



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

## **LICENSING GUIDE AND STANDARDS TO PROVIDE CORPORATE MANAGEMENT AND TRUST SERVICES**

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## SECTION 1. GENERAL INFORMATION RELATED TO THE APPLICATION FOR GRANTING A LICENCE TO OPERATE MONEY SERVICE BUSINESSES

This guide is designed to assist persons applying for a licence to conduct Corporate Management and Trust Services and should be read in conjunction with the Corporate Management and Trust Service Providers Act, 2008 and its Amendment No. 5 of 2010 ("CMTSP Act"). Additionally, please be aware that the Commission cannot provide legal advice to applicants who are urged to seek appropriate legal advice on their particular circumstances.

### 1. DEFINITION OF CORPORATE MANAGEMENT AND TRUST SERVICES

For the purpose of this guide, Corporate Management and Trust Services mean:

- (a) *Administering corporate management services for profit or reward in or from within Antigua and Barbuda;*
- (b) *Providing corporate management and trust services in or from within Antigua and Barbuda, including on-line corporate management services;*
- (c) *Managing and administering international business corporations incorporated or existing under the International Business Corporation Act ("IBC Act"), Cap. 222;*
- (d) *Managing and administering companies incorporated or registered as external companies under the Companies Act 1995;*
- (e) *Managing and administering International Limited Liability Companies ("LLCs") under the International Limited Liability Companies Act;*
- (f) *Managing companies registered or incorporated under the International Foundations Act;*
- (g) *Providing registered agent services and registered office services for corporations mentioned in (c), (d), and (e);*
- (h) *Acting as directors or officers for corporations mentioned in (c), (d) and (e);*
- (i) *Providing nominee shareholders services for corporations mentioned in (c), (d), (e);*
- (j) *Preparing and filing statutory documents on behalf of corporations mentioned in (c), (d) and (e);*
- (k) *Providing asset management services not otherwise regulated by the Commission or any other Authority;*
- (l) *Providing managers or officers for corporations and companies mentioned in (c), (d), and (e);*
- (m) *Providing partners for partnerships registered under any law in force in Antigua and Barbuda;*
- (n) *Acting as protector of a Foundation registered under the International Foundations Act; and*
- (o) *The provision of services as a custodian of bearer shares,*
- (p) *Any other services that the Minister may by order specify.*

### 2. PROHIBITED NAMES

The Commission may require an applicant to immediately change its name should the following situations apply:

- (a) *A name which is identical to any other person whether within or outside Antigua and Barbuda or which nearly resembles that name as to be capable of being misleading;*
- (b) *A name which is capable of suggesting a connection with another person whether within or outside Antigua and Barbuda; or*
- (c) *A name which suggests that the applicant has a special status in relation to or derived from the Government or has the official approval of the government or any of its department or officials.*

### 3. CLASSES OF LICENCE

The classes of licence to be issued along with the applicable fees are listed in the table below. The Commission may amend the classes of licence, fees and the requirements for the licensing process by an order published in the Gazette.

**TABLE 1: 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 to the Commission upon the granting of the licence.**

<b>Services</b>	<b>US\$ COST</b>
Application for Corporate Management and Trust Service Providers Licence	<b>\$2,500.00</b>
Search Fees	<b>\$10.00</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> <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> <li>● The provision of financial or asset management services not otherwise regulated by the Commission or another Authority;</li> <li>● Acting as a trustee of a trust or member of a foundation council.</li> </ul>	
<b>Class D Licence<sup>1</sup></b>	<b>\$1,000.00</b>
<ul style="list-style-type: none"> <li>● Acting as a custodian of bearer shares.</li> </ul>	
<b>Class E Licence<sup>2</sup></b>	
<ul style="list-style-type: none"> <li>● Providing the services permitted under Class A and Class D.</li> </ul>	<b>\$2,000.00</b>
<ul style="list-style-type: none"> <li>● Providing the services permitted under Class B and Class D.</li> </ul>	<b>\$3,500.00</b>
<ul style="list-style-type: none"> <li>● Providing the services permitted under Class C and Class D.</li> </ul>	<b>\$5,500.00</b>
<b>Approval to be a Recognised Custodian</b>	<b>\$500.00</b>
<ul style="list-style-type: none"> <li>● Approval to be a Recognised Custodian</li> </ul>	

#### **4. TRANSITIONAL PROVISIONS FOR EXISTING PRACTITIONERS**

A person who, immediately before the commencement of the CMSTP Act, was carrying on the business of corporate management and trust services shall be deemed to be duly licensed for a period of three (3) months after the commencement date or the longer period that the Commission may approve. During this period an application must be made for a licence. Upon expiration of the transitional period, any person found to be

<sup>1</sup> An applicant for a class D licence must be resident in Antigua and Barbuda.

<sup>2</sup> An applicant for a class E licence must be resident in Antigua and Barbuda.

conducting corporate management and trust services without a licence or exemption will be deemed to be non-compliant with the Act and the relevant administrative penalties inscribed in the Act will obtain in this regard.

## SECTION 2. THE APPLICATION PROCESS

No person is allowed to engage in the business of corporate management and trust services in or from within Antigua and Barbuda unless that person has a valid licence or has been granted an exemption. Additionally, a licensee is required to have a physical presence in Antigua and Barbuda.

### 1. WHO CAN APPLY FOR A LICENCE

Only an attorney-at-law licensed to practice in Antigua and Barbuda; a professional; a corporation formed, registered or continued under the Companies Act including an external company registered under that Act; or an International Business Corporation may apply to the Commission for a licence to carry on the business of corporate management and trust services.

### 2. REQUIREMENTS FOR APPLICATION FOR A LICENCE

An applicant must ensure that the services to be provided are conducted in a structured manner and should ensure that all persons associated with the business meet and demonstrate the “fit and proper” test. Additionally, the applicant must ensure that its systems, controls and resources are adequate and appropriate for the regulated activities it wishes to conduct. Therefore in considering an application for a licence, the Commission will conduct such investigation as it may deem necessary to ascertain the:

- (a) *validity of the documents submitted in accordance with the application and the personal questionnaire;*
- (b) *financial condition and history of the Applicant;*
- (c) *nature of the business of the Applicant;*
- (d) *experience of the persons who are to constitute its management;*
- (e) *source of the initial capital;*
- (f) *the applicant’s ownership and business structure*
- (g) *the defined objectives and the proposed operations of the business which must be consistent with the principles enshrined in the legislation and in the Commission’s authorization and relevant supervision requirements and standards.*

### 3. APPLICATION FOR A LICENCE

In order to obtain a licence, exemption or approval to provide corporate management and trust services, the applicant must complete a copy of either **Form A(1): Application by Attorney or Professional for Licence or Renewal of Licence** or **Form A(2): Application by Corporation for Licence or Renewal of Licence**, provide the requisite documents and other information as specified in the other schedules or forms and pay the prescribed application and licence fees as listed in table 1.

### 4. FORM A (1): APPLICATION BY ATTORNEY OR PROFESSIONAL FOR LICENCE OR RENEWAL OF LICENCE

An attorney or professional may submit an application for licence or renewal of a licence by completing a **Form A(1): Application by Attorney or Professional For Licence or Renewal of Licence**. This form requires disclosure on personal details, educational and professional background in addition to the proposed activities which the applicant intends to conduct to assess the eligibility and competency of the applicant in providing corporate management and trust services.

## 5. FORM A (2): APPLICATION BY CORPORATION FOR LICENCE OR RENEWAL OF LICENCE

Where a corporation applies for a licence or renewal to conduct corporate management and trust services a **Form A (2): Application By Corporation for Licence or Renewal of Licence** must be completed. This form comprises five (5) critical sections which detail identification information on the applicant, the activities it proposes to conduct, and whether the applicant and key individuals (directors, officers, managers, shareholders, members and partners of more than 20 percent beneficial ownership interest) who are responsible for managing and controlling the applicant's business are fit and proper persons; the professional qualifications, reputation and experience of each director, officer and manager and the legal soundness of the corporation.

Additionally, where a corporation applies for a licence, that corporation must regularly retain an accountant or attorney licensed to practice in Antigua and Barbuda. That attorney or accountant may be retained on a regular interval for services or have a seat on the Corporate Board of Directors. Additionally, the applicant must have on its staff or management at least one person who is a citizen of Antigua and Barbuda and who can satisfy the Commission that he or she can render advice on matters related to corporate management services.

Section VI of the form outlines a list of supporting documentation which should accompany the application, inclusive of a **Schedule B: Biographical Affidavit of Directors, Managers or Officers of an Applicant**. A Schedule B must be submitted by each director, manager or officer of the corporation making application to provide corporate management and trust services. This form is used to conduct due diligence on the individuals holding the positions listed above to determine if they are fit and proper. The CMTSP Act stipulates that only an individual can be a director, officer or manager of a licensee where the licensee is a corporation. Further, a **Schedule C: Declaration of Person Owning at Least a 20% Interest in Licensee** must be submitted by each shareholder owning 20% or more beneficial interest in the applicant's business. This form is used to conduct due diligence on shareholders holding a significant interest in the licensee to determine if they are fit and proper.

## 6. FORM A (3): APPLICATION FOR AN APPROVAL OR RENEWAL TO BE A RECOGNISED CUSTODIAN

A corporation outside of Antigua and Barbuda which does not have a physical presence in Antigua and Barbuda may apply to the Commission for approval to be a recognized custodian using a **Form A(3): Application for an Approval or Renewal to be a Recognised Custodian**. When making an application, the applicant must provide confirmation of its contact details and legal and regulatory status. Information necessary to substantiate the reputation and financial soundness of its management, inclusive of shareholders, directors and executive officers, must also be disclosed.

Additionally, the Commission shall in approving this application take into account: the body corporate is subject to FAFT regulations, due diligence obligations and principles, and the prudential regulation exercised over the body corporate.

## 7. FORM J: EXEMPTIONS FROM A LICENCE TO PROVIDE CORPORATE MANAGEMENT AND TRUST SERVICES

Notwithstanding that the provision of corporate management and trust services is a regulated activity, a person may apply using **Schedule J: Notice of Exemption from the Provisions of the Corporate Management and Trust Service Providers** for an exemption from the CMTSP Act. This form seeks to establish the relevant details of information necessary to determine the exemption criteria and makes request, where applicable, for supporting documentation. An application for exemption must be accompanied by either **Form A(1): Application by Attorney or Professional For Licence or Renewal of Licence** or **Form A (2): Application By Corporation For Licence or Renewal of Licence**.

A person who has been “grandfathered” in must provide the Commission with certified proof of the information below during the application process for those companies the person is currently managing.

- **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;
- **Clients’ Residential Information:** Provide details of the client’s current home address, telephone and facsimile numbers and electronic address; an original utility bill;
- **Identification Information:** copies of passport or identity card, drivers licence and or bank statement;
- **Two sources of reference:** Two sources of reference to provide adequate indication on the reputation and standing of the client;
- **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, and
- **Assets under management:** The applicant must provide proof of assets under management which does not exceed US\$30,000.
- **Additional information:** The Commission may request further information for a purpose of making a determination on the application.

**The Commission’s decision for an application for an exemption is final.**

## SECTION 3. THE LICENCE

The following obtains once a licence to conduct corporate management and trust services has been granted:

### 1. NOTICES

The Commission shall cause a notice of the granting of a licence or an exemption to be published in the Gazette.

### 2. TRANSFERABILITY OF LICENCE

A licence to carry on corporate management and trust services is not transferable.

### 3. PERIOD OF LICENCE AND LICENCE FEE

A licence issued is valid for a period not exceeding twelve (12) months from the date on which it takes effect unless sooner revoked or otherwise ceases to have effect and a licensee may apply to the Commission and, on payment of the appropriate fee prescribed by the Board, have its licence renewed for a further period not exceeding twelve (12) months.

### 4. DISPLAY OF LICENCE CERTIFICATE/EXEMPTION

A licence or exemption issued shall be prominently displayed on the premises where the business of the corporate management and trust services is carried on. Additionally, if the licensee has a website or other presence on the internet, the licence number and class of licence must be prominently displayed on each web page.

## SECTION 4. ADDITIONAL INFORMATION

### 1. PROCESSING TIME FOR APPLICATION

During the due diligence process, the Commission may seek additional information to mitigate any future risks. Therefore, the time frame for the processing of applications will be based on the timeliness and accuracy of the submissions of the requisite forms and supporting documentations.

## 2. PRUDENTIAL GUIDELINES

The Commission will issue prudential guidelines and related orders to administer the CMTSP Act.

## 3. OFFENCES AND PENALTIES

Any person who carries on the business of corporate management and trust services in or from within Antigua and Barbuda without obtaining a licence, exemption or approval, commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars (\$100,000), or to a term of imprisonment not exceeding twelve (12) months, and where the offence continues after conviction, that person is liable to a fine of one thousand dollars (\$1,000) for each day that the offence continues.

Any person who with intent to deceive, for any purpose, makes any representation that he knows to be false or does not believe to be true, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars (\$10,000) or to a term of imprisonment not exceeding six (6) months.

## SECTION 5. GLOSSARY

**Affiliated entity** means an entity in a group of two (2) or more entities where:

- (a) One or more of the entities directly or indirectly holds ownership interests in the other entities;
- (b) One or more of the entities exercises control over the selection of the board of directors or other similar board that exercises management authority over the entity; or
- (c) One or more of the entities is authorized to act on behalf of the other entities.

**Authority** means a governmental agency or body within Antigua and Barbuda or another Caricom country having authority to regulate the entities within Antigua and Barbuda.

**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 licenced or recognised custodian.

**Beneficial owner** means a person who enjoys the benefits of ownership of property or an interest in property who may not necessarily be registered or listed as the legal owner of the property or interest.

**Dollar** unless otherwise specified, means United States dollar.

**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.

**Licensed Custodian** means a person licensed by the Commission 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.

**Physical presence** when used in relation to a person means a permanent address and physical office space within Antigua and Barbuda.



**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 to perform the duties and functions of a recognised custodian of bearer shares.

**Significant Interest** with respect to an entity means a 20% or greater equity interest in the entity.