

## ABILL

### ENTITLED

AN ACT to Make provision for the regulation of the providers of international corporate services and international trust services; and for related matters.

[ ]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

#### PART I—*Preliminary*

1. This Act may be cited as the International Corporate and Trust Services Providers Act, 2016, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title  
and  
commence-  
ment.

Interpretation.

2. In this Act, unless the context otherwise requires--

“advertisement” includes the dissemination or conveyance of information, by any means or in any form, for the purpose of inviting or soliciting, the sale or other supply of goods or services or increasing brand recognition or good will;

“affiliate”, in relation to two or more companies, means—

- (a) one of them is the subsidiary of the other;
- (b) each of them is a subsidiary of the same company;
- (c) each of them is controlled directly or indirectly by the same person; or
- (d) a shareholder of one of them, either alone or with an associate or associates, holds fifty *per cent* or more of the shares of the other company or is entitled to exercise, or control the exercise of more than fifty *per cent* of the voting power of the other company at a general meeting;

“Appeal Tribunal” means the Appeal Tribunal established by section 19 of the *Financial Services Commission Act*;

“appointed day” means the day appointed under section 1 for the coming into operation of this Act;

“articles”, in relation to a company, means the original or restated articles of incorporation, articles of amendment, articles of amalgamation, articles of arrangement, articles of continuance, articles of dissolution, articles of reorganization, articles of renewal, by-laws, letters patent, supplementary letters patent, a special Act or any other instrument by which a company is incorporated or governed, or any enactment establishing a company;

“audit firm” means a partnership or body of auditors that carries on the business of providing auditing services (whether or not it provides other services);

“auditor” means a person who is a registered public accountant as defined in section 2 of the *Public Accountancy Act* and satisfies such requirements as may be prescribed under that Act;

“client” means the person for whom an international service is provided or potentially provided;

“Commission” means the Financial Services Commission established by section 3 of the *Financial Services Commission Act*;

“company” means a body corporate incorporated or constituted under the laws of Jamaica or any other jurisdiction;

“control”, in relation to a company or other entity, means—

- (a) the power of a person (whether acting alone or jointly with another) who holds or is beneficially entitled to, whether directly or indirectly, fifty per cent or more of the votes in the company or other entity to secure by means of those voting rights that the affairs of the company or other entity are conducted in accordance with the wishes of that person; or
- (b) the ability of a person (whether acting alone or jointly with another) to ensure that the affairs of the company or other entity are conducted in accordance with the wishes of that person, whether or not the person holds or is beneficially entitled, whether directly or indirectly, to voting rights referred to in paragraph (a);

“director”, in relation to a company or other entity, means any person who occupies the position of director (by whatever name called) and an alternate director and, in the case of a partnership, a general partner within the meaning of the *Partnership (General) Act*;

“document” means, in addition to a document in writing, anything in which information of any description is recorded by any means including electronic means;

“firm” means a general partnership within the meaning of the *Partnership (General) Act* or a limited partnership within the meaning of the *Partnership (Limited) Act*;

“functions” includes powers and duties;

“international company” means a company constituted under the laws of a jurisdiction other than Jamaica;

“international corporate service” means any service specified in section 14 that is provided in or from Jamaica for remuneration or hire;

“international corporate service provider licence” means a licence to provide an international corporate service issued pursuant to section 6(4);

“international entity” means—

- (a) a company or other entity constituted under any enactment that the Minister may, after consultation with the Minister responsible for commerce, by order, published in the *Gazette*, prescribe;
- (b) an international company;
- (c) an international trust;

“international service” means an international corporate service or an international trust service;

“international service provider” means an individual, firm or company that engages or proposes to engage in the business of providing international services;

“international trust” means a trust the proper law of which is not the law of Jamaica;

- “international trust service” means a service, specified in section 15, that is provided in or from Jamaica for remuneration;
- “international trust service provider licence” means a licence to provide an international trust service licence pursuant to section 6(4);
- “licence” means an international corporate service provider licence or an international trust service provider licence;
- “licensee” means a person who is granted a licence under this Act;
- “Minister” means the Minister responsible for finance;
- “officer”, in relation to a company or entity, means a director, secretary or senior executive, by whatever named called, of the company or entity;
- “principal office” means the principal place in Jamaica from which the business of an international service provider is conducted;
- “principal representative” means the person appointed as the principal representative of an applicant for a licence in accordance with section 6(4)(b);
- “relevant person” in relation to an applicant for a licence (or the renewal thereof) under this Act, means—
- (a) each officer of the applicant;
  - (b) each person beneficially entitled (directly or indirectly and whether alone or in association with others) to up to twenty per cent or more of the issued shares or other ownership interest in the applicant;
  - (c) in the case of a partnership, each general partner;
  - (d) such other person who the Commission considers to be integral to, or to exercise significant influence with respect of, the decision making or business operation of the applicant;

“senior executive” in relation to a company or other entity means the chief executive officer, president, chief financial officer and any other person who exercises senior managerial functions;

“settlor” means a person who directly or indirectly provides trust property or makes a testamentary disposition on trust or to a trust;

“subsidiary” has the meaning assigned to it in the *Companies Act*.

Objects of Act.

3. The objects of this Act are to—

- (a) establish and maintain the reputation of Jamaica as a premier jurisdiction for the administration of international entities;
- (b) encourage the sound administration of international entities by licensees in Jamaica;
- (c) protect the interests of international entities and international service providers through the licensing and supervision of international service providers;
- (d) maintain high standards of conduct, ethics and competence in the provision of international services;
- (e) ensure that international service providers adhere to modern, internationally acceptable standards of best practice;
- (f) detect and prevent any illegal activity within the international services sector and in particular, money laundering, the financing of terrorist activity, illegal drugs, illegal firearms and other weapons;
- (g) provide for the establishment of procedures and policies to be followed by international service providers to enable international service providers to—
  - (i) know, identify and verify the identity of each client; and
  - (ii) exercise due diligence in the provision of international services.

PART II—*Administration*

4.—(1) The Commission shall be responsible for the administration of this Act and shall— Functions of Commission.

- (a) establish and maintain a licensing scheme for international service providers;
- (b) receive applications for, and issue international corporate service providers licences and international trust service providers licences;
- (c) publish the names of all licensees in the *Gazette*, on the website of the Commission and in such other manner as the Commission may determine;
- (d) monitor and examine the businesses of international service providers in such manner as it thinks necessary to determine whether international service providers are in compliance with this Act and any regulations made under this Act and are in good financial standing; and
- (e) receive and investigate any complaints made against international service providers and take appropriate action in respect of the complaints.

(2) In performing the functions set out in subsection (1), the Commission is entitled at all reasonable times to—

- (a) have access to and examine the books, records, vouchers, documents, cash and securities of any licensee; and
- (b) request any information, matter or thing from any person who it has reasonable grounds to believe is involved in the providing of an international service in contravention of section 5.

(3) The Executive Director of the Commission may, in writing, with the approval of the Commission—

- (a) delegate the performance of any functions conferred on him by or under this Act to a person specified in the instrument of delegation (other than this power of delegation); or

- (b) authorize any other person to assist the Commission in the performance of its functions under this Act and may make provision for the payment of such person's remuneration and expenses.

(4) A delegation of functions under subsection (3) (a) shall not prevent the performances by the Executive Director of the delegated function.

### PART III—*Regulation of International Service Providers*

Restriction on provision of international service.

5.—(1) A person shall not provide or hold himself out as capable of providing an international service—

- (a) in or from Jamaica;
- (b) with respect to an international entity referred to in paragraph (a) of the definition of international entity in section 2,

except where that person is a licensee operating under and in accordance with a licence issued under this Act;

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years.

Application for international service licence.

6.—(1) A person who proposes to provide an international corporate service or international trust service shall apply in the prescribed form and manner to the Commission for the appropriate licence to do so.

(2) An application under subsection (1) shall be accompanied by the prescribed application fee.

(3) The Commission may, upon receipt of an application under subsection (1), require an applicant to furnish such additional information or documents as it may specify.

(4) The Commission shall, before granting a licence pursuant to this section, be satisfied that—

- (a) each individual referred to in subsection (6) and each relevant person is a fit and proper person within the meaning of section 7;



- (b) the applicant has appointed a fit and proper person, within the meaning of section 7, who is resident in Jamaica, as the principal representative of the applicant in Jamaica;
- (c) the applicant has met such financial requirements, if any, as may be prescribed with respect to the international service in respect for which the application was made;
- (d) if the licence is granted, the international service provider shall comply with the standards set out in the Schedule; and Schedule.
- (e) if the applicant is—
  - (i) an individual, that the applicant is a resident of Jamaica;
  - (ii) not an individual, is incorporated or formed under the Laws of Jamaica or is registered under Part 10 of the *Companies Act*;

(5) The Commission shall—

- (a) upon being satisfied as to the matters specified in subsection (4) and upon payment of the prescribed licence fee, issue a licence in the prescribed form to the applicant authorizing the applicant to provide the international service;
- (b) if not satisfied, refuse to issue the licence.

(6) For the purposes of subsection (4) an individual is a resident of Jamaica if that individual—

- (a) resides permanently in Jamaica;
- (b) has his home in Jamaica; or
- (c) conducts most of his economic and personal activity in Jamaica.

(7) The Commission may—

- (a) attach to a licence, such terms or conditions; or
- (b) vary or amend a licence in such manner,

as it may consider appropriate in giving effect to this Act.

(8) The Commission shall set out in the licence any terms or conditions attached to the licence pursuant to subsection (7).

(9) A licence shall not be transferable.

(10) Before refusing to issue a licence pursuant to subsection 5(b) the Commission shall notify the applicant of its intention to do so and afford the applicant an opportunity to be heard.

Determination  
whether  
applicant,  
*etc.*, is fit and  
proper  
person.

7.—(1) Every applicant and principal representative of the applicant under section 6 and each person who is, or is to be, a relevant person in relation to a licensed international service provider is required to be a fit and proper person to hold the particular position which he holds or is to hold.

(2) In determining whether an applicant, a principal representative of the applicant or a relevant person is a fit and proper person to hold any particular position, regard shall be had to—

- (a) his educational and professional qualifications;
- (b) whether he is a member of a relevant professional body and is in good standing with that body;
- (c) his knowledge of the legal and other professional responsibilities assumed or likely to be assumed;
- (d) his probity;
- (e) his competence and soundness of judgment for fulfilling the responsibilities of that position;
- (f) the diligence with which the person is fulfilling or likely to fulfill those responsibilities; and
- (g) whether the interests of clients or potential clients of the licensed international service provider are, or are likely to be, in any way threatened by his holding or continuing to hold that position.

(3) Without prejudice to the generality of subsection (2), regard may be had to the previous conduct and activities in business or financial matters of the applicant, the principal representative of the applicant or

the relevant person in question and, in particular, to any evidence that he has—

- (a) engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether lawful or not) or which reflects discredit to his method of conducting business;
- (b) contravened any provision made by or under any enactment appearing to the Commission to be designed for protecting members of the public, whether in Jamaica or overseas, against financial loss due to dishonesty, incompetence or malpractice by persons concerned in dealing in securities or in the provision of banking, insurance, investment or other financial services or in the management of a company or trust or due to bankruptcy;
- (c) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment;
- (d) committed an offence involving fraud or other dishonesty;
- (e) contravened any provision of any Act relating to banking or a relevant Act within the meaning of the *Financial Services Commission Act*;
- (f) contravened any provision of the *Proceeds of Crime Act* or any regulations made under that Act;
- (g) contravened any provision of any enactment relating to the financing of terrorist activities as defined in the *Terrorism Provision Act*; or
- (h) contravened any provision of any enactment relating to illegal drugs, illegal firearms or other weapons (including weapons of mass destruction).

(4) The Commission may, by notice in writing served on any person who is or is to be an officer or partner of a licensed international service provider, require that person to provide the Commission, within

such time as may be specified in the notice, with such information or documents as the Commission may reasonably require for determining whether the person is a fit and proper person to hold the particular position which he holds or is to hold.

Duration of licence.

**8.** A licence may be renewed annually in accordance with section 9, and, subject to that section, remains in effect, (unless suspended, revoked or surrendered) until the next anniversary of the date on which it was issued or renewed.

Renewal of licence.

**9.—(1)** A licensee may, in the prescribed form, apply to the Commission for the renewal of a licence and shall submit with the application such information and documents as the Commission may require to determine whether the licence should be renewed.

(2) Where the Commission is satisfied that the applicant and each relevant person continues to satisfy the requirements of this Act for the issue of a licence under this Act, the Commission shall, in the prescribed form and upon payment of the prescribed fee, renew the licence of the applicant.

(3) Where a licensee applies for the renewal of a licence and pays the prescribed fee before its expiration date but the Commission does not determine the application before that date—

- (a) subject to provisions of this Act, the licence remains in effect until the Commission determines the application; and
- (b) any renewal granted in such a case shall be deemed to be and recorded as effective from the expiration date.

Loss, defaced or destroyed licence.

**10.** A licensee whose licence is lost, defaced or destroyed, may, in the prescribed form and upon payment of the prescribed fee, apply to the Commission for its replacement.

Licensee to display and produce licence.

**11.—(1)** A licensee shall display the licence granted to the licensee prominently in a part of the principal office to which the public has access, and a copy thereof shall be similarly displayed —

- (a) at each of the licensee's branches in Jamaica;

- (b) on, or on a link from, the home page of any website administered, hosted or supported by the licensee in connection with its international service business.

(2) Every licensee who, without lawful excuse, fails to comply with subsection (1) commits an offence and is liable on summary conviction in a Parish Court, to a fine not exceeding five hundred thousand dollars or, in default of payment thereof, to imprisonment for a term not exceeding three months.

12.—(1) In this section, “change” means, in a case where a licensee is— Change in status of licensee.

- (a) an individual, a change in respect of the—
- (i) name under which the licensee provides international services; or
  - (ii) address of the principal office or branch of the licensee;
- (b) a firm, a change in respect of the—
- (i) name or address of the principal office or branch of business; or
  - (ii) general partners of the firm;
- (c) a company, a change in respect of the—
- (i) name or address of the registered office of the company;
  - (ii) articles of the company or other constitutive documents of the company;
  - (iii) beneficial ownership (whether direct or indirect and whether alone or in association with others) of the majority of the shares of the company; or
  - (iv) any officer of the company.

(2) Subject to subsection (3), where a change is intended, the licensee shall give the Commission and every client of the licensee written notice of the change at least thirty days prior to the date of the change.

(3) Notwithstanding subsection (2), the licensee may give the Commission written notice of the departure of a—

- (a) general partner, where the licensee is a firm;
- (b) officer, where the licensee is a company,

within fourteen days after the departure.

(4) Where the Commission receives notice of a change referred to in subsection (1) with respect to a licensee, the Commission may require the licensee to furnish additional information or documents in respect of the change.

(5) The Commission may require notification of any change in relation to such other matters as may be prescribed.

*Register*

Registers.

**13.**—(1) The Commission shall keep, and maintain up-to-date, registers to be known as the Register of International Corporate Service Providers and the Register of International Trust Service Providers, respectively, in which shall be recorded the particulars set out in subsection (2).

(2) The Commission shall cause to be recorded in the appropriate register in respect of each licensee—

- (a) the name of the licensee;
- (b) the address of the registered office and, if different, the principal office of the licensee and of any branch offices;
- (c) the date on which the licence was issued, the date of the renewal thereof and the date on which it expires;
- (d) any refusal to issue or renew the licence;
- (e) any suspension, revocation or surrender of the licence; and
- (f) such other particulars as the Commission considers necessary.

(3) In criminal proceedings pursuant to section 5, the absence of the name of the person charged from a list of licensees in a register

kept pursuant to this section, *is prima facie* evidence that the person is not a licensee.

**PART IV—Services and Duties of International Service Providers**

**14.** A licensed international corporate service provider may provide the following services to an international entity, namely—

Services of international corporate service provider.

- (a) acting as a coordinator or an assistant in the formation, management or administration of a firm or company;
- (b) acting as (or arranging for another person to act as) a director or secretary of a company, an alternate director or a partner of a firm;
- (c) providing a registered office, business address, correspondence address or administrative address, for a company or firm or for any other person;
- (d) acting as (or arranging for another person to act as) a nominee shareholder for another person;
- (e) arranging the establishment of any legal entities not covered by any of the foregoing paragraphs and providing any of the foregoing services to such entities; and
- (f) any other service that the Minister may, by order published in the *Gazette*, prescribe as an international corporate service.

**15.—(1)** A licensed international trust service provider may provide the following services in relation to an international trust—

Services of international trust service provider.

- (a) the creation of the trust;
- (b) acting as trustee, executor or administrator in relation to the trust;
- (c) arranging for any person to act as trustee in respect of the trust;
- (d) administration services in relation the trust;

- (e) any other service that the Minister may, by order published in the *Gazette*, prescribe as an international trust service.

(2) The Commission may, by order published in the *Gazette*, exclude from the provisions of this Act, such categories of trust services as the Commission does not consider appropriate to be subject to this Act.

Records to be kept by international service provider.

**16.**—(1) A licensed international service provider shall keep or cause to be kept accurate records in respect of business as an international service provider, including accounting records and records on clients, that will—

- (a) sufficiently explain—
- (i) the transactions and the nature of the business entered into by the international service provider and between the international service provider and the clients of the international service provider; and
  - (ii) the financial position of any express trust;
- (b) enable true and fair financial statements to be prepared;
- (c) enable the ascertainment of the ultimate beneficial owner (“s”) of the client in order to allow the international service provider to respond to information request duly authorized by law; and
- (d) facilitate the convenient and proper auditing of the records.

(2) An international service provider shall take reasonable precautions to—

- (a) prevent falsification of the records required to be kept by it under this Act; and
- (b) facilitate the discovery of any falsification of any such records.

(3) An entry in the records of a licensee required to be kept in accordance with this section shall be deemed to have made by or with the authority of the licensee.



(4) A licensee that contravenes this section commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding three million dollars or, in default of payment thereof, to a term of imprisonment not exceeding one year.

17.—(1) The accounts of every licensee shall be audited annually, in accordance with generally accepted accounting principles promulgated by the Institute of Chartered Accountants of Jamaica, from time to time, or such other body as the Minister with responsibility for commerce may prescribe, by an independent auditor who shall not be an employee or an officer of the licensee.

Accounts and audit.

(2) The audited accounts shall be submitted to the Commission within three months after the end of each financial year of the licensee.

18.—(1) Every holder of an international trust service provider licence shall ensure that all moneys, property and securities received or held by the licensee in a fiduciary capacity are always kept distinct and in separate accounts from the licensee's own moneys, property and securities and marked in the licensee's books for each particular trust, so that they may be distinguished from any other assets shown in the registers and other books of account kept by the licensee, and so that the trust monies, properties or securities do not form part of, or are mixed with, the licensee's general assets.

Trust funds to be kept separate.

(2) Every holder of an international trust service provider licence shall ensure that all investments made by the licensee as trustee shall be designated so that the trusts to which the investments belong may be readily identified at any time.

(3) Any licensee that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding three million dollars or, in default of payment thereof, to a term of imprisonment not exceeding twelve months.

19. An international service provider shall give the Commission written notice as soon as practicable where—

International service provider to notify Commission of legal and other proceedings.

- (a) a judgment in civil proceedings is given against the international service provider which exceeds the amount of its insurance cover with respect to that liability;

- (b) the licensed international service provider or an employee, a member, a manager, an officer, a partner or an affiliate of the international service provider is convicted of an offence which relates to—
  - (i) the business of providing an international service;
  - (ii) the formation, management or administration of a firm or company;
  - (iii) bankruptcy or insolvency; or
  - (iv) fraud or dishonesty;
- (c) a summons, warrant or other order of court is issued or made in respect of the international service provider or, as the case may be, an employee, member, manager, officer, partner, or affiliate of the international service provider, pursuant to the *Proceeds of Crime Act* or any regulations made thereunder, the *Terrorism Prevention Act* or any regulations made thereunder, the *United Nations Security Council Resolutions Implementations Act* or any regulations made thereunder, or any other enactment that the Minister may, by order published in the *Gazette*, designate;
- (d) an official inquiry is made into the affairs of the international service provider;
- (e) the international service provider is refused a licence or other legal authorization in respect of any business, or such a licence or other legal authorization has been revoked or suspended; or
- (f) disqualification proceedings have commenced against an officer or partner of the international service provider, with respect to any company, or the officer is disqualified from holding an office with respect to any company; or
- (g) an act of bankruptcy occurs with respect to the international service provider or any of its officers.

20.—(1) A licensed international service provider shall give the Commission the required prior notice in writing in any case where—

International  
service  
provider to  
notify  
Commission  
of merger  
and cessation  
of business.

- (a) being a company, a merger or take-over in respect of the international service provider or its international service business is intended; or
- (b) the international service provider intends to cease to operate the international service business for which it is licensed.

(2) A licensed international service provider shall give the Commission written notice, as soon as practicable, where—

- (a) the international service provider is no longer able to continue to operate the international service business;
- (b) being a firm or company, action is initiated to dissolve or wind up the international service provider;
- (c) being a company, a receiver, a liquidator, a trustee, or administrator is appointed in respect of the international service provider; or
- (d) composition or arrangement is made with the creditors of the international service provider.

(3) A licensed international service provider shall, in any case referred to in subsection (1)(b) or (2)—

- (a) arrange for the orderly winding up or transfer of the international service business; and
- (b) submit with the notice, details of the arrangements made.

(4) For the purposes of subsection (1) the required prior notice in a case where all the parties to a merger or takeover are licensed or registered by the Commission, shall—

- (a) be at least thirty days;
- (b) in any other case, be at least sixty days.

(5) A licensed international service provider shall give its clients written notice, as soon as practicable, where either of the circumstances specified in subsection (1) arises.

Requirement for professional indemnity insurance.

**21.—**(1) A licensed service provider shall purchase and maintain a policy of professional indemnity insurance of not less than the prescribed minimum amount to cover the risk of losses in respect of liabilities arising from the operation of his business.

(2) Any professional indemnity insurance arrangement made by an international service provider shall be subject to review by the Commission on an annual basis or otherwise as the Commission may determine.

(3) In conducting reviews under subsection (2), the Commission shall have regard to relevant factors, including the nature and scope of the business, the financial position and reputation of the licensee and, where applicable, its parent company, and the existence of any group coverage or financial commitment made by the parent company or other appropriate body to cover risks in respect of the licensee's trust business.

International service provider not to act to detriment of clients or public.

**22.** A licensed international service provider shall not operate business in that capacity in a manner that is detrimental to the public or the interest of clients of the international service provider.

Advertising by international service provider.

**23.** A licensed international service provider shall ensure that any advertisement that the international service provider publishes or causes to be published—

- (a) is not damaging to the reputation of Jamaica; and
- (b) contains a fair and accurate indication of the international service provided by the international service provider.

#### PART V—*Offences and Penalties*

Offence of pretending to be a licensee.

**24.** A person who, not being a licensee, knowingly holds himself or itself out as a licensee commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

25. A person who procures a licence fraudulently commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Offence of fraudulently procuring a licence.

26. A person who, in respect of an application for the grant or renewal of a licence, knowingly or recklessly—

Offence of making false or misleading statement, etc.

- (a) makes a false statement of a material fact;
- (b) omits to state a material fact; or
- (c) makes a statement that contains information that is misleading in light of the circumstances in which it is made,

commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

27. Any person who, wilfully and otherwise than as permitted by law, destroys, conceals or alters any documents relating to the business of a licensed international service provider or relating to any of its clients commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

Offence of destroying, etc., documents of licensed international service provider.

28. Where an offence under this Act or any regulations made under this Act is committed by a company and is proved—

Offence of officer or relevant person of a company, etc.

- (a) to have been committed with the consent or connivance of an officer or relevant person of the company or any person who was purporting to act in that capacity; or
- (b) to be attributable to the failure of any such officer or relevant person or other similar person to exercise all such reasonable diligence as he ought in the circumstances to have exercised to prevent the offence, having regard to the nature of his functions and all the circumstances,

the officer or relevant person or other similar person as aforesaid, as well as the company commits the offence and may be proceeded against and be punished accordingly.

PART VI—*Enforcement*

Protection of  
clients by  
Commission.

**29.**—(1) If it appears to the Commission that there is a reasonable ground for suspecting that an offence against this Act has been or is being committed by a licensee, an international service provider, or any other person, the Commission may take such action as it considers necessary, in the interest of the clients, or of the beneficiaries of any trust, or creditors of that licensee, international service provider or other person, including action to preserve any assets held by that licensee, international service provider or other person.

(2) The Commission may impose on a licensee such charges as may be prescribed to meet the expenses relating to any action taken under subsection (1).

Power to  
obtain  
information  
and reports.

**30.**—(1) The Commission may, by notice in writing served on a licensed international service provider—

- (a) require the international service provider to provide the Commission, or such person acting on behalf of the Commission as may be specified in the notice, at a time or at an interval or in respect of a specified period, with such information as the Commission may reasonably require for ensuring that the international service provider is complying with the provisions of this Act and any regulations made under this Act and for safeguarding the interests of the clients of the international service provider; or
- (b) require the international service provider to provide the Commission with a report, in such form as may be specified in the notice, by the international service provider's auditor or by an accountant or other person with relevant professional skill in, or on any aspect of, any matter about which the Commission has required or could require the international service provider to provide information under paragraph (a).

(2) The person appointed by an international service provider to make a report under subsection (1)(b) shall forthwith give written notice to the Commission of any fact or matter of which he becomes aware which is likely to be of material significance for the discharge, in relation to the international service provider, of the functions of the Commission under this Act.

(3) Regulations made under section 47(1) may specify the facts or matters which are likely to be of material significance for the discharge of the Commission's functions under this Act.

31.—(1) The Commission may—

- (a) by notice in writing served on a licensed international service provider, require the international service provider to produce, within such time and at such place as may be specified in the notice, such document as may be so specified; or
- (b) authorize an officer, servant or agent of the Commission to require the international service provider to provide to him such information, or to produce to him such documents, as he may specify,

General  
power to  
require  
production of  
documents.

being such information or documents as the Commission may reasonably require for the performance of its functions under this Act.

(2) Where, by virtue of subsection (1), the Commission or any officer, servant or agent of the Commission has power to require the production of any documents from an international service provider, the Commission or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.

(3) The power to require an international service provider or other person to produce any documents includes power—

- (a) if the documents are produced, to take copies of them or extracts from them and to require that international service

provider or person, or any other person who is a present or past officer or partner of, or is or was at any time employed by or acting as an employee of, the international service provider in question, to provide an explanation of any of the documents; and

- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where the documents are located.

(4) If it appears to the Commission to be desirable in the interests of the clients of a licensed international service provider which is a company to do so, it may also exercise the powers conferred by section 30 and subsection (1) in relation to any company which is, or has at any relevant time been an affiliate of the licensed international service provider.

(5) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section or section 7(2) commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding one million dollars or, in default of payment thereof, to imprisonment for a term not exceeding three months.

(6) Nothing in this section or section 7(2) shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege.

Right of  
entry to  
obtain  
information  
and  
documents.

**32.—**(1) Any officer, servant or agent of the Commission may, upon obtaining a warrant from a Justice of the Peace, enter any premises occupied by a person on whom a notice has been served under sections 30(1) and 31(1) for the purpose of obtaining there the information or documents required by that notice and of exercising the powers conferred by section 31(3).

(2) Any person who intentionally obstructs a person exercising powers conferred by this section commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding five hundred thousand dollars or, in default of payment thereof, to imprisonment for a term not exceeding three months.



33.—(1) If it appears to the Commission to be desirable to do so in the interests of the clients of a licensed international service provider, the Commission may appoint one or more competent persons to investigate and report to the Commission on—

Investigations  
on behalf of  
the  
Commission.

- (a) the nature, conduct or state of the International service provider's business or any particular aspect of it; or
- (b) the ownership or control of the international service provider, and the Commission shall give written notice of any such appointment to the international service provider concerned.

(2) If a person appointed under subsection (1) thinks it necessary for the purposes of the investigation that he is appointed to carry out, he may also investigate the business of any company which is or has at any relevant time been an affiliate of the licensed international service provider.

(3) Where a person appointed under subsection (1) decides to investigate the business of any company by virtue of subsection (2) the person shall give the company written notice to that effect.

(4) It shall be the duty of every person who is or was an officer, a partner, an employee, an agent, a banker, an auditor or an attorney-at-law of an international service provider which is under investigation (whether by virtue of subsection (1) or (2)) or any person appointed to make a report in respect of that international service provider under section 30(1)(b)—

- (a) to produce to the persons appointed under subsection (1), within such time and at such place as they may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation, which are in his custody or power;
- (b) to attend before the persons as appointed under subsection (1) at such time and place as they may require and answer questions relevant to the investigation as the persons appointed under subsection (1) may require; and

- (c) otherwise to give the persons so appointed all assistance in connection with the investigation which he is reasonably able to give,

and those persons may take copies of or extracts from any documents produced to them under paragraph (a).

(5) For the purpose of exercising his powers under this section, a person appointed under subsection (1) may upon obtaining a warrant from a Justice of the Peace, enter any premises occupied by an international service provider which is being investigated by him under this section.

(6) A person exercising powers by virtue of an appointment under this section shall, if so requested, produce evidence of his authority.

(7) The Commission may require the international service provider under investigation to pay to the Commission all reasonable and verified charges and expenses of, and incidental to, the investigation.

(8) Any person who—

- (a) without reasonable excuse fails to produce any documents which it is his duty to produce under subsection (4);
- (b) without reasonable excuse, fails to attend before the persons appointed under subsection (1) when required to do so;
- (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to an international service provider which is under investigation or a company which is being investigated by virtue of subsection (2); or
- (d) intentionally obstructs a person in the exercise of the powers conferred by subsection (5),

commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding one million dollars or, in default of payment thereof, to imprisonment for a term not exceeding three months.

(9) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him.

(10) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege.

**34.—**(1) The Commission may conduct an investigation if it appears to the Commission that— Investigations of suspected contraventions.

- (a) an international service provider has contravened a requirement imposed by or under this Act;
- (b) an individual may not be a fit and proper person for the purposes of this Act.

(2) The power conferred by subsection (1)(a) may also be exercised in relation to a former licensed international service provider but only in relation to—

- (a) business carried on at any time when the international service provider was licensed under this Act; or
- (b) the ownership or control of an international service provider at any time when it was licensed under this Act.

**35.—**(1) The Commission, may by notice in writing, require the person who is the subject of an investigation under section 34 (hereinafter referred to as the “person under investigation”) or any person connected (within the meaning of subsection (8)) with the person under investigation to— Power to require production of documents during investigations.

- (a) provide at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as the Commission may reasonably require for the purpose of the investigation;
- (b) produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description, as may be

specified, being documents the production of which may be reasonably required for the investigation; or

- (c) attend at such place and time as may be specified in the notice and answer such questions relevant to the enquiry as the Commission may require.

(2) The Commission may, by notice in writing, require every person who is or was an officer, a partner, an employee, an agent, a banker, an auditor or an attorney-at-law of an international service provider which is under investigation by virtue of subsection (1) to—

- (a) produce to the Commission within such time and at such place as the Commission may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation, which are in his custody or power;
- (b) attend before the Commission at such time and place as the Commission may require and answer such questions relevant to the investigation as the Commission may require; or
- (c) take such actions as the Commission may direct in connection with the investigation.

(3) The Commission or a duly authorized officer, servant or agent of the Commission may take copies of or extracts from any documents produced under this section.

(4) Any officer, servant or agent of the Commission may upon obtaining a warrant from a Justice of the Peace, on producing if requested evidence of his authority, enter any premises occupied by a person on whom a notice has been served under subsection (1) for the purpose of obtaining the information or documents required by the notice or exercising the powers conferred by subsection (3).

(5) Any person who, without reasonable excuse, fails to comply with a requirement imposed on him under this section or intentionally obstructs a person in the exercise of the powers conferred by subsection

(4) commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding one million dollars or, in default of payment thereof, to imprisonment for a term not exceeding three months.

(6) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him.

(7) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege.

(8) For the purposes of this section, a person is connected with the person under investigation if that person is, or has at any relevant time been—

- (a) an affiliate of the person;
- (b) an officer of the person under investigation; or
- (c) a partner of a partnership of which the person under investigation is a member.

36.—(1) A Judge of the Parish Court may issue a warrant under this section if satisfied on information on oath that the Commission is conducting an investigation under section 34 and— Powers of entry.

- (a) a person has failed to comply with a notice served on him under section 35;
- (b) that there are reasonable grounds for suspecting the completeness of any information provided or documents produced by the person in response to a notice served on him under section 35; or
- (c) that there are reasonable grounds for suspecting that if a notice were served on the person under section 35 it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(2) A warrant under this section shall authorize any police officer not below the rank of sergeant, together with any other person named in the warrant and any other police officers to—

- (a) enter any premises occupied by the person under investigation which are specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1) or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them; or
- (c) take copies of or extracts from any such documents.

(3) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.

(4) Any document of which possession is taken under this section may be retained—

- (a) for a period of one month or such longer period as may be permitted by an order of a Judge of the Parish Court; or
- (b) until the conclusion of proceedings, if within the period of one month referred to in paragraph (a), proceedings in which the documents are required as evidence are commenced against any person for any such contravention as is mentioned in section 34.

(5) Any person who intentionally obstructs the exercise of any power conferred by a warrant issued under this section commits an offence and is liable on a summary conviction in a Parish Court, to a fine not exceeding two million dollars or, in default of payment thereof, to imprisonment for a term not exceeding six months.

(6) Nothing in this section shall require the disclosure or production by a person of information or documents which he would

be entitled to refuse to disclose or produce on the grounds of legal professional privilege.

**37.**—(1) Where an investigation has commenced under section 34, a person commits an offence if he— Obstruction  
of  
investigations.

- (a) falsifies, conceals, destroys or otherwise disposes of documents which he knows or suspects are or would be relevant to such an investigation unless he proves that he had no intention of concealing facts disclosed by the documents from the persons carrying out such an investigation; or
- (b) causes or permits the falsification, concealment, destruction or disposal of any such documents, unless he proves that he had no intention of concealing facts disclosed by the documents from the persons carrying out the investigation;
- (c) notifies any other person of the investigation with intent to enable that person to commit an offence under paragraph (a) or (b).

(2) A person who commits an offence under this section is liable on summary conviction in a Parish Court, to a fine not exceeding two million dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

**38.**—(1) The Commission may take any action specified in subsection (2) where the Commission is satisfied as to any of the following circumstances— Sanctions and  
other  
measures in  
respect of  
licensees.

- (a) the licensee has not, within one year of being licensed, begun to carry on international services in Jamaica in accordance with the licence; or
- (b) the licensee has permanently ceased to carry on international services in Jamaica;
- (c) the licensee has made an assignment under the *Insolvency Act*, or a receiving order has been made with respect to the

licensee under that Act, or a receiver has otherwise been appointed in respect of the licensee, or the licensee has entered into liquidation, has been wound up or is otherwise dissolved;

- (d) the licensee obtained the licence by the concealment or misrepresentation of any fact that the Commission considers to be material to the application or suitability of the licensee for the issue of a licence;
- (e) the licensee no longer satisfies the requirements of this Act for the issue of a licence;
- (f) the licensee is contravening or has contravened—
  - (i) this Act or any regulations made hereunder; or
  - (ii) a term or condition of the licence;
- (g) the licensee has failed to comply with a lawful request or directive of the Commission;
- (h) the licensee has been convicted of an offence involving fraud or dishonesty;
- (i) the licensee is contravening or has contravened the *Proceeds of Crime Act* or any regulations made thereunder;
- (j) the direction and management of a licensee's business has not been conducted in a prudent manner, or the officers of a licensee have failed to discharge the functions of their office;
- (k) a person who is a relevant person with respect to the licensee is not a fit and proper person for the purposes of this Act; or
  - (1) action under subsection (2) is—
    - (i) necessary to protect the reputation of Jamaica as an international financial centre; or
    - (ii) in the public interest.



(2) Where the Commission is satisfied as to any of the circumstances set out in subsection (1) in respect of a licensee, the Commission may, as it considers appropriate—

- (a) issue a warning or reprimand to the licensee;
- (b) give directives to the licensee, which may include a directive—
  - (i) requiring the licensee, within such period as the Commission may specify, to take such remedial measures as the Commission may specify;
  - (ii) requiring the licensee, within such period as the Commission may specify, to cease engaging in such activity or behaviour as the Commission may specify;
  - (iii) limiting, within such period as the Commission may specify, any activities, functions or operations of the licensee as regards any international service;
- (c) refuse to renew the licence of the licensee;
- (d) in accordance with section 39, suspend the licence of the licensee for an initial period of thirty days;
- (e) in accordance with section 40, revoke the licence of the licensee;
- (f) require the substitution of any officer of the licensee; or
- (g) at the expense of the licensee, appoint a person to assume control of the licensee's affairs who shall, have all the powers of a temporary manager appointed under the *Financial Services Commission Act*, subject to complying with the procedures set out in Part C of the Third Schedule to that Act.

(3) A person appointed under subsection (2)(g) or whose appointment has been extended under subsection (4)(b) shall, from time to time, as required by the Commission (and where applicable) every three months while his appointment subsists, within three months of the date of his appointment or of the extension of his appointment

prepare and furnish a report to the Commission of the affairs of the licensee and of his recommendation thereon.

(4) On receipt of a report under subsection (3), the Commission may—

- (a) revoke the appointment of the person appointed under subsection (2)(h);
- (b) extend the period of the person's appointment subject to complying with the procedures set out in Part C of the Third Schedule to the *Financial Services Commission Act*;
- (c) subject to such conditions as the Commission may impose, allow the licensee to reorganize the licensee's affairs in a manner approved by the Commission;
- (d) revoke the licence and apply to the Supreme Court for an order that the licensee be forthwith wound up by the Supreme Court, in which case the provisions of the *Companies Act* relating to the winding up of a company by the Supreme Court shall, *mutatis mutandis*, apply;
- (e) apply to the Supreme Court for any order the Commission considers necessary to enforce a licensee's compliance with the provisions of this Act or any regulations made hereunder or to require a licensee to act in the interest of a client, or the beneficiary of a trust controlled or managed by the licensee.

(5) Notwithstanding any provision of this section, the Commission may revoke a licence in accordance with section 40.

(6) Except where the Commission considers that immediate action under section 39 or 40 is required in the public interest, the Commission shall not undertake any action specified in subsection (2)(d) or (4)(d) without first giving the licensee—

- (a) written notice of the action that the Commission intends to take; and
- (b) an opportunity to show cause as to why the action should not be taken.

**39.—**(1) The suspension of a licence under section 38(2)(d)— Suspension of licence.

- (a) shall take immediate effect, where the Commission considers it necessary in the public interest or to protect the reputation of Jamaica as an international financial centre; or
- (b) shall take effect on such date as the Commission may specify having notified the licensee of its intention to suspend the licence and having afforded the licensee an opportunity to be heard.

(2) The Commission may extend for an additional period for up to ninety days from the expiration of the initial thirty-day period referred to in section 38(2)(e)—

- (a) where the Commission is satisfied that the matter is capable of being remedied within a period that the Commission considers appropriate and the licensee has satisfied the Commission in that it is using its best efforts to remedy the matter and is likely to complete the remediation within that period;
- (b) the Commission requires additional time within which to obtain information so as to determine what further action is appropriate, if any, in the circumstances.

(3) While its licence is suspended under this section, the licensee shall discontinue its operations with respect to international services except to the extent the Commission requires or permits otherwise.

(4) The Commission may withdraw a notice of suspension at any time where the Commission considers that the circumstances so warrant.

**40.—**(1) Where the Commission revokes the licence of an international service provider pursuant to section 38(2)(e), the Commission shall notify the international service provider in writing of the revocation. Revocation of licence.

(2) A licensee whose licence has been revoked shall surrender the licence to the Commission.

(3) Every person who, without lawful excuse, fails to comply with subsection (2) commits an offence and shall be liable on summary

conviction in a Parish Court to a fine not exceeding five hundred thousand dollars.

(4) The revocation of a licensee shall not relieve a licensee of any obligation incurred or assumed by the licensee prior to the revocation of the licence.

(5) The Commission shall within seven days of making its decision, cause notice of such revocation to be gazetted and may cause such notice to be published in a newspaper in daily circulation in Jamaica or in such other manner as the Commission may determine.

#### PART VII—*Restriction on Disclosure of Information*

Restricted information.

41.—(1) Except as provided by sections 42, 43 and 44, a person who—

- (a) for the purposes of this Act, receives information relating to the business or other affairs of any person; or
- (b) obtains information, directly or indirectly, from a person who has received it as provided under paragraph (a),

shall not disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received.

(2) Subsection (1) does not apply to information which at the time of the disclosure is, or has already been made, available to the public from other sources.

(3) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction in a Parish Court to a fine not exceeding one million dollars or, in default of payment thereof, to imprisonment for a term not exceeding one year.

Disclosure for facilitating the discharge of functions of the Commission or other authorities.

42.—(1) Section 41 does not preclude the disclosure of information—

- (a) in any case in which disclosure is for the purpose of enabling or assisting the Commission to discharge its functions under this Act or the *Financial Services Commission Act*;
- (b) by the Commission to the auditor or accountant of a licensed international service provider or the person appointed to

make a report under section 30(1)(b) if it appears to the Commission that disclosing the information would enable or assist the Commission to discharge the functions mentioned in that section or would otherwise be in the interest of the client;

- (c) to the Minister or other authority in Jamaica in any case in which the disclosure is for the purpose of enabling or assisting him to discharge his regulatory functions;
- (d) subject to subsection (2), for the purpose of enabling or assisting an authority in a country or territory outside Jamaica to exercise functions corresponding to the functions of the Commission under this Act;
- (e) for the purpose of enabling or assisting a person to do anything which he is required to do in pursuance of a requirement imposed under section 30(1)(b);
- (f) with a view to the undertaking of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or any other enactment;
- (g) in connection with any other proceedings arising out of this Act.
- (h) to the Director of Public Prosecutions or a police officer not below the rank of sergeant of information obtained pursuant to section 33, 34, 35 or 36, that is in the possession of the Commission as to any suspected contravention in relation to which the functions conferred by those sections are exercisable.

(2) Subsection (1)(d) does not apply in relation to the disclosures to an authority unless the Commission is satisfied that the authority is subject to provisions which the Commission considers to be equivalent to subsection (1)(a), (b), (c), (e), (f), (g) or (h) or section 41.

(3) Information which is disclosed to a person in pursuance of this section shall not be used otherwise than for the purposes mentioned in this section.

Disclosure by auditor, etc. not in breach of duty.

**43.** An auditor, director or employee of a licensee who is required to make any disclosure to the Commission or to a person appointed by the Commission, shall not, by reason of making the disclosure, be regarded as being in breach of his duty to licensee.

Information supplied to the Commission by relevant supervisory authority.

**44.—(1)** Sections 41 and 42 apply to information which has been supplied to the Commission for the purposes of any relevant functions by the relevant supervisory authority in a country or territory outside Jamaica.

(2) In subsection (1)—

“relevant functions” in relation to the Commission means its functions under this Act;

“relevant supervisory authority” means the authority discharging in a country or territory outside Jamaica functions corresponding to those of the Commission under this Act.

#### PART VIII—*Appeal*

Appeal.

**45.—(1)** Any person aggrieved by any action, decision, ruling, direction, order or proposal of the Commission in any case, may, in writing, appeal to the Appeal Tribunal within thirty days of being notified of that action, decision, ruling, direction, order or proposal, together with the Commission’s reasons therefor.

(2) A person referred to in subsection (1) shall state the grounds of appeal and send a copy thereof to the Commission.

(3) The Appeal Tribunal shall give its decision in writing and may confirm, vary, cancel or reverse the Commission’s action, decision, ruling, direction, order, proposal or any part thereof, as the case may be.

(4) The Appeal Tribunal shall forward a copy of its decision to the Commission and a copy to the appellant, together with a written statement of the reasons for its decision.

(5) Any rules or procedures made by the Appeals Tribunal pursuant to the *Financial Services Commission Act* shall, unless the Appeals Tribunal otherwise determines, apply to appeals brought under this section.

PART IX—*Miscellaneous*

46.—(1) The Commission may issue guidelines in respect of the standards to be observed and the measures to be implemented by international service providers in connection with their obligations under this Act; and the guidelines may be made to apply generally or to any particular category of international service or international service provider.

Commission  
may issue  
guidelines.

(2) The Commission shall make the guidelines and any amendments thereto available for inspection by the public, whether by electronic publication or otherwise.

(3) The Commission shall review the guidelines at such intervals as the Commission determines.

(4) The guidelines and any amendments thereto shall be published in the *Gazette*.

47.—(1) The Commission may, with the approval of the Minister, make regulations providing for such matters as may be necessary or expedient for the purposes of this Act and, without prejudice to the generality of the foregoing the regulations, may make provision in relation to all or any of the following—

Commission  
may make  
regulations.

- (a) the procedure to be followed for the application for licences;
- (b) the qualifications of officers of international service providers and other professionals required to deliver services under this Act;
- (c) the qualifications of auditors to be appointed under this Act;
- (d) the books and records to be kept by international service providers;
- (e) the reporting requirements to be met by international service providers;
- (f) the forms to be used in connection with any of the provisions of this Act;
- (g) the matters in respect of which fees are to be payable and the amount of such fees;

- (h) the registers to be kept for the purposes of this Act;
- (i) the standards of corporate governance or procedures to have licensees meet international best practices;
- (j) the segregation of trust assets from a licensee' own property;
- (k) the conduct of business by licensees.

(2) Regulations made under subsection (1) shall be subject to affirmative resolution.

(3) Notwithstanding section 29(b) of the *Interpretation Act*, regulations made under subsection (1) may provide in respect of a breach of any of the provisions thereof for the imposition on summary conviction in a Parish Court of a fine not exceeding one million dollars or imprisonment for a term not exceeding twelve months.

Minister may  
amend  
monetary  
penalties.

48. The Minister may, by order subject to affirmative resolution, amend the monetary penalties specified in this Act.

Transitional.

49.—(1) A person who, immediately before the appointed day, was providing an international trust service or an international corporate service, shall, within six months after the appointed day, make an application under section 5 for the appropriate licence.

(2) If an application is made by a person pursuant to subsection (1), the person may continue to provide the relevant international service until that person's application is determined.

(3) If an application is not made by a person pursuant to subsection (1), the person's ability to lawfully provide the relevant international service shall cease at the end of the period referred to in subsection (1).

(4) The Minister may, by order published in the *Gazette*, extend the period specified in subsection (1).



## SCHEDULE (Section 6(4)(d))

*Standards for Grant and Retention of Licence**Composition of Board of Directors*

1. The directors of a licensed international service provider which is a company shall include such number of directors without executive responsibility for the management of its business as the Commission considers appropriate having regard to the circumstances of the licensed international service provider and the nature and scale of its operations.

*Business to be Conducted in Prudent Manner*

2.—(1) The licensed international service provider shall conduct its business in a prudent manner.

(2) In determining whether a licensed international service provider is conducting, or an international service provider will conduct, its business in a prudent manner, the Commission shall take into account any failure by the international service provider to comply with the provisions of this Act or any other enactment or any regulations made under this Act or any other enactment.

(3) An international service provider or a licensed international service provider shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate accounting and other records of its business and adequate systems of control of its business and records and has developed policies and procedures pertaining to its obligations under this Act or any other enactment.

(4) Those records and systems referred to in subparagraph (3) shall not be regarded as adequate unless they are such as to enable the business of the international service provider to be prudently managed and comply with the duties imposed on it by or under this Act or any other enactment.

*Integrity and Skill*

3. The business of the international service provider shall be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.

*Reputation of Jamaica*

4.—(1) An international service provider shall carry on its activities in a manner that will not tend to bring the reputation of Jamaica as an international financial centre into disrepute.

(2) An international service provider shall not be regarded as carrying on its activities in a manner as set out in sub-paragraph (1) unless it maintain adequate systems to assess the risks of its business and has developed and maintained policies and procedures pertaining to its obligations under this Act or any other enactment relevant to those activities.

Passed in the House of Representatives this 19th day of October 2016.

PEARNEL CHARLES  
*Speaker.*

## MEMORANDUM OF OBJECTS AND REASONS

The Jamaica International Financial Services Authority has been established with a mandate, among other things, to promote and develop Jamaica as a centre for international financial services.

The suite of international financial services to be offered includes the provision of international corporate services and international trust services.

This Bill seeks to regulate the persons who will provide international corporate services and international trust services by ensuring that such persons are licensed by the Financial Services Commission.

International corporate services include—

- (a) providing to an international entity the services associated with the formation, management or administration of a company, partnership or other legal entity;
- (b) acting as a director, secretary or similar officer of an international entity;
- (c) the provision of a registered office, place of business or address for an international entity; and
- (d) serving as a nominee shareholder in an international entity.

International trust services include the services associated with the creation or administration of a trust and acting as a trustee in relation to a trust.

Among other things, the Bill aims to promote and maintain high standards of conduct, ethics and competence in the provision of international corporate services and international trust services and seeks to ensure that international service providers adhere to modern, internationally acceptable standards of best practice.

Jamaica has highly trained accountants, attorneys-at-law and other professionals who can provide the required professional services for corporate and trust businesses at competitive rates. Therefore, it is anticipated that the provision of these services will create significant job opportunities for those professionals and others.

AUDLEY SHAW  
Minister of Finance and the Public Service.

**ABIL**

**ENTITLED**

**ANACT to Make provision for the regulation of  
the providers of international corporate  
services and international trust services;  
and for related matters.**

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**As passed in the Honourable House of Representatives.**

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