

Financial Services Regulatory Commission



GUIDE AND STANDARDS FOR LICENCE TO OPERATE MONEY SERVICES BUSINESS

Financial Services Regulatory Commission

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PART: A

GENERAL INFORMATION RELATED TO THE APPLICATION FOR GRANTING A LICENCE TO OPERATE MONEY SERVICE BUSINESSES

A. INTRODUCTION

1. By virtue of the Money Services Business Act 2007("the Act"), The Financial Services Regulatory Commission ("the Commission") is authorized to licence and regulate money services businesses within the state of Antigua and Barbuda effective May 1, 2008.
2. Money Services Business means:
 - a. The business of providing as a primary service any of the following:
 - i. transmission of money or monetary value in any form
 - ii. cheque cashing
 - iii. currency exchange
 - iv. the issuance, sale and Redemption of Payment Instruments
 - v. any other services the Minister may specify by Notice published in the gazette
 - b. The business of operating as an agent or franchise holder of any of the business mentioned in (a).

B. REQUIREMENTS FOR LICENCE

1. Money services activities are not allowed unless a licence is authorized in accordance with the Money Services Act.
2. Anyone engaged in money services activities prior to the commencement of the Act will require a licence within four (4) months of the effective date of the Act or such other period as the Commission approves.

C. CLASSES OF LICENCE

1. There are several classes of licence as specified below which may be applied for and granted subject to the provisions of the Act.

Table: 1

Class of Licence	Description of Licence	Application Fee	Annual Licence Fee	Annual Location Fee
Class A	Money Transmission	\$5,000.00	\$5,000.00	\$2,500.00
Class B	Issuance, Sale and Redemption of Payment Instruments	\$5,000.00	\$5,000.00	\$2,500.00
Class C	Cheque Cashing	\$5,000.00	\$5,000.00	\$2,500.00
Class D	Currency Exchange	\$5,000.00	\$5,000.00	\$2,500.00
Class E ¹	Composite Licence	\$5,000.00	\$	\$

2. The class of licence issued will authorize the licensee, for the period specified in the licence, to carry on money services business.

D. LOCATION

1. A licence granted under this Act authorizes the licensee to carry on money services business at the place of business designated in the licence. Where the licensee requests and receives from the Commission, authorization to conduct money services business at a location other than the one so designated by the licence, the licensee will be required to pay the annual fee for this and each additional location.

E. APPLICATION FOR LICENCE

1. Prior to submitting an application, Applicants are advised to meet with the Commission to discuss their proposal. Unless the Commission is satisfied in relation to all aspects set out in this document and other related documents, authorization cannot be granted. In addition, the requirements prescribed by the Commission must be fulfilled prior to Authorization.

¹ The Class E: Composite Licence will be any combination of Classes from A to D.

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2. In order to obtain a licence to operate a Money Services Business, the Applicant must complete a copy of the application form, provide the requisite documents and other information as specified, and pay the prescribed application and licence fees as listed in table 1.
3. The Commission may amend the classes of licences and its fees and the requirements for the licensing process by Order published in the *Gazette*.
4. 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; and
 - f. convenience and needs of the community to be served by the granting of the licence.
5. The Applicant's ownership and business structure must be clear and transparent. The Applicant must have clearly defined objectives and the proposed operations must be consistent with the principles enshrined in the legislation and in the Commission's authorisation and relevant supervision requirements and standards. A detailed organisation chart must be provided with all group companies listed and details of any regulatory approvals.
6. A licence to carry on money services business is not transferable.

F. FIT AND PROPER CRITERIA

1. Approvals shall not be granted to any company unless each principal involved in the operations of the money services business is deemed to be 'fit and proper' for that purpose. The Commission shall not renew any licence unless the 'fit and proper' criteria specified in the personal questionnaire are met.
2. To determine whether the principal is 'fit and proper' the Commission:
 - a. shall have regard to:
 - i. his financial status;
 - ii. his educational or other qualifications or experience having regard to the nature of his application;
 - iii. his ability to perform his proposed function efficiently, honestly and fairly; and
 - iv. his reputation, character, financial integrity and reliability; and
 - b. will take into account any matter relating to:
 - i. any other company or firm in the same group of companies or any director or officer of any such company or firm.
3. The following information is also required from each principal:
 - a. Legal name and any alias and residential address;
 - b. Occupation (over the previous five (5) years) and business address;
 - c. Date of birth
 - d. Citizenship
 - e. Social security number;
 - f. Passport number;
 - g. Two (2) character references, and a police certificate certifying that the person has not been convicted of a serious crime or any offence involving dishonesty
 - h. Two or more references verifying the good financial health of the each significant shareholder who is a natural person.
4. The Commission may have regard to any information in its possession whether furnished by the Applicant or not and reserves the right to require such further and other information from any Applicant as it deems fit, for the purpose of making its determination of the fitness and propriety of an Applicant.

G. CAPITAL ADEQUACY AND DEPOSIT

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1. In considering an application for a Class A, Class B, or Class E, Licence the Commission shall, in addition to the matters specified in section D above, take into consideration:
 - a. the adequacy of the capital structure; and
 - b. The earnings prospects of the Applicant.
2. The licensee must:
 - a. maintain adequate capital as prescribed by the Commission;
 - b. deposit with the Commission a portion of capital, for the benefit of holders of outstanding payment instruments should the licensee become bankrupt or for any other reason be unable to meet its contractual obligations to them, as prescribed by the Commission, to be held in a trust account.

H. PROCESSING TIME FOR THE APPLICATION FOR LICENCE

1. The time range for considering applications will depend greatly upon the quality of the information provided. All directors, significant shareholders and senior management (i.e. persons who hold key positions) will be subject to a strict assessment procedure in respect of probity and competence.

I. PERIOD OF LICENCE AND LICENCE FEE

1. The licence will be valid from the date of first issue to the 31st of December of that year and is renewable each year on payment on or before the 15th day of January.
2. The licence fees are as prescribed in C (1) above.
3. Licence fees are payable to the Accountant General.

J. DISPLAY OF LICENCE CERTIFICATE

1. A licensee must display a copy of the certificate of its licence granted under the Money Services Business Act in a conspicuous place in the public part of any place of business of the licensee.

K. ACTIONS OF FUNDAMENTAL CHANGE REQUIRING APPROVAL

1. An Applicant must disclose any significant change in its business activities and have an open, cooperative and professional relationship with the Commission.
2. Prior approval must be sought of the Commission in respect of any material change of ownership. In the case of a body corporate, the prior approval of the Commission must be sought for any transfer of shares, which would result in the transferee controlling more than 10 per cent of the shares, voting rights attaching to shares or other interests in Money Services Business.
3. Any licence granted under the Money Services Act authorizes the licensee to engage in money services business in Antigua and Barbuda at the place of business designated in the licence and at such other place as the Commission may authorize in writing.
4. No licensee shall open a new place of business or change the location of the existing business in Antigua and Barbuda without prior approval of the Commission and no licensee shall close an existing place of business in Antigua and Barbuda without having given thirty (30) days prior written notification to the Commission.
5. No licensee shall open a place of business elsewhere than in Antigua and Barbuda without the prior written approval of the Commission.
6. No licensee shall close an existing place of business outside of Antigua and Barbuda without having given twenty-one (21) days prior written notification to the Commission.
7. Licensees must first obtain approval in order to:
 - a. Change its name;
 - b. Change its principal office;
 - c. Enter into a merger or consolidation within Antigua and Barbuda.
8. All appointments to the Board of Directors of the Money Services Business and senior management positions (including the Compliance Officer) are subject to thirty (30) days notice prior to the proposed date of

appointment. In this regard a 'Personal Questionnaire' must be completed and submitted to the Commission for processing.

9. If the licensee is unable to provide prior notification of the appointment of a proposed appointee as director or other senior officer of a licensee, the licensee:
 - a. May appoint the proposed appointee as director or other senior officer as the case may be, conditional on the approval of the Commission; and
 - b. within five days of such appointment submit to the Commission a completed Personal Questionnaire form and a letter specifying the reasons for the appointment of the proposed appointee without prior approval.
10. All resignations and departures from senior management and the Boards of the Money Services Business must be notified to the Commission including details of the reason for the resignation / departure.

L. ANNUAL AUDIT, REPORT AND PUBLICATION OF FINANCIAL STATEMENTS AND RESULTS

1. A licensee shall appoint annually, an auditor who must be a chartered accountant, a certified public accountant, a member of the institute of Chartered Accountants of the Eastern Caribbean (ICAEC) or some other professionally qualified accountant, satisfactory to the Commission.
2. A licensee shall within three (3) months of the end of the financial year forward the audited financial statements to the Commission; unless prior written approval for an extension has been granted by the Commission.
3. A licensee must notify the Commission in writing of its intention to terminate the appointment of its auditor, or not to reappoint its auditor for a new term, and state the reasons for its decision in the notification.

M. ACCOUNTING RECORDS AND SYSTEMS OF BUSINESS CONTROL

1. A licensee must in accordance with this section, in respect of its money services business keep accounting records, establish and maintain systems of internal control and record keeping, for inspection and report.
2. The systems of control, inspection and report shall ensure that the Money Services Business is so conducted and its records so kept that:
 - a. the information necessary to enable the directors and the business to discharge their duties and functions is sufficiently accurate, and is available with sufficient regularity or as needed and with sufficient promptness, for those purposes; and
 - b. the information obtained by or furnished to the Commission under or for the purposes of the Act is sufficiently accurate for the purpose for which it is obtained or furnished.

N. RETURNS

1. The holder of a Class A, Class B, or Class E licence must in the format provided by the Commission, file quarterly returns with the Commission within fifteen (15) days of the end of a quarter, along with a written declaration that the information set out in the application for the licence remains correct and gives a full and fair picture of its money services business.
2. The holder of a Class C or Class D licence must, within fifteen (15) days of the end of the financial year file an annual return with the Commission along with a written declaration that the information set out in the application for the licence remains correct and gives a full and fair picture of its money services business.
3. The Commission may assess a penalty of an amount not exceeding twenty thousand dollars against any corporation or a director of a corporation who fails to:
 - a. file quarterly returns within the stipulated time specified in M(1) above;
 - b. provide complete and accurate information with respect to a return or other information required by this Act; or
 - c. comply with any directions given in writing by the Commission

O. RETENTION OF RECORDS

1. A licensee shall retain for a period of at least six (6) years from the date of creation of each particular record, all records created and obtained by them, in particular records of each transaction executed by them, records of each outstanding transaction, bank reconciliation records and bank statements received during the course of operation and administration of its money services business.

P. EXAMINATION BY THE COMMISSION

1. The Commission shall examine each licensee from time to time, or whenever in its judgment such examination is necessary or expedient, in order to determine that such licensee is in a sound financial condition and that the requirements of the Act have been complied with in the conduct of its business.
2. For the purpose of determining the condition of a licensee with the Act, the Commission may at any time examine any affiliate of the licensee in Antigua and Barbuda to the same extent that an examination may be made of the licensee.
3. The Commission will assess a licensee for the reasonable expenses of conducting an examination.

Q. SUSPENSION OF LICENCE

1. The Commission may suspend a licence granted under the Act for the period, or until the happening of an event, as the Commission considers appropriate for the following reasons:
 - a. for the protection of the public, or
 - b. as a result of any investigation under the Act or regulations made under the Act.
2. A person whose licence is suspended under the Act shall be notified accordingly by the Commission and shall, for the purpose of this Act, be deemed not to be licensed from the date of notification of suspension.

R. REVOCATION OF LICENCE AND DECLARATION OF DISCONTINUANCE OF SERVICES

1. The Commission may revoke any licence to carry on money services business in Antigua and Barbuda if the licensee:
 - a. fails to commence operations within a period of three (3) months following the granting of the licence,
 - b. fails to comply with the conditions or restrictions of its licence;
 - c. is in breach of any of the provisions of the Act which is applicable thereto;
 - d. ceases to carry on money services business in Antigua and Barbuda for a period in excess of ten (10) months;
 - e. is conducting its affairs in a manner detrimental to the public interest or to the interest of its customers;
 - f. goes into liquidation or is wound up otherwise dissolved; or
 - g. by reason of any other circumstances, is no longer a fit and proper person to hold a licence.
 - h. at the request of the licensee.

S. SYSTEMS AND INTERNAL CONTROLS

1. The Commission requires that an entity shall manage its business in accordance with sound administrative and accounting principles and shall put in place and maintain internal controls and reporting arrangements and procedures to ensure that the business is managed in accordance with industry best practice.
2. The Commission must be satisfied that:
 - a. Directors and senior management exercise adequate control over the entity;
 - b. Comprehensive risk management systems commensurate with the scope, size and complexity of the entity are in place. The systems should incorporate continuous measuring, monitoring and controlling of risk. There should also be accurate and reliable management information systems, timely management reporting and thorough audit and control procedures;
 - c. Where the size or nature of the operations of the entity warrants it, a properly staffed internal audit function exists which has direct access to the Board.
 - d. The maintenance of adequate reserves and other capital resources in amounts which may be prescribed by the Commission;
 - e. The maintenance of adequate assets in liquid form in amounts which may be prescribed by the Commission; and
 - f. Management is conducted with prudence and integrity by a sufficient number of persons, having regard to the range and scale of the business, who are fit and proper to be directors or, as the case may be, officers of the licensee in accordance with the criteria established.
3. An entity must satisfy the Commission that it has adequate arrangements to protect the interests of its clients. It also must have procedures in place to prevent potential conflicts of interests arising in the conduct of different types of activity. If a conflict arises it must be resolved fairly for all parties.

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4. An entity should be aware of and monitor, on an ongoing basis, all risks to its business and maintain adequate technical, organisational and procedural safeguards to prevent and detect threats to its security.
5. All charges and fees payable for services must be clearly disclosed to all clients. A list of charges and fees must be available at all offices of an entity. Receipts must be issued for each transaction.
6. Any transaction must contain the name and address of the sender and the receiver, the amount, currency sent, charges and a unique identifier which will permit the transaction to be traced back to the originator. The transaction details must be kept for at least six (6) years.
7. The Commission may issue prudential guidelines and related orders to administer the Act in respect to:
 - a. policies, practices and procedures for evaluating the quality of assets,
 - b. policies, procedures and systems for identifying, monitoring and controlling transfer risk, market risk, operational risk; and such other risks as the Commission shall specify;
 - c. Corporate governance;
 - d. Auditors;
 - e. procedures to be adopted by licensees and the Commission; and
 - f. anti money laundering and combating the financing of terrorism matters.

T. SEGREGATION OF ACCOUNTS

1. An entity is required to maintain a designated bank account for Money Service Business.
2. Monies from Money Services Business must be kept separately from monies of other activities and go through this designated bank account.
3. Any funds which are not delivered or transmitted to the payee customer by or on behalf of the licensee shall first charge on the assets of a bankrupt or otherwise insolvent licensee and shall be:
 - a. re-paid to the payer customer; or
 - b. paid to the payee customer;

by the licensee, receiver, liquidator or administrator out of the segregated account to which it was placed or was deemed to have been placed.

U. BANKRUPTCY OR INSOLVENCY OF LICENSEE

1. A licensee must notify the Commission as soon as practicable after bankruptcy or insolvency proceedings are instituted.

V. MANAGEMENT'S DUTY OF COMPLIANCE WITH THE REQUIREMENTS OF THE LAW

1. A director, manager, secretary or other officer concerned in the management of a licensee who fails to take all reasonable steps to secure compliance by the licensee with the requirements of the Act commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars (\$50,000) or to imprisonment for a term of six (6) months or to both.

W. FALSE OR MISLEADING INFORMATION

1. All licensee, director or an officer of a licensee who knowingly or willfully supplies false or misleading information to the Commission commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars (\$50,000) or to imprisonment for a term of one year or both.

X. MONEY LAUNDERING / TERRORIST FINANCING

1. A licensee shall institute procedures to ensure that its accounting records and systems of business control comply with the requirements of the Money Laundering Prevention Act (MLPA).
2. The key elements of any anti money laundering or terrorist financing procedure are Know Your Consumer ("KYC") and client verification. All Money Services Businesses are obliged to take the necessary measures to effectively counteract money laundering and terrorist financing in accordance with the Money Laundering Prevention Act.

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3. Money Services Business must take appropriate measures to ensure that their employees are aware of the relevant provisions of the MLPA, Guidelines and Regulations. These measures should include ensuring that employees receive appropriate training to enable them recognise operations which may be related to money laundering and terrorist financing as well as instructing them on how to proceed in such cases.
4. Money Services Businesses must establish adequate procedures of internal control and communication in order to forestall and prevent money laundering and terrorist financing. They should have in place adequate arrangements and procedures to:
 - a. ensure the prompt reporting of suspicious transactions both internally and to the ONDCP;
 - b. identify an officer (for the position of Compliance Officer) with responsibility for the company's obligations in relation to money laundering and terrorist financing and designate the responsibilities of the officer. The name of the officer designated and any changes thereto must be notified to the Commission;
 - c. provide the Compliance Officer with the necessary access to systems and records to fulfil his/her responsibilities;
 - d. establish close co-operation and liaison with the ONDCP;
 - e. provide for screening of potential employees when recruiting;
 - f. provide continuing training programmes for employees; and
 - g. provide for the testing of the arrangements and procedures in place by way of audit.

Y. GLOSSARY

1. "Connected" in relation to a company means two or more companies or group of companies with interests which are so interrelated that they should be considered as a single unit;
2. "Corporation" means a body corporate, incorporated in Antigua and Barbuda or elsewhere;
3. "Principals" for the purpose of the Personal Questionnaire shall include the directors, management, agents, sub-agents and shareholders holding or exercising rights attaching to 10% or more of the company's shares, whether such rights are held solely by an individual or jointly with another person and any persons managing those operations on the company's behalf.
4. "Relevant activity" means:
 - a. Banking finance, insurance, money-lending, money management, debt-financing, hire purchase financing, leasing or other financial activities;
 - b. Dealing in securities; and
 - c. Providing investment or financial advice and management.
5. "Sub-agency" for the purpose of the Personal Questionnaire means an entity not carrying out money services business in an independent capacity but operates under the supervision of another entity which possesses an agency/franchise agreement with an international money service operator to carryout money services business.