the statement, information or document provided by the person would or might be used by the Commission for the purpose of exercising its functions conferred by or under this Act -
    - (i) makes a statement which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
    - (ii) dishonestly or recklessly makes a statement which is false, deceptive or misleading in a material particular,
    - (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
    - (iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

commits an offence.

(2) A licensee or regulated subsidiary company that fails to provide the Commission with any information in its possession knowing or having reasonable cause to believe -

- (a) that the information is relevant to the exercise by the Commission of its functions under this Act in relation to the licensee or regulated subsidiary company; and
- (b) that the withholding of the information is likely to result in the Commission being misled as to any matter which is relevant to and of material significance to the exercise of those functions in relation to the licensee or regulated subsidiary company,

commits an offence.

**Breach of conditions of licence**

**63.** A licensee or its regulated subsidiary company that carries on business contrary to the terms or conditions of the licence concerned commits an offence and is liable on summary conviction to a fine of \$25,000.

**Offence to destroy, conceal, alter, etc., books**

**64.** (1) A person who, with intent to prevent, delay or obstruct the carrying out of an audit under this Act -

- (a) destroys, conceals or alters any book or record relating to the fiduciary services business of a licensee or regulated subsidiary company or any trust that is administered by the licensee or regulated subsidiary company; or
- (b) sends, or conspires with any other person to send, out of Anguilla, any book, record or asset of any description belonging to, in the possession of or under the control of a licensee or regulated subsidiary company,

commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for a term of 2 years or to both.

(2) If, in any proceedings for an offence under subsection (1), it is proved that the person charged with the offence -

- (a) destroyed, concealed or altered any book or record referred to in subsection (1)(a); or
- (b) sent, or conspired to send, out of Anguilla, any book, record or asset referred to in subsection (1)(b),

the onus of proving that, in so doing, the person did not act with intent to prevent, delay or obstruct the carrying out of an examination and audit under this Act shall lie on the person charged.

#### **General penalty**

**65.** A person who contravenes any provision of this Act or the regulations made under this Act, for which no penalty is specifically provided commits an offence and is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of one year or to both.

### PART 10 MISCELLANEOUS

#### **Trusteeship**

**66.** (1) Subject to subsection (2), in all cases in which the Court or any person has power to appoint a trustee, whether as an original or a new or an additional trustee, to perform any legal trust or duty, a licensee or regulated subsidiary company may be appointed in the same manner as if the licensee or regulated subsidiary company were a private individual.

(2) No licensee or regulated subsidiary company shall be appointed in any case in which the instrument creating the trust, or the power authorising the appointment, forbids the appointment of a company.

**Trust funds to be kept separate**

**67.** (1) Without prejudice to any other provision of this Act, a licensee and a regulated subsidiary company shall ensure that all moneys, property and securities received or held by the licensee or regulated subsidiary company in a fiduciary capacity are always kept distinct and in separate accounts from its own moneys, property and securities and marked in its books for each particular trust, so that they may be distinguished from any other assets shown in the registers and other books of account kept by it and so that the trust moneys do not form part of, or are not mixed with, its general assets.

(2) A licensee and a regulated subsidiary company shall ensure that all investments made by it as trustee shall be designated so that the trusts to which the investments belong may be readily identified at any time.

(3) Where a licensee or regulated subsidiary company holds or receives moneys on behalf of a client, the licensee or regulated subsidiary company shall disclose to the client, the terms upon which the moneys are so held or received, and shall not -

- (a) use the moneys for the settlement of its fees or disbursements; or
- (b) pay the moneys to a person other than the client, without the signed approval of two officers of the licensee or regulated subsidiary company.

(4) A licensee or regulated subsidiary company that contravenes subsection (1), (2) or (3) commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for a term of 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

**Offence by company**

**68.** (1) Where an offence under this Act committed by a company is proved -

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on the officer's part,

the officer as well as the company commits the offence and both are liable to be proceeded against and punished accordingly.

(2) Where the affairs of the company are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the company.

**Offences by officers**

**69.** (1) Any person, being an officer of a licensee or regulated subsidiary company, who fails to take all reasonable steps to secure -

- (a) compliance with any provision of this Act; or
- (b) the accuracy and correctness of any statement submitted under this Act,

commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for a term of 2 years or to both.

(2) In any proceedings against an officer under subsection (1), it shall be a defence for the officer to prove that the officer had reasonable grounds for believing that another person was charged with the duty of securing compliance with the requirements of this Act, or with the duty of ensuring that those statements were accurate, as the case may be, and that that person was competent, and in a position, to discharge that duty.

(3) An officer shall not be sentenced to imprisonment for any offence under subsection (1) unless, in the opinion of the Court, the officer committed the offence wilfully.

#### **Intervention by Commission in voluntary winding up**

**70.** Where a licensee or regulated subsidiary company or a person who has at any time been a licensee or regulated subsidiary company is being wound up voluntarily, the Commission may apply to the Court for leave to intervene on behalf of any interested party, if the Commission considers that the winding up is not being conducted in the best interests of its depositors, the beneficiaries of any trust, or other creditors and the Court shall make such order as it considers appropriate.

#### **Service of notices**

**71.** A document other than a summons to be given or served under this Act may be given to or served upon -

- (a) an individual, by being delivered to the individual in person, or by being left at, or sent by registered post or transmitted to, the individual's usual or last known place of abode;
- (b) a company with a principal office in Anguilla, by being left at, or sent by registered post or transmitted to, that office;
- (c) a company without a principal office in Anguilla, by being left at, or sent by registered post or transmitted to, its principal or last known principal place of business in Anguilla or, if there is no such place, its principal or last known principal place of business outside Anguilla;
- (d) an unincorporated body, by being given to or served on any partner, member, manager, director or other similar officer thereof

in accordance with paragraph (a), or by being left at, or sent by registered post or transmitted to, the body's principal or last known principal place of business in Anguilla or, if there is no such place, its principal or last known principal place of business elsewhere; and

- (e) the Commission or its Chairman, by being left at, or sent by registered post or transmitted to, the office of the Commission.

### **Proof of records of business or public authority**

**72.** (1) A document which is shown to form part of the records of a business or public authority may be received in evidence in civil proceedings without further proof.

(2) A document shall be taken to form part of the records of a business or public authority if there is produced to the Court a certificate to that effect signed by an officer of the business or public authority to which the records belong; and for this purpose -

- (a) a document purporting to be a certificate signed by an officer of a business or public authority shall be deemed to have been duly given by such an officer and signed by the officer; and
- (b) a certificate shall be treated as signed by a person if it purports to bear a facsimile of the person's signature.

(3) The absence of an entry in the records of a business or public authority may be proved in civil proceedings by affidavit of an officer of the business or public authority to which the records belong.

(4) The Court may, having regard to the circumstances of the case, direct that all or any of the above provisions of this section do not apply in relation to a particular document or record, or description of documents or records.

(5) In this section -

"business" includes any activity regularly carried on over a period of time, whether for profit or not, by any body (whether corporate or not) or by an individual;

"officer" includes any person occupying a responsible position in relation to the relevant activities of a business or public authority or in relation to its records;

"public authority" includes any public or statutory undertaking or any government department; and

"records" means records in whatever form.

### **Codes of practice**

**73.** (1) The Commission may issue such codes of practice as the Commission thinks necessary -

- (a) for the purpose of providing guidance as to the duties, requirements and standards to be complied with and the procedures (whether as to identification, record-keeping, internal reporting and training or otherwise) and best practices to be observed by persons carrying on fiduciary services business; and
- (b) generally for the purposes of this Act.

(2) A contravention by any person of a provision of a code of practice under this section shall not of itself render the person liable to any proceedings; but -

- (a) the Commission, in the exercise of its powers conferred by or under -
  - (i) this Act or any regulation; or
  - (ii) such relevant financial services enactments as may be applicable,

may take the provision of the code and the contravention thereof into account in determining whether and in what manner to exercise those powers; and

- (b) in any legal proceedings, whether or not under this Act, the provision of the code shall be admissible in evidence, and if the provision appears to the Court or other tribunal before which the proceedings are being conducted to be relevant to any question arising in the proceedings, then the provision may be taken into account in determining that question.

### Regulations

**74.** (1) The Governor in Council may make regulations generally for giving effect to the provisions of this Act and specifically -

- (a) in relation to the carrying on of fiduciary services business by licensees and regulated subsidiary companies;
- (b) as to the manner in which licensees and regulated subsidiary companies conduct, or hold themselves out as conducting, their business;
- (c) requiring the payment of fees under this Act and prescribing them, including-
  - (i) fees for filing an application,
  - (ii) fees for the issuance of a licence, and
  - (iii) annual fees;
- (d) controlling the form of advertising undertaken by licensees and regulated subsidiary companies;
- (e) prescribing anything required or permitted to be prescribed by this Act;

- (f) setting out general conditions applicable to licensees and regulated subsidiary companies and making provision for matters in respect of which conditions may be imposed under section 11;
- (g) prescribing the manner in which licensees and regulated subsidiary companies shall conduct, govern, manage and operate their business (including matters relating to corporate governance, internal controls and reporting, the holding of client assets, financial resources, the calculation of technical provisions and capital requirements);
- (h) prohibiting licensees and regulated subsidiary companies from carrying on, or holding themselves out as carrying on, fiduciary services business -
  - (i) of any specified class or description,
  - (ii) of a class or description, on a scale or in a manner other than that specified in a notice served on them by the Commission, or
  - (iii) in relation to persons of a specified class or description or persons other than those of a specified class or description;
- (i) imposing requirements (as to time, frequency, manner or otherwise) in relation to the exercise by licensees and regulated subsidiary companies of any discretionary powers afforded to them by clients;
- (j) requiring licensees and regulated subsidiary companies to employ persons of specified descriptions, and to have at their disposal specified resources, in connection with the carrying on of any fiduciary services business, and to specify the powers and duties of persons so employed;
- (k) controlling the relationship between licensees and regulated subsidiary companies and their employees and agents and requiring licensees and regulated subsidiary companies to impose and enforce restrictions on the activities carried on by their employees and agents;
- (l) regulating or prohibiting the carrying on of any other business in conjunction with any class or description of fiduciary services business;
- (m) requiring specified information to be given in the form and manner and at the time specified by or under the regulations -
  - (i) to the Commission,
  - (ii) to the public, or
  - (iii) to any prescribed class or description of persons;
- (n) requiring licensees and regulated subsidiary companies to make provision for the protection of clients in the event of the cessation of any business or any class or description of business carried on by them;

- (o) imposing requirements as to the places and manner in which, and the times during which, licences are to be displayed or available for inspection by the public;
- (p) making provision as to the settlement of disputes;
- (q) requiring the public disclosure by licensees and regulated subsidiary companies of information of such class or description, at such times and intervals and in such form and manner as the regulations may specify, including information on -
  - (i) the financial position and financial performance of licensees and regulated subsidiary companies,
  - (ii) the basis, methods and assumptions on which any information is prepared,
  - (iii) risk exposures and the management thereof, and
  - (iv) management and corporate governance; and
- (r) making provision as to the dealings and relationship of licensees and regulated subsidiary companies with other licensees, other regulated subsidiary companies, other persons carrying on fiduciary services business, clients and the Commission.

(2) The regulations made under this section may -

- (a) make different provision in relation to different persons, circumstances or cases; and
- (b) prescribe offences against the regulations and prescribe a fine not exceeding \$100,000, a term of imprisonment not exceeding 2 years, or both, in respect of any offence.

### **Exemption**

**75.** (1) The Commission may, on the application of the holder of –

- (a) a Category A licence;
- (b) a Category A, Type Family Office, licence; or
- (c) a Category A, Type Restricted, licence,

by written notice, exempt the licensee or its regulated subsidiary company from any of the provisions of this Act (other than section 15, section 18 and Part 8), if the Commission considers it appropriate to do so in the circumstances of the case.

(2) The Commission may, on the application of the holder of a Category B licence or a Category C licence, by written notice, exempt the licensee or its regulated subsidiary company from any of the provisions of this Act, if the Commission considers it appropriate to do so in the circumstances of the case.

(3) For the purposes of subsections (1) and (2) -

- (a) an application for an exemption shall be made in such form and manner, and shall be accompanied by such information and documents, as the Commission may require;
- (b) the application shall be accompanied by such fee as may be prescribed by regulations;
- (c) the application may be refused or granted subject to such written conditions as the Commission may consider necessary or expedient;
- (d) the Commission may at any time after receipt of the application require the applicant to furnish such additional information and documents as it considers necessary or desirable; and
- (e) the exemption may be revoked or varied at any time by the Commission by written notice to the person to whom it was granted.

(4) In considering whether or not to grant an exemption under subsection (1) or (2), the Commission shall have regard to -

- (a) the manner in which the applicant and its regulated subsidiary companies conduct, govern, manage and operate their business (including matters relating to corporate governance, internal controls and reporting, the holding of client assets, financial resources, the calculation of technical provisions and capital requirements);
- (b) whether the applicant and its regulated subsidiary companies have at their disposal specified resources in connection with the carrying on of any fiduciary services business and employ persons who have specified descriptions, powers and duties;
- (c) whether the applicant and its regulated subsidiary companies make provision for the protection of clients in the event of the cessation of any business or any class or description of business carried on by them;
- (d) whether there is public disclosure, by the applicant and its regulated subsidiary companies, of information on -
  - (i) the financial position and financial performance of the applicant and its regulated subsidiary companies,
  - (ii) the basis, methods and assumptions on which any information is prepared,
  - (iii) risk exposures and the management thereof, and
  - (iv) management and corporate governance; and
- (e) the dealings and relationship of the applicant and its regulated subsidiary companies with other licensees, other regulated subsidiary companies, other persons carrying on fiduciary services business, clients and the Commission.

(5) An exemption granted under subsection (1) or (2) may be withdrawn at any time by the Commission.

(6) A person who contravenes a condition imposed under subsection (3)(c) commits an offence and is liable on summary conviction to a fine of \$25,000.

#### **Amendment of Schedule**

**76.** The Governor in Council may, by Order, amend the Schedule.

#### **Repeal of Company Management Act**

**77.** The Company Management Act is repealed.

#### **Transitional provisions**

**78.** (1) Where, immediately before the commencement of this Act, a person was carrying on any fiduciary services business, in or from within Anguilla, then that person -

- (a) at any time prior to the prescribed date, shall be deemed to be a licensee; and
- (b) on the prescribed date and for a period of 2 years after the prescribed date, shall be deemed to be a licensee, if the conditions set out in subsection (2) are satisfied in relation to that person,

and the provisions of this Act shall apply in relation to that person accordingly.

(2) The conditions referred to in subsection (1)(b) are -

- (a) that, prior to the prescribed date, the person concerned has submitted an application for a licence in accordance with the provisions of section 8, and
- (b) that, at the time in question, the application has been finally determined and granted;

and for the purposes of this subsection an application is finally determined when it is granted (whether or not subject to conditions) or, if it is refused -

- (i) at the end of the period within which, under the Financial Services Commission Act, an appeal against the refusal can be brought, or
- (ii) if an appeal is brought within that period, when the appeal is determined or withdrawn.

(3) For the purposes of subsection (2)(b), an application that at the time in question has not been finally determined, shall be deemed to have been abandoned.

(4) In this section "prescribed date" means the date specified in regulations made by the Governor in Council for the purposes of this section.

**Citation** and commencement

**79.** This Act may be cited as the Trust and Corporate Services Providers Act, 2022 and shall come into force on a date the Minister charged with responsibility for Finance appoints by Notice in the Gazette.

## SCHEDULE

(Sections 9 and 76)

## MINIMUM CRITERIA FOR LICENSING

**Integrity and skill**

**1.** (1) The business of the applicant, licensee or regulated subsidiary company is or, in the case of a person who is not yet carrying on a regulated activity, will be carried on -

- (a) with prudence and integrity;
- (b) with professional skill appropriate to the nature and scale of the activities of the applicant, licensee or regulated subsidiary company; and
- (c) in a manner which will not tend to bring Anguilla into disrepute as an international finance centre.

(2) In conducting business, the applicant, licensee or regulated subsidiary company shall at all times act in accordance with -

- (a) such relevant financial services enactments, and codes, as may be applicable; and
- (b) any rules, codes, guidance, principles and instructions issued by the Commission.

**Fit and proper persons**

**2.** The applicant, licensee or regulated subsidiary company is a fit and proper person (as defined in section 4 of this Act) to hold a licence and, in the case of -

- (a) a Category A licence;
- (b) a Category A, Type Family Office, licence; or
- (c) a Category A, Type Restricted, licence,

every person who is, or is to be, a director, controller, partner or manager of the applicant or licensee is a fit and proper person (as so defined) to hold that position.

**Business to be directed by at least two individuals**

3. (1) In the case of a Category A licence, at least two individuals who are -

- (a) resident in Anguilla;
- (b) of appropriate standing and experience; and
- (c) sufficiently independent of each other,

shall effectively direct the business of the applicant or licensee.

(2) For the purposes of subparagraph (1), an individual is sufficiently independent of another where, in the opinion of the Commission, that individual would not be unduly influenced by that other individual.

**Composition of board of directors**

4. Where the applicant, licensee or regulated subsidiary company is a company, the board of directors shall include such number of -

- (a) directors with executive responsibility for the management of its business; and
- (b) directors without executive responsibility for the management of its business,

as the Commission considers appropriate having regard to the circumstances of the company and the nature and scale of its operations.

**Business to be conducted in prudent manner**

5. (1) The applicant, licensee or regulated subsidiary company conducts or, in the case of a person who is not yet carrying on fiduciary services business, will conduct business in a prudent manner.

(2) Without prejudice to subsection (1) and subject to subsection (4), a person shall not be regarded as conducting business in a prudent manner unless -

- (a) the person maintains or, as the case may be, will maintain -
  - (i) a capital base, and
  - (ii) insurance cover,of an amount which the Commission considers appropriate;
- (b) the person maintains or, as the case may be, will maintain adequate liquidity, having regard to -
  - (i) the relationship between the person's liquid assets and the person's actual and contingent liabilities,
  - (ii) the times at which those liabilities will or may fall due and the person's assets will mature,
  - (iii) the nature and scale of the person's operations,

- (iv) the risks inherent in those operations and (where the person is a company) in the operations of any other company in the same group so far as capable of affecting the company, and
- (v) any other factors appearing to the Commission to be relevant;
- (c) in the case of a Category A licence, the person makes or, as the case may be, will make adequate provision for -
  - (i) depreciation or diminution in the value of the person's assets (including provision for bad or doubtful debts),
  - (ii) liabilities which will or may fall to be discharged by the person, and
  - (iii) losses which the person will or may incur; and
- (d) the person maintains or, as the case may be, will maintain -
  - (i) adequate accounting and other records of the person's business, and
  - (ii) adequate systems of control of the person's business and records.

(3) Without prejudice to the generality of the foregoing provisions of this paragraph, the Commission shall also have regard, in determining whether a person is to be regarded as conducting business in a prudent manner, to the following -

- (a) in the case of a Category A licence, whether the applicant or licensee has staff of adequate number, skills, knowledge and experience to undertake and fulfil their duties;
- (b) the systems of control and record keeping of the applicant, licensee or regulated subsidiary company for business undertaken or contemplated and the provision made for the proper maintenance and development of such systems;
- (c) the complaints history of the applicant, licensee or regulated subsidiary company; and
- (d) in the case of a Category A licence, whether the structure or organisation of the group of which the applicant or licensee is a part, hinders effective supervision.

(4) For the purposes of -

- (a) subsection (2)(a), an appropriate amount is -
  - (i) an amount commensurate with the nature and scale of a person's operations, and
  - (ii) an amount and of a nature sufficient to safeguard the interests of the person's clients, having regard to -
    - (A) the nature and scale of the operations,
    - (B) the risks inherent in the operations and (where the person is a company) in the operations of any other company in the same group so far as capable of affecting the company, and

- (C) any other factors appearing to the Commission to be relevant;
- (b) subsection (2)(b), in considering the liquid assets of a person, the Commission may, to such extent as it thinks appropriate, take into account -
  - (i) the assets of the person, and
  - (ii) the facilities which are available to the person and which are capable of providing liquidity within a reasonable period; and
- (c) subsection (2)(d) -
  - (i) records and systems shall not be regarded as adequate unless they are such as to enable -
    - (A) the business of the person to be managed prudently, and
    - (B) the person to comply with the duties imposed on the person by or under this Act and such relevant financial services enactments, and codes, as may be applicable, and
  - (ii) where the person is a company, in determining whether those systems are adequate the Commission shall have regard to the functions and responsibilities of the company's directors.

**Information required by the Commission**

6. An applicant, licensee or regulated subsidiary company and any person who is, or is to be, a director, controller, partner or manager of the applicant, licensee or regulated subsidiary company, shall supply such information as the Commission may reasonably require for the purpose of assessing compliance with the minimum criteria set out in this Schedule.

## OBJECTS AND REASONS

*(The objects and reasons do not form part of the Bill)*

The Bill for consideration is the Trust and Corporate Services Providers Bill.

In 2014, the Group of International Finance Centre Supervisors introduced a Standard on the Regulation of Trust and Corporate Service Providers (“the Standard”), with a view to establishing a new framework for adequate regulation and supervision of Trust and Corporate Service Providers (“TCSPs”).

Research has indicated that the adoption of the principles set out in this new framework will raise the standard for anti-money laundering and combating the financing of terrorism. The Bill therefore seeks to give effect to various issues addressed in the Standard, such as -

- the oversight and regulation of TCSPs
- the licensing of TCSPs
- the corporate governance of TCSPs
- the integrity of controllers of TCSPs
- the separation of the funds of TCSPs’ clients from the funds of TCSPs
- the capital and liquidity requirements relating to TCSPs
- the auditing of the accounts of TCSPs
- the keeping of the records of TCSPs.

Part 1 of the Bill provides for preliminary matters, including the interpretation (**clause 1**) and the meaning of key terms used in the Bill (**clauses 2 to 5**).

Provision is made in Part 2 of the Bill (clauses 6 to 14) for the regulation of fiduciary services business.

**Clause 6** sets out the prohibition of any person other than a licensed company, from carrying on fiduciary services business in or from within Anguilla and provides that a licensee does not require a licence under the Trades, Businesses, Occupations and Professions Licensing Act in respect of its trust business or company management business.

**Clause 7** details the various types of licences and sub-categories of licences for which a company may apply and also enables a company to apply for its licence to extend to its wholly owned subsidiary company. Depending on the type of licence issued, various aspects of fiduciary services business would be authorised, for example, acting as a registered agent, providing company management and administration services and acting as a trustee to trust structures established within or outside of Anguilla.

**Clauses 8 to 11 and the Schedule** set out the information required for an application for a licence under the legislation and empower the Financial Services

Commission (“the Commission”) to issue a licence to a successful applicant and extend the licence to include the applicant’s subsidiary company.

Part 3 of the Bill (clauses 15 to 25) outlines the key obligations of a licensee and the subsidiary companies to which its licence extends (termed “regulated subsidiary companies”).

By virtue of **clause 15**, a licensee and a regulated subsidiary company are required to have a principal office in Anguilla and to appoint a resident manager and two agents.

A specified amount of paid-up and unencumbered share capital is to be maintained (**clause 17**) and a policy of insurance is to be maintained with an insurance company approved by the Commission (**clause 18**).

By virtue of **clause 19**, a licensee and a regulated subsidiary company would be required to seek the prior written approval of the Commission in respect of a change of name.

**Clause 20** imposes upon a licensee a duty to notify the Commission of certain transactions involving shares (for example, the transfer of shares that does not result in a change to the distribution of the licensee’s beneficial ownership); however, the Commission’s approval is required prior to significant ownership changes (**clause 21**).

Part 4 of the Bill (clauses 26 to 34) seeks to regulate Managing Trust Companies.

**Clause 26** sets out the prohibition of any person acting as a Managing Trust Company unless the Commission’s authorisation has been obtained and a written management agreement is filed with the Commission.

**Clauses 27 to 29** set out the required material necessary in an application for an authorisation under the legislation and empower the Commission, if satisfied with the submitted material, to issue an authorisation to a successful applicant.

**Clauses 30 and 31** set out the obligations of Managed Trust Companies and Managing Trust Companies, respectively, while **clause 32** deals with the content of management agreements and **clause 33** identifies the books and records that are to be kept by a Managed Trust Company.

**Clause 34** deals with corporate governance and requires a Managed Trust Company to have at least one director who is resident in Anguilla and at least one resident manager.

Part 5 of the Bill (clauses 35 to 37) regulates outsourcing.

**Clause 35** empowers the Commission to specify the functions of a licensee that shall not be outsourced while **clause 36** would require data (whether in a physical or digital format) to be held in a secure manner.

**Clause 37** deals with the protection of personal data.

Part 6 of the Bill (clauses 38 to 43) seeks to make provision for the regulation of directors of the Board of a licensed company or its regulated subsidiary.

The prior written approval of the Commission would be required for the appointment of resident managers and the Commission would have to be notified if directors are changed (**clauses 38 and 39**, respectively).

Directors would be required to exercise a high standard of care when exercising their powers (**clause 41**) and to disclose to the Board their conflicting interest in any transactions (**clause 43**).

Part 7 of the Bill (clauses 44 to 52) deals with administrative provisions.

**Clause 44** details the circumstances in which the Commission may require a licensed company to suspend the conduct of certain actions.

**Clause 47** empowers the Commission to publish a list of licensed companies, all of their regulated subsidiary companies and also all of their subsidiary companies that carry on business other than fiduciary services business.

The Commission is also empowered to make an order prohibiting an individual from performing any function, if it appears that the individual is not a fit and proper person to perform functions in relation to the relevant fiduciary services business (**clauses 48 to 50**).

Part 8 of the Bill (clauses 53 to 60) contains provisions requiring the annual accounts of a licensee and a regulated subsidiary company to be audited by an auditor.

By virtue of **clause 53**, the auditor's appointment would have to be approved in writing by the Commission.

The annual accounts would be prepared on an accrual basis and in accordance with generally accepted accounting principles acceptable to the Commission (**clause 54**) and the auditor would be required to report to the Commission any matter which, in the auditor's opinion, constitutes an offence involving fraud or dishonesty (**clauses 55 to 57**).

The Bill specifies the books and records that a licensee and a regulated subsidiary company are required to keep and maintain (**clauses 59 and 60**).

Part 9 of the Bill (clauses 61 to 65) sets out various offences constituted under the legislation and these include giving false or misleading information (**clause 62**) and breaching the conditions of a licence (**clause 63**).

Part 10 of the Bill (clauses 66 to 79) deals with miscellaneous provisions.

**Clause 67** requires a licensee to keep trust funds separate from the licensee's own funds.

**Clause 70** enables the Commission to intervene before a court, on behalf of depositors, in the voluntary winding up of a licensee or regulated subsidiary company.

**Clause 73** empowers the Commission to issue codes of practice and **clause 74** sets out the power of the Governor to implement regulations for the administration of the legislation.

**Clause 75** deals with exemptions that may be granted by the Commission. When considering whether to exempt a licensee from having to comply with the legislation, the Commission would be guided by objective criteria so that the process of obtaining an exemption would be transparent. A condition may be attached to an exemption and breach of the condition would be an offence.

**Clause 76** enables the amendment of the Schedule which sets out minimum criteria for licensing.

**Clause 77** seeks to repeal the Company Management Act and **clause 78** contains transitional provisions.

**Clause 79** provides the short title and commencement of the legislation.

*Speaker*

Passed by the House of Assembly this      day of      , 2020

*Clerk of the House of Assembly*

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