

ANTIGUA AND BARBUDA



**THE CORPORATE MANAGEMENT AND TRUST SERVICE PROVIDERS  
(AMENDMENT) ACT, 2010**

**No. 5 of 2010**

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[ L.S.]



I Assent,

**Louise Lake-Tack,**  
*Governor-General.*

18<sup>th</sup> May, 2010

**ANTIGUA AND BARBUDA**

**THE CORPORATE MANAGEMENT AND TRUST SERVICE PROVIDERS  
(AMENDMENT) ACT, 2010**

**No.      of 2010**

**AN ACT** to amend the Corporate Management and Trust Service Providers Act, No 20 of 2008 and for incidental and connected purposes.

**ENACTED** by the Parliament of Antigua and Barbuda as follows:

**1. Short title**

This Act may be cited as the Corporate Management and Trust Service Providers (Amendment) Act, 2010 and shall come into operation on a date that the Minister may appoint, by Notice published in the *Gazette*.

**2. Interpretation**

In this Act “the principal Act” means the Corporate Management and Trust Service Providers Act, No. 20 of 2008.

### **3. Amendment of section 2**

### **Interpretation**

Section 2(1) of the principal Act is amended—

(a) in the definition of “corporate management and trust service provider” by repealing paragraph (o) and inserting the following paragraphs—

“(o) the provision of services as a custodian of bearer shares;

(p) any other service provider that the Minister may by order specify.”

(b) by inserting the following definitions—

“bearer share” means a share in a company represented by a certificate which states that the bearer of the certificate is the owner of the share;

“custodian” means a licensed or recognised custodian;

“FATF” means the Financial Action Task Force, an intergovernmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing.;

“financial services business” means a business covered under any financial services legislation regulated by the Commission;

“financial services legislation” means any legislation regulated by the Commission;

“licensed custodian” means a person licensed by the Commission under section 6 to perform the duties and functions of a licensed custodian of bearer shares;

“person” includes any entity, natural or juridical, a corporation, partnership, trust of estate, joint stock company, association, syndicate, joint venture or other unincorporated organisation or group, capable of acquiring rights or entering into obligations;

“professional” means a person who has relevant certified qualification conferred by a reputable body or association responsible for the certification or regulation of persons providing services in the relevant field and who is subject to the regulation and oversight of a reputable body in the carrying out or provision of the services in the relevant field;

“recognised custodian” means a person approved by the Commission under section 6A to perform the duties and functions of a recognised custodian of bearer shares;

“regulated person” means a person authorised, licensed, registered or recognised or required to be so authorised, licensed, registered or recognised under any financial services legislation regulated by the Commission;

“Supervisory Authority” means the Authority established under section 10 of the Money Laundering (Prevention) Act, No. 9 of 1996; and

“transition date” means three months after the commencement of this Act or such other period as the Commission may determine in accordance with section 139C(4) of the International Business Corporations Act, Cap 222”

**4. Amendment of section 4 Exemptions**

Section 4 of the principal Act is amended by inserting after subsection (1) the following subsections —

“(1A) An application under subsection (1) for an exemption shall be accompanied by written evidence capable of satisfying the Commission that the applicant is eligible for the exemption.

(1B) An applicant shall provide such further information and in the manner as the Commission may request for the purpose of making a determination on the application under subsection (1).

(1C) The decision of the Commission on an application for an exemption is final. ”

**5. Amendment of section 5 Requirement for licence**

Section 5(3) of the principal Act is amended by repealing ‘corporate management services’ and substituting ‘any service provided by a corporate management and trust service provider’.

**6. Amendment of section 6 Application for Licence**

Section 6 of the principal Act is amended—

(a) by inserting in subsection (1) after the words ‘Antigua and Barbuda;’, the words ‘a professional;’;

(b) by repealing subsection (4) and substituting the following—

“(4) An application for a licence under this Act shall—

(a) be in the relevant form set out in Schedule A, or in such other form as may be prescribed;

(b) be accompanied by the affidavit in the form set out in Schedule B and where applicable, the declaration in the form set out in Schedule C; and

- (c) be accompanied by the fee prescribed in Schedule I;”;
- (c) in subsection (6), by inserting after ‘attorney-at-law’, ‘or professional’;
- (d) in subsection 9, by repealing ‘as defined in this Act’;
- (e) in subsection 9 (iii), by repealing “Acting as custodian for bearer shares”;
- (f) by inserting after subsection 9 (iii) the following—
  - “(iv) Class D Licence  
Acting as custodian of bearer shares.
  - (v) Class E Licence  
Acting as custodian of bearer shares and providing the services permitted under another class of licence”; and
- (g) by repealing subsections (6), (7), (8) and (9) where they appear for the second time and substituting the following subsections—
  - “(10) An applicant for a class D or class E licence shall be resident in Antigua and Barbuda.
  - (11) Where the Commission grants, revokes, suspends or reinstates a licence, the Commission shall cause a notice of the grant, revocation, suspension or reinstatement of the licence to be published in the *Gazette*.
  - (12) If the Commission refuses to grant a licence, it shall, in writing indicate to the applicant the reasons why and the provisions under the Act pursuant to which, the application was rejected.
  - (13) Information supplied to an applicant pursuant to subsection (12) shall not be available to the public but shall be maintained in the files of the Commission.”.

## **7. Insertion of section 6A**

### **Application to be recognised custodian**

The principal Act is amended by inserting after section 6, the following section—

#### **“6A. Application for approval as recognised custodian**

(1) A body corporate that is incorporated or formed outside of Antigua and Barbuda may apply to the Commission to be a recognised custodian if it –

- (a) is not resident in Antigua and Barbuda; and
- (b) does not have a place of business in Antigua and Barbuda.



(2) An application under subsection (1) shall—

- (a) be in such form as may be prescribed;
- (b) contain such information as may be prescribed; and
- (c) be accompanied by the fee prescribed in Schedule I.

(3) The Commission shall not approve an application by a body corporate to be a recognised custodian unless it is satisfied that—

- (a) the body corporate carries on the business of financial services in a jurisdiction outside of Antigua and Barbuda;
- (b) the body corporate is subject to FATF regulations or due diligence obligations and principles; and
- (c) there is satisfactory prudential regulation exercised over the body corporate outside of Antigua and Barbuda.

(4) Where the Commission grants, revokes, suspends or reinstates an approval, the Commission shall cause a notice of the grant, revocation, suspension or reinstatement of the approval to be published in the *Gazette*.

(5) If the Commission refuses to grant an approval, it shall, in writing indicate to the applicant the reasons why and the provisions under the Act pursuant to which, the application was rejected.

(6) Information supplied to an applicant pursuant to subsection (5) shall not be available to the public but shall be maintained in the files of the Commission.

## **8. Amendment of section 7            Duration of licence**

Section 7 of the principal Act is repealed and substituted with the following—

### **“7. Duration and renewal of licence or approval**

(1) A licence or approval granted under this Act is valid for a period not exceeding twelve months from the date on which it takes effect unless sooner revoked or otherwise ceases to have effect.

(2) A licensee or a recognised custodian may, not less than 30 days before the expiration of the licence or approval, apply to the Commission to renew the licence or approval for a further period not exceeding twelve months.

(3) An application to renew a licence or approval shall be—

(a) in writing and in such form as may be prescribed; and

(b) accompanied by the prescribed fee.

(4) Before renewing a licence or approval, the Commission shall take into consideration –

(a) in the case of a licence, the matters referred to in section 6; and

(b) in the case of an approval, the matters referred to in section 6A.

(5) If the Commission is satisfied that the licensee or recognised custodian continues to meet the requirements of section 6 or 6A as the case may be, the Commission shall renew the licence or approval for a further period not exceeding twelve months.

(6) The date of expiration of a licence or approval shall be set out on the licence or the approval.

(7) Where an application for the renewal of a licence or approval made in accordance with this section has not been determined by the Commission by the date of expiration of the licence or approval –

(a) the licence or approval continues in force until the application is determined; and

(b) any renewal is deemed to have commenced from the day when the licence or approval would have expired.”

(8) Where the Commission renews a licence or approval, the Commission shall cause a notice of the renewal to be published in the *Gazette*.

(9) If the Commission refuses to renew a licence or approval, it shall, in writing indicate to the applicant the reasons why and the provisions under the Act pursuant to which, the application for renewal was rejected.

(10) Information supplied to an applicant pursuant to subsection (9) shall not be available to the public but shall be maintained in the files of the Commission.

## **9. Insertion of section 7A                      Conditions of licence or approval**

The principal Act is amended by inserting after section 7, the following section—

### **“7A. Conditions of licence or approval**

(1) A licence or approval granted under this Act may be subject to conditions or limitations as the Commission considers appropriate and shall be set out in or attached to the licence or approval.

(2) The Commission may upon giving 10 working days notice to the licensee or recognised custodian—

(a) vary or revoke any conditions attached to a licence or approval; or

(b) attach new conditions to the licence or approval.”

(3) A licensee or recognised custodian may in writing request the commission to vary or revoke any conditions attached to its licence or approval.

#### **10. Amendment of section 8      Maintenance of corporate management service and trust service provider Register**

Section 8 of the principal Act is amended—

(a) in the heading, by inserting after ‘management’, ‘and trust’;

(b) by inserting after subsection (1)(f), the following—

“(g) if a licensee ceases to be a corporate management and trust service provider—

(i) the date on which the person ceased being a corporate management and trust service provider; and

(ii) whether the licence was revoked, suspended or expired or any other reason for the person ceasing to be licensed.

(h) in respect of a recognised custodian—

(i) the name and address of each person approved as a recognised custodian;

(ii) the date on which the person was approved as a recognised custodian; and

(iii) if a person ceases to be a recognised custodian, the date on which and the reasons for which the person ceased to be a recognised custodian; and

(i) any other information as may be prescribed.”

#### **11. Amendment of section 9      Notification of change in particulars of licence**

Section 9 of the principal Act is repealed and substituted with the following—

##### **“9. Notification of change in particulars of licence or approval**

(1) Subject to section 13, if a change occurs in the particulars of a licensee or recognised custodian as set out in the application for the licence or approval, the licensee or recognised custodian, as applicable, shall, within 30 days of the change, notify the Commission of the change.

(2) The notification required under subsection (1) shall—

- (a) in the case of a licensee, be in the form set out in Schedule E or in such other form as may be prescribed;
- (b) in the case of a recognised custodian, be in the form set out Schedule E1 or such other form as may be prescribed.

(3) If there is a material change in circumstances, capable of having an adverse effect on the continuance of a licence or approval, the licensee or recognised custodian, as applicable, shall, within 30 days of the change occurring and in such form as may be prescribed, notify the Commission of the change.

(4) Without limiting the generality of subsection (3), a material change in circumstances includes any legal proceedings in which the licensee or recognised custodian is or will be a defendant and which may adversely affect—

- (a) its the financial standing or business; or
- (b) its the professional reputation or financial integrity.

(5) Where a licence or approval has been renewed by the Commission, this section applies to each subsequent renewal.”

## **12. Amendment of section 11. Surrender of licence**

Section 11 of the principal Act is repealed and substituted with the following—

### **“11. Surrender of licence or approval**

(1) A licensee who intends to cease carrying on the business in respect of which the licence was granted, shall apply in writing to the Commission to surrender the licence.

(2) An application to surrender a licence shall be accompanied by—

- (a) evidence that the licensee has paid all taxes, levies, charges and dues owing to the government;
- (b) evidence that the licensee has repaid all deposits and has transferred all assets held or administered on behalf of entities managed by it or for which it provides corporate management and trust services to their beneficial owners or to another licensee designated by the beneficial owner;

- (c) a declaration by the licensee that there are no outstanding judgments against the licensee and that the licensee is not a party to any litigation, relating to its role as a corporate management and trust service provider; and
- (d) in the case of a corporation that is being wound up voluntarily—
  - (i) evidence that the corporation is solvent and is liable on demand to repay all deposits held by it and all its other creditors and that it has transferred, to the beneficial owners, all assets held or administered on behalf of corporate businesses on behalf of which it provides services; or
  - (ii) evidence that the licensee has sent notices, prior to its application to surrender its licence, to all clients informing them that it will cease to carry on business as a corporate management and trust service provider and that it has given each client a list of other corporate management and trust service providers.

(3) A custodian who desires to cease being a custodian shall apply in writing to the Commission and shall specify the date on which it desires to cease being a custodian, which date shall not be less than 60 days from the date of delivery of the application to the Commission.

(4) A custodian who has applied to cease being a custodian shall ensure that all its clients are notified of its intention to cease being a custodian and if the custodian has a presence on the internet, it shall ensure that notice of its intention to cease being a custodian is prominently displayed via this medium.

(5) A licensee who has applied to the Commission to cease carrying on the business in respect of which the licence was granted shall not, after the date of its application, accept any new clients, unless the application is withdrawn.

(6) A recognised custodian who has applied to the Commission to cease being a recognised custodian shall not, after the date of its application, accept any new clients, unless the application is withdrawn.”

(7) In the case of an application of a company being wound up, the Commission may apply to the Court for an order that the licensee be wound up either by the Court or be subject to the supervision of the Court, and where the court so orders the provisions of the Companies Act or the International Limited Liability Company Act or the International Business Corporation Act relating to the winding up of a corporation by or subject to the supervision of the court apply with such modifications as may be necessary.

### **13. Amendment of section 12. Restriction on use of the term “corporate management and trust service provider”**

Section 12 of the principal Act is amended—

- (a) in subsection (2)(a), by repealing the words “calculated to deceive” and substituting “capable of being misleading”;
- (b) in subsection (2)(b), by repealing the words “calculated to suggest falsely” and substituting “capable of falsely suggesting”; and
- (c) in subsection (2)(c), by repealing the words “calculated to suggest falsely” and substituting “capable of falsely suggesting”.

**14. Amendment of section 13. Appointment or transfer not to be made without approval**

Section 13 of the principal Act is amended—

- (a) in subsection (1), by repealing ‘as defined in section 2;
- (b) in subsection (2), by repealing ‘of’ where it appears for the second time and substituting ‘or’; and
- (c) by repealing subsection (5) and substituting the following—

“(5) If a director, officer or manager of a licensee is convicted of fraud in any jurisdiction, the licensee shall, within 14 days of the conviction—

  - (a) remove the person from that position; and
  - (b) send notice to the Commission -
    - (i) of the conviction; and
    - (ii) of the removal of the person from the position held.”

**15. Amendment of section 14. Functions of the Commission**

Section 14 of the principal Act is amended—

- (a) in subsection (1)(b)(i), by repealing ‘Terrorism Prevention Act’ and substituting ‘Prevention of Terrorism Act’;
- (b) by inserting after subsection (b), the following—

“(c) with the approval of the Board, to license corporate management and trust service providers;

(d) with the approval of the Board, to approve persons as recognised custodians of bearer shares;

(e) to effectively supervise corporate management and trust service providers in Antigua and Barbuda.”;

(c) by inserting after subsection (7), the following subsection—

“(8) The Commission may issue rules, guidelines, directions or orders as necessary for the efficient regulation and supervision of corporate management and trust service providers and the rules, guidelines, directions or orders issued, shall have effect in like manner as the provisions of this Act.”

## **16. Insertion of section 18A**

The principal Act is amended by inserting after section 18, the following section—

### **“18A. Record keeping by custodian**

(1) A licensed custodian shall prepare and maintain at its registered office records, in respect of each bearer share it holds, indicating—

- (a) the name and address of the beneficial owner at the time of first receiving the bearer share;
- (b) the name and address of each subsequent beneficial owner;
- (c) the identification number and the date of receipt of each bearer share; and
- (d) any other information as may be prescribed.

(2) Where a licensed custodian transfers possession of a bearer share, it shall keep records containing—

- (a) the name and address of the transferee;
- (b) the name and address of the transferor;
- (c) the date of the transfer; and
- (d) any other information as may be prescribed.

(3) A licensed custodian shall ensure that its records are kept current and accurate.

(4) A licensed custodian shall maintain its records for a minimum of six years from the date of last entry in or update of the records, or for such longer period of time as may be prescribed.

**17. Amendment of section 19—Keeping records of clients**

Section 19 of the principal Act is amended by repealing ‘section 18(2)’ and substituting ‘sections 18(2) and 18A’.

**18. Amendment of section 22—Duty relating to suspicious transactions**

Section 22 (1) of the principal Act is amended by repealing ‘Director of the Office of National Drug Control Policy (ONDCP)’ and substituting ‘Supervisory Authority’.

**19. Amendment of section 24**

The principal Act is amended in section 24 by repealing paragraph (1)(b) *and* substituting the following—

“(b) licensees with a Class B licence, a Class C licence or a Class E licence where that licence is comprised of a combination of a Class D licence and a Class B licence or a Class D licence and a Class C licence, shall obtain insurance in an amount determined by the Commission that amount being identical for each member of the class, in respect of—

- (i) claims arising out of negligence, breach of duty, violation of law embezzlement, theft or conversion of assts, or any other liability by the licensee or by any officer, director, manager, employee or agent of the licensee; and
- (ii) loss of documents or property not covered by paragraph (a).”

**20. Amendment of section 26—Revocation of licence**

Section 26 of the principal Act is amended—

- (a) in the heading, by inserting after ‘licence’, ‘or approval’;
- (b) by inserting before ‘The Commission’, ‘(1)’; and
- (c) by inserting after paragraph (c) the following subsections—

“(2) The Commission may revoke a licence or approval, if in the opinion of the Commission, the holder—

- (a) is no longer a fit and proper person to hold the licence or approval;
- (b) fails to comply with any condition attached to its licence or approval;
- (c) fails to observe any guidelines, directions, order or rules issued by the Commission; or



- (d) in the case of a recognised custodian, becomes resident or establishes a place of business in, Antigua and Barbuda.
- (3) Where the Commission revokes a licence or approval, it shall—
  - (a) serve a revocation notice on the licensee or recognised custodian as the case may be;
  - (b) in writing, indicate to the licensee or recognised custodian, as the case may be, the reasons for the revocation; and
  - (c) publish the revocation notice in the *Gazette*.”

## **21. Insertion of sections 26A, 26B and 26C**

The principal Act is amended by inserting after section 26, the following sections—

### **“26A. Procedure on ceasing to be a custodian**

(1) Where a person ceases to be a custodian, it shall, in respect of each bearer share that it holds in a company, forthwith give each corporate management and trust service provider of the company, the beneficial owner of the bearer share and any person who the custodian knows has an interest in that bearer share, written notice that it is no longer licensed or approved as a custodian.

(2) A person who ceases to be a custodian shall—

- (a) within 60 days of ceasing to be a custodian, seek written instructions from the beneficial owner of each bearer share that it holds as to a replacement custodian that agrees to hold the bearer share and deliver the bearer share to that custodian; or
- (b) on the written instructions of the beneficial owner, deliver the bearer share to the company where the bearer share has been—
  - (i) converted to, or exchanged for, a registered share;
  - (ii) redeemed, purchased or otherwise acquired by the company; or
  - (iii) cancelled and forfeited.

(3) A custodian shall act in accordance with instructions from the beneficial owner, except that a transfer shall not be made to a company, unless it receives written evidence from the company in the form of a directors’ or shareholders’ resolution indicating which of the conditions in (2)(b) is applicable.

(4) Where a custodian delivers a bearer share under subsection (2), it shall—

- (i) make and retain copies of all notices sent or received by it in respect of each bearer share, for a minimum of six years, or for such longer period as may be prescribed; and
- (ii) deliver with the bearer share, all original notices provided upon receipt of the bearer share and a copy of each notice sent by it in respect of the bearer share.

(5) Where a custodian does not receive or is unable to act upon, instructions from the beneficial owner, within the time specified, then subject to section 26B, the custodian shall forthwith deliver each bearer share to another custodian or a corporate management and trust service provider of the company.

- (6) Upon delivery of a bearer share under subsection (5), a custodian shall also deliver—
- (a) all original notices provided to it, in respect of the bearer share;
  - (b) a copy of each notice sent by it, in respect of the bearer share; and
  - (c) a copy of all records kept by it in respect of the bearer share.

(7) A corporate management and trust service provider of a company who receives a bearer share in a company under this section shall hold the share on behalf of the beneficial owner of the share and shall only transfer possession of that share in accordance with instructions received under subsection (8) or if no instructions are received within the time period specified, then in accordance with subsection (9).

(8) The corporate management and trust service provider shall, within 60 days of receipt of a bearer share under this section, seek written instructions from the beneficial owner as to the transfer of possession of the bearer share to—

- (a) a custodian who has agreed to hold the share; or
- (b) the company where the bearer share has been—
  - (i) converted to, or exchanged for, a registered share;
  - (ii) redeemed, purchased or otherwise acquired by the company; or
  - (iii) cancelled and forfeited.

(9) The corporate management and trust service provider shall act in accordance with instructions received from the beneficial owner except that it shall not transfer a bearer share to a company unless it receives written evidence from the company in the form of a directors' or shareholders' resolution, indicating which of the conditions in subsection (8)(b) is applicable.

(10) If at the expiration of the 60 day period, the corporate management and trust service provider does not receive or is unable to act upon instructions from the beneficial owner, the corporate management and trust service provider shall transfer possession of the share to a custodian as it sees fit and which agrees to hold the share.

(11) Where a corporate management and trust service provider fails to transfer possession of a bearer share in accordance with subsection (10), the Commission may apply to the Court for an order that the bearer share be disabled.

(12) On an application under subsection (11), the Court may make such order as it considers appropriate.

(13) Where a corporate management and trust service provider transfers possession of a bearer share received under this section, it shall—

- (a) make a copy of all notices provided to it in respect of the bearer share and retain the copies made for a minimum of six years or for a longer period of time as requested by a competent authority or such period as may be prescribed; and
- (b) deliver, with the bearer share—
  - (i) the original notices, and
  - (ii) copies of notices received from the licensed or recognised custodian, previously holding the share.

(14) A corporate management and trust service provider commits an offence and is liable on summary conviction to a fine of twenty thousand dollars if it transfers possession of a bearer share otherwise than in accordance with instructions received from the beneficial owner.

#### **“26B. Procedure on ceasing to be custodian if custodian is sole service provider**

(1) If a custodian is the sole corporate management and trust service provider of the company on behalf of which it holds a bearer share, then upon its licence being revoked or surrendered, it shall give the beneficial owner of the share and any person who the custodian knows has an interest in that share, notice in the prescribed form that it is no longer a licensed custodian.

(2) A custodian shall, within 14 days of the revocation of its licence or within 60 days of surrendering its licence, seek to get written instructions from the beneficial owner as to the transfer of possession of the share to—

- (a) a custodian who has agreed to hold the share; or
- (b) the company where the bearer share has been—
  - (i) converted to, or exchanged for, a registered share,

- (ii) redeemed, purchased or otherwise acquired by the company, or
- (iii) cancelled and forfeited.

(3) The custodian shall act in accordance with instructions received from the beneficial owner except that it shall not transfer a bearer share to a company unless it receives written evidence from the company in the form of a director's or shareholders' resolution, indicating which of the conditions in subsection (2)(b) is applicable.

(4) If after the expiration of the relevant time period, the custodian does not receive or is unable to act upon written instructions from the beneficial owner, it shall forthwith transfer each bearer share to a custodian who has agreed to hold it.

(5) Upon transfer of a bearer share under subsection (4) a custodian shall—

(a) make a copy of all notices provided to it in respect of the bearer share and retain the copies made for such period as may be prescribed; and

(b) deliver, with the bearer share—

(i) the original notices, and

(ii) any copies of notices received from the licensed or recognised custodian, previously holding the share.

(6) A custodian commits an offence and is liable on summary conviction to a fine of twenty thousand dollars if it transfers possession of a bearer share otherwise than in accordance with instructions received from the beneficial owner.

## **26C. Procedure where no custodian willing to hold bearer share**

(1) A person who is unable to identify a custodian willing to hold a bearer share shall apply to the Court for directions.

(2) In determining an application the Court may make any order as it sees fit.

(3) The court may hear from any party with an interest in the proceedings or the bearer share, or any person as the court sees fit.”

## **22. Amendment of section 27 -**

Section 27 of the principal Act is amended—

3(a) in subsection (1) by repealing—

- (i) the word “ten” after the words “not exceeding” and substituting the word “one hundred”;
  - (ii) the words “twelve months” after the words “a term of imprisonment not exceeding” and substituting the words “two years”; and
  - (iii) the word “one” after the words “a fine of” and substituting the word “two”;
- (b) by inserting after subsection (1), the following—
- “(1A) A person who carries on the business of a recognized custodian in or from Antigua and Barbuda without obtaining an approval under this Act commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars, or to a term of imprisonment not exceeding two years; and where the offence continues after conviction that person is liable to a fine of two thousand dollars for each day that the offence continues.”
- (c) in subsection (2) by repealing—
- (i) the words “with intent to deceive” after the words “Any person who”;
  - (ii) the word “ten” after the words “not exceeding” and substituting the word “one hundred”; and
  - (iii) the word “six” after the words “not exceeding” and substituting the word “twelve”;
- (d) in subsection (3) by repealing—
- (i) the words “with intent to deceive” after the words “Any person who”;
  - (ii) the word “ten” after the words “not exceeding” and substituting the word “fifty”; and
  - (iii) the word “six” after the words “not exceeding” and substituting the word “twelve”;
- (e) in subsection (4) by repealing—
- (i) subsection (4), by repealing ‘ subsection 16(3)’ and substituting ‘section 18(3)’;

- (ii) the word “twenty” after the words “not exceeding” and substituting the word “forty”; and
  - (iii) the words “twelve months” after the words “not exceeding” and substituting the words “two years”;
- (f) in subsection (5) by repealing—
- (i) the word “fifty” after the words “not exceeding” and substituting the word “one hundred”; and
  - (ii) the words “twelve months” after the words “not exceeding” and substituting the words “two years”;
- (g) by inserting after subsection (7), the following subsection—

“(8) A civil remedy for any act or omission is not affected by reason that the act or omission is an offence under this Act.”.

### **23. Insertion of section 27A**

The principal Act is amended by inserting after section 27, the following section—

#### **“27A. Compounding offences**

(1) The Minister may, by Regulation, prescribe the offences under the Act which may be compounded.

(1) The Board may, if satisfied that a person has committed an offence prescribed under subsection (1), compound that offence, by accepting from the person an amount not exceeding fifty percent of the applicable penalty imposed for an offence under the Act.

(2) The power conferred by subsection (1) shall only be exercised where the person admits that he has committed the offence and agrees in writing to the offence being dealt with under this section.

(3) If any proceedings are brought against any person for an offence under this Act or under any Order or Regulation made under this Act, it shall be a defence if the person proves that the offence with which that person is charged has been compounded under this section.

(4) Any sum of money received under this section shall be dealt with as if the sum of money were a fine imposed by a court.

**24. Amendment of section 32**

Section 32 of the principal Act is amended—

- (a) in the heading, by inserting after ‘regulations’, ‘and orders’;
- (b) in subsection (1) by inserting the words “and Orders” after the word “regulations”; and
- (c) in subsection (3) by inserting the words “or Orders” after the word “regulations”.

**25. Miscellaneous amendments**

The principal Act is amended by repealing, wherever it appears in the Act—

- (a) “corporate management service provider” and substituting “corporate management and trust service provider”; and
- (b) the word “attorney” in section 6 (2) (a), 6 (3), 6 (6) (a), 6 (6) (b), 15 (2) (f) (ii), 30 (1) and in Form A 2 at paragraph 6 and substituting the words “attorney-at-law.

**26. Insertion of section 35 - Savings**

The principal Act is amended by inserting the following section after section 34—

**“ 35. Savings**

Any licence to act as a custodian of bearer shares which is in force immediately before the commencement of this Act shall—

- (a) have effect as from the commencement of this Act as if granted under this Act;
- (b) remain in force until expiration, subject to the powers of the Commission in respect thereto.”

**27. Amendment of Schedule A**

Schedule A to the principal Act is amended—

- (a) in Form A(1)—
  - (i) in the heading by repealing the words “by attorney”;
  - (ii) in paragraph 5, by inserting after ‘Class C licence’, the following—

[ ] Class D licence; and

[ ] Class E licence; and

(b) by inserting after Form A (2), the following—



## Financial Services Regulatory Commission

### THE CORPORATE MANAGEMENT AND TRUST SERVICE PROVIDERS ACT, 2008 [Section 6A]

#### SCHEDULE A: FORM A (3)

#### APPLICATION FOR AN APPROVAL OR RENEWAL OF AN APPROVAL TO BE A RECOGNISED CUSTODIAN

Please forward completed form with any supporting material to:  
**Manager of International Business Corporations and Other Non-Banking Financial  
Institutions**

### **Financial Services Regulatory Commission**

First Caribbean Financial Center  
Old Parham Road  
P.O. Box 2674  
St. John's, Antigua

**Tel:** (268)481-1194 • **Fax:** (268)463-0422

**Email:** [tsmith@fsrc.gov.ag](mailto:tsmith@fsrc.gov.ag)

**Website:** <http://www.fsrc.gov.ag>



**SECTION I: INSTRUCTIONS FOR COMPLETING SCHEDULE A  
APPLICATION FOR APPROVAL OR RENEWAL TO BE A  
CUSTODIAN**

This application must be submitted with all supporting documentation listed at the end of the form and a non refundable application fee of US\$2,500.00. Upon approval of the licence, the applicant must submit the appropriate approval fee.

This application form can be downloaded from our website in Adobe Acrobat format, with boxes that will expand to fit the text. Alternatively, the applicant can print the form and complete it with the use of a typewriter. Any information provided on additional sheets must be signed and dated. Where there is a question which is not applicable, please write “N/A” beside the question. All dates should be completed in the format: Day/Month/Year.

If an application is incomplete or does not disclose all information which may affect the Commission’s assessment, this may result in significant delays in processing. The Commission does not accept responsibility for any loss caused to the applicant by any delay. The approval is valid for a period not exceeding twelve (12) months from the date on which it takes effect.

Please note that a person commits an offence if, for the purposes of obtaining an approval he or she makes any representation that he or she knows to be false or does not believe to be true. That person will be liable *on summary conviction, to a fine not exceeding one hundred thousand United States Dollars (US\$100,000); or to a term of imprisonment not exceeding twelve (12) months.*

The Commission’s employees are available for consultation in the course of the preparation of this application and will try to give appropriate guidance where it is sought. However, in order that the role of the employees of the Commission is not misunderstood, the Commission wishes to emphasize: (1)*the preparation and submission of this application for an approval is the sole responsibility of the applicant;*(2)*the decision whether or not to grant an approval is the responsibility of the Commission;* and (3)*the Commission normally takes legal advice on questions of law that it is required to address and applicants for approvals must similarly be prepared to seek legal advice on questions of law that they are required to adhere.*

**SECTION II: APPLICANT'S CONTACT DETAILS**

<b>1. Date of Application:</b>			
<b>2. Name of Applicant:</b>			
<b>3. Registration information of applicant:</b>			
Company Registration Number:		Date of Incorporation:	
Place of Incorporation:			
<b>4. Contact information of principal office of applicant:</b>			
Address:			
Contact's Name:			
Telephone Number:		Mobile Number:	
Fax Number:		E-mail Address:	
<b>5. Website address, if any:</b>	http://		

**SECTION III: ABOUT THE APPLICANT**

<b>6. Is the applicant licensed with another jurisdiction?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>7. Contact information of the regulatory authority through which the licence was issued:</b>		
Name of Regulatory Authority:		
Address:		
Contact's Name:		

Telephone Number:		Mobile Number:	
Fax Number:		E-mail Address:	
<b>8. Website address, if any:</b>	http://		
<b>9. Type of Licence Issued:</b>			
<b>10. Date of Issuance:</b>		<b>11. License No:</b>	

**SECTION IV: DIRECTORS, EXECUTIVE OFFICERS & MANAGERS**

**12. Provide the number and names of directors in the Applicant’s company:**

<b>Director 1:</b>		<input type="checkbox"/> Schedule B attached
<b>Director 2:</b>		<input type="checkbox"/> Schedule B attached
<b>Director 3:</b>		<input type="checkbox"/> Schedule B attached
<b>Director 4:</b>		<input type="checkbox"/> Schedule B attached

**13. Provide the number and names of executive officers or managers; include compliance officer::**

<b>Name 1:</b>		<input type="checkbox"/> Schedule B attached
<b>Name 2:</b>		<input type="checkbox"/> Schedule B attached
<b>Name 3:</b>		<input type="checkbox"/> Schedule B attached
<b>Name 4:</b>		<input type="checkbox"/> Schedule B attached

**SECTION V: LEGAL STANDING**

**1. Has any beneficial interest holder of the applicant ever been convicted or had a sentence imposed or suspended or had pronouncement of a sentence suspended or pardoned for conviction of or pleaded guilty or nolo contendere to any information or**

**indictment charging any felony, or charging a misdemeanour involving embezzlement, theft, larceny, or fraud, or charging a violation or any corporate securities statute or any international financial services statutes, money laundering statutes, or have they been the subject of any disciplinary proceeding of any governmental or state regulatory agency anywhere in the world?**

Yes (Give details)

No

**2. Is the corporation considered to be in good legal standing or is there any outstanding litigation against the applicant or has the applicant issued any current proceedings?**

Yes (Attach certificate of good standing)

No (Explain)

**3. Have there been any convictions or civil judgments against the applicant?**

Yes (Explain)

No

**4. Has the applicant, at any time within the last 6 years, received an indication from a banker that its office account or clients' money account has not been kept in a satisfactory manner?**

Yes (Explain)

No

**5. Does the applicant comply with the Money Laundering Prevention Act?**

Yes (Provide Compliance Manual)

No

### SECTION VI: DOCUMENTATION WHICH FORMS PART OF THIS APPLICATION

Documents	Notes	Attached
● Certificate of incorporation	Verification of registration of incorporation by providing a certified copy of certificate of incorporation.	<input type="checkbox"/>
● Articles and bylaws	Certified copy of articles and bylaws or other governing documents are required.	<input type="checkbox"/>
● Certificate of good standing	A certificate of good standing is required if the company has been in existence for more than one (1) year.	<input type="checkbox"/>
● Biological Affidavit of Director	A biological affidavit for each Director (Schedule B) must be submitted.	<input type="checkbox"/>
● Biological Affidavit of Manager or Officer	A biological affidavit (Schedule B) for each Manager or Officer of the Applicant (Schedule B) must be submitted.	<input type="checkbox"/>
● Client Agreements/Administration Agreements/Terms of Business	Client Agreements/Administration Agreements/Terms of Business must be provided.	<input type="checkbox"/>
● Payment	Cheque payable to "the FSRC" in the amount of US\$2,500.00 for application fees and one for the approval fees upon receipt of confirmation of approval must be submitted.	<input type="checkbox"/>

### SECTION VII: DECLARATION

**This declaration must be signed by any two directors or the company secretary of the applicant. A licence will not be issued until this Declaration is properly signed.**

The applicant hereby declares that all the information provided in this application and any other document provided in support of the said application is true and correct. Applicant further undertakes to inform the Commission without delay of any changes to the information supplied with this application.

We understand and accept that the Commission may wish to make inquiries, both now and on a continuing basis, to satisfy itself as to the initial and continuing fitness and propriety of the Licensee and its directors and management. Consequently, we authorize any person, body or institution named in this application that the Commission may approach, to provide such information, as the Commission believes may be relevant to its assessment.

Director's Name

Director's Signature

Date

Director's/ Company Secretary's Name

Director's/Company Secretary

Date

Signature			
<b>SECTION VIII: ADMINISTRATION - FOR FSRC USE ONLY</b>			
Date application received:			
Received by (employee's name):			
Date application fee was received by Commission:		Receipt Number:	
Decision taken by the Commission:			

**28. Insertion of Schedule EI**

The principal Act is amended by inserting the following after Schedule E—



**ANTIGUA AND BARBUDA  
FINANCIAL SERVICES REGULATORY  
COMMISSION**

**THE CORPORATE MANAGEMENT AND TRUST SERVICE PROVIDER  
ACT, 2008**

**SCHEDULE E(1): NOTICE OF CHANGE IN PARTICULARS OF A  
RECOGNISED CUSTODIAN**

**SECTION I: DETAILS OF RECOGNIZED CUSTODIAN**

<b>6. Name of the Recognised Custodian:</b>			
<b>7. Date of Change:</b>		Approval No.:	
<b>8. Registered Office Information:</b>			

Name of Registered Office:

Address of Registered Office:

Contact's Name:

Telephone Number:  Mobile Number:

Fax Number:  E-mail Address:

**9. Mailing Address:**

Address:

Telephone Number:  Mobile Number:

Fax Number:  E-mail Address:

**SECTION II: PARTICULARS OF CHANGE**

**10. Please provide details to change in particulars in the application/renewal of licence  
(Attach particulars as necessary)**

**SECTION III: DECLARATION**

**This declaration must be signed by any two directors or the company secretary of the licensee**

I hereby certify that all the information provided on this form and any other document provided in support of said form is true and correct to the best of my knowledge and belief. I further undertake to inform the Commission without delay of any changes to this form and any information supplied with this form.

Director's Name:			
Director's Signature:		Date:	
Director's/ Company Secretary's Name:			
Director's/Company Secretary Signature:		Date:	
<b>SECTION IV: ADMINISTRATION - FOR FSRC USE ONLY</b>			
Date form received:			
Received by (employee's name):			
Decision taken by the Commission:			

**29. Amendment of Schedule I**

The principal Act is amended by repealing Schedule I and substituting the following—

**“SCHEDULE I**



**ANTIGUA AND BARBUDA  
FINANCIAL SERVICES REGULATORY  
COMMISSION**

**THE CORPORATE MANAGEMENT AND TRUST SERVICE PROVIDER  
ACT, 2008**



**SCHEDULE I: SCHEDULE OF SERVICES & FEES**

**NOTE: An application fee of U.S. \$2,500.00 must accompany all applications and shall be non-refundable. Licence fees will be payable when the Commission approves the grant of the licence.**

<b>SERVICES</b>	<b>US\$ COST</b>
Application for Corporate Management and Trust Service Providers Licence	<b>\$2,500.00</b>
<b>Class A Licence</b>	<b>\$1,000.00</b>
<ul style="list-style-type: none"> <li>● Entity incorporation, registration or organization;</li> <li>● Preparing and filing statutory documents on behalf of the Entity;</li> <li>● Acting as registered agent for an Entity;</li> <li>● Providing registered offices in Antigua and Barbuda for Entities;</li> <li>● Other administrative, secretarial or clerical services for Entities which do not include a signatory authority or other control over accounts or assets of an Entity.</li> </ul>	
<b>Class B Licence</b>	<b>\$2,500.00</b>
<ul style="list-style-type: none"> <li>● Entity incorporation, registration or organization;</li> <li>● Preparing and filing statutory documents on behalf of the Entity;</li> <li>● Acting as registered agent for an Entity;</li> <li>● Providing registered offices in Antigua and Barbuda for Entities;</li> <li>● Other administrative, secretarial or clerical services for Entities;</li> <li>● Signatory authority or other control over accounts or assets of an Entity;</li> <li>● Acting as a director, manager, shareholder, member or officer of Entities;</li> <li>● Acting as a Protector for a trust or foundation.</li> </ul>	
<b>Class C Licence</b>	<b>\$4,500.00</b>
<ul style="list-style-type: none"> <li>● Entity incorporation, registration or organization;</li> <li>● Preparing and filing statutory documents on behalf of the Entity;</li> <li>● Acting as registered agent for an Entity;</li> </ul>	

- Providing registered offices in Antigua and Barbuda for Entities;
- Other administrative, secretarial or clerical services for Entities;
- Signatory authority or other control over accounts or assets of an Entity;
- Acting as a director, manager, shareholder, member or officer of Entities;
- Acting as a Protector for a trust or foundation;
- The provision of financial or asset management services not otherwise regulated by the Commission or another Authority;
- Acting as a trustee of a trust or member of a foundation council;
- Acting as a custodian of bearer shares.

**Class D Licence** **\$1,000.00**

- Acting as a custodian of bearer shares.

**Approval to be a Recognised Custodian** **\$500.00**

- Approval to be a Recognised Custodian

**Search Fees** **\$10.00**

### 30. Amendment of Schedule J

The principal Act is amended by repealing Schedule J and substituting the following—



## **ANTIGUA AND BARBUDA FINANCIAL SERVICES REGULATORY COMMISSION**

## SCHEDULE J

### NOTICE OF EXEMPTION FROM THE PROVISIONS OF THE CORPORATE MANAGEMENT AND TRUST SERVICE PROVIDERS ACT

#### SECTION I: INSTRUCTIONS FOR COMPLETING SCHEDULE J: NOTICE OF EXEMPTION FROM THE PROVISIONS OF THE CORPORATE MANAGEMENT AND TRUST SERVICE PROVIDERS ACT

This form can be downloaded from our website in Adobe Acrobat format, with boxes that you will be able to type in. Alternatively, the form can be printed and completed with the use of a typewriter. Any information provided on additional sheets must be signed and dated. Where there is a question which is not applicable, please write “N/A” beside the question.

If areas of this form are left incomplete or do not disclose all information which may affect the Commission’s assessment, significant delays in processing may occur. The Commission does not accept responsibility for any loss caused by any delay. All dates should be completed in the form: Day/Month/Year.

#### SECTION II: CONTACT INFORMATION

##### 11. Provide contact details:

Date of Notice:	<input style="width: 95%;" type="text"/>	Contact’s Name:	<input style="width: 95%;" type="text"/>
Address:	<input style="width: 95%;" type="text"/>		
Telephone Number:	<input style="width: 95%;" type="text"/>	Mobile Number:	<input style="width: 95%;" type="text"/>
Fax Number:	<input style="width: 95%;" type="text"/>	E-mail Address:	<input style="width: 95%;" type="text"/>

#### SECTION III: ABOUT YOU

- 12. Identify the services provided in or from within Antigua and Barbuda which are currently regulated by the Commission or by another Authority. Complete the table below by indicating with tick marks the activity or activities which the applicant proposes to carry on within or from Antigua and Barbuda. Additionally, indicate in the box to the right the amount of activity or activities to date where applicable:**

<input type="checkbox"/> Acting as a Protector for a trust or foundation; total number	
<input type="checkbox"/> Acting as a trustee of a trust or member of a foundation council; total number to date	
<input type="checkbox"/> Providing financial or asset management services; total number	

**1. Do you act as a trustee of three or less international trust registered under the International Trust Act, 2008?**

Yes (Give details below)  No

Company Name	Address	Telephone Number	Email Address	Asset Value
1.				
2.				
3.				

**1. Do you act as a member of foundation council of three or less international foundations registered under the International Foundation Act, 2008?**

Yes (Give details below)  No

Company Name	Address	Telephone Number	Email Address	Asset Value
1.				
2.				
3.				

**1. Do you Provide financial or asset management services?**

Yes (Give details below)  No

Company Name	Address	Telephone Number	Email Address	Asset Value
1.				
2.				
3.				

**1. Identify the services provided as an incorporator registered agent, director, manager or officer if less than 12 entities. Complete the table below by indicating with tick marks the activity or activities which the applicant proposes to carry on within or from Antigua and Barbuda. Additionally, indicate in the box to the right the amount**

**of activity or activities to date where applicable:**

- Entity incorporation, registration or organization; total number of entities incorporated/registered
- Acting as registered agent for an Entity; total number of entities acting on behalf of
- Providing registered offices in Antigua and Barbuda for Entities; total number of entities
- Acting as a director, manager, or officer of Entities; total number to date
- Other administrative, secretarial or clerical services for Entities
- Preparing and filing statutory documents on behalf of the Entity

**1' Provide details of any bodies corporate of which you are a director, manger or officer.**

Company Name	Address	Telephone Number	Email Address	Asset Value
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				

**1: List any entity in which you have an equity interest of 10% or more:**

Company Name	Address	Telephone Number	Email Address	Asset Value
1.				
2.				
3.				
4.				
5.				

**1' Do you act as a non-resident director, manger or officer?**

Yes (Give details below)

No

Company Name	Address	Telephone Number	Email Address	Asset Value
1.				
2.				
3.				

**SECTION IV: EXEMPTION INFORMATION**

The undersigned is desirous of filing certain documents with the Commission on behalf of the below named entity,

(“THE ENTITY”)

and in that regard claims an exemption from the provisions of the Corporate Management and Trust Service Providers Act on the following basis (Select the provision which best describes the claim for exemption):

The undersigned represents or acts as a director, manager or officer for less than 13 Entities and does not have a significant interest in any of them. The filing relates to one of such Entities. *(Services rendered must not include the management or other control of assets of one or more entities and the aggregate value of the assets must not exceed thirty thousand dollars (\$30,000)).*

The undersigned has a significant interest in the Entity.

The undersigned, acts for less than four trusts registered under the International Trust Act and this filing relates to one of such trusts. *(Services rendered must not include the management or other control of assets of one or more entities and the aggregate value of the assets must not exceed thirty thousand dollars (\$30,000)).*

The undersigned acts for less than four foundations registered under the International Foundation Act and this filing relates to one of such foundations *(Services rendered must not include the management or other control of assets of one or more entities and the aggregate value of the assets must not exceed thirty thousand dollars (\$30,000)).*

### SECTION V: DOCUMENTATION WHICH FORMS PART OF THIS APPLICATION

Documents	Notes	Attached
● Clients' Business Information	Provide details of the client's principal place of business, business address, telephone and facsimile, telex numbers and electronic address of the principal or professional concerned with the client	<input type="checkbox"/>
● Clients' Residential Information	Provide details of the client's current home address, telephone and facsimile numbers and electronic address; an original utility bill	<input type="checkbox"/>
● Passport Information	copies of passport or identity card, drivers licence and or bank statement;	<input type="checkbox"/>
● Two sources of reference	Two sources of reference to provide adequate indication on the reputation and standing of the client.	<input type="checkbox"/>
● Names and addresses of the beneficial owners of entities	The names and addresses of the beneficial owners of entities for which it provides corporate management and trust services.	<input type="checkbox"/>
● Names and addresses of the beneficial owners of entities	The names and addresses of the beneficial owners of entities for which it provides corporate management and trust services.	<input type="checkbox"/>
● Certificate of good standing	A certificate of good standing is required if the company has been in existence for more than one (1) year.	<input type="checkbox"/>
● Client Agreements/Administration Agreements/Terms of Business	Client Agreements/Administration Agreements/Terms of Business for applicants who operate clients' accounts must be provided.	<input type="checkbox"/>
● Client account letter for applicants who operate clients' accounts	If the applicant is to operate clients' money accounts, letters from the banks which maintain the accounts confirming that the accounts are held in trust on behalf of the clients.	<input type="checkbox"/>
● Compliance Manual	Applicant must submit a copy of the organization's Compliance Manual which should also outline the organization's Anti-Money Laundering policies and procedures, due diligence and Know Your Customer (KYC) procedures.	<input type="checkbox"/>
● Proof of qualifications	Proof of qualifications for the individual named in question for the individual on staff who is a citizen of Antigua and Barbuda who can provide corporate services.	<input type="checkbox"/>
● A copy of Schedule B		<input type="checkbox"/>

<input checked="" type="checkbox"/> Bank references	Two original bank references	<input type="checkbox"/>
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**SECTION VI: DECLARATION**

I hereby certify that all the information provided on this form and any other document provided in support of said form is true and correct to the best of my knowledge and belief. I further undertake to inform the Commission without delay of any changes to this form and any information supplied with this form.

Authorised Name:	<input type="text"/>	Signature:	<input type="text"/>
Title:	<input type="text"/>	Date:	<input type="text"/>

**SECTION VII: ADMINISTRATION - FOR FSRC USE ONLY**

Date Received	<input type="text"/>
Received by (employee's name):	<input type="text"/>
Decision taken by the Commission:	<input type="text"/>

Passed the House of Representatives on the 3rd day of March , 2010.

Passed the Senate on the 25<sup>th</sup> day of March, 2010.

**D. Gisele Isaac-Arrindell,**  
*Speaker.*

**Hazlyn M. Francis,**  
*President.*

**T. Thomas,**  
*Clerk to the House of Representatives.*

**T. Thomas,**  
*Clerk to the Senate.*