



Financial Services Commission
Mauritius

**PRACTICE NOTES FOR QUALIFIED TRUSTEES AND
MANAGEMENT COMPANIES WHEN PROVIDING
CORPORATE TRUSTEESHIP SERVICES**

24th August 2018

1.0 SCOPE OF THE PRACTICE NOTES

1.1 The objective of these Practice Notes (the “Notes”) is to provide for the implementation of a common set of standards for Qualified Trustees and Management Companies (“Trust Services Providers - TSPs”) when they provide corporate trusteeship services.

1.2 The Notes neither derogate nor restrict the powers vested upon the Financial Services Commission (the “FSC”) by statute, and should be read together with the relevant Acts as well as guidelines and Circulars issued by the FSC.

1.3 TSPs, through their relevant officers, should ensure that they are fully conversant and comply with the provisions of these Notes.

1.4 These Notes are part of ‘guidelines’ issued by the FSC pursuant to its powers under section 7(1) (a) of the Financial Services Act 2007 (the “FSA”). They do not have the force of law in that breaches will not by themselves constitute criminal offences – although they may entail regulatory sanctions. However, where as a result of a breach or failure to comply with practice notes, the FSC directs TSPs or their relevant officers to comply with any practice notes or any part thereof, failure to do so will constitute a contravention of the law and may lead to prosecution- quite apart from any other regulatory action that may be taken.

2.0 DEFINITIONS

In these Notes –

“client” means a person with whom a TSP has entered into an agreement to provide corporate trusteeship services or who has received or might reasonably be expected to receive the benefit of such services and includes beneficiaries of a trust;

“guidelines” has the same meaning as in the Financial Services Act and includes codes, guidance notes, practice notes and such other similar instruments issued by the Commission;

“corporate trusteeship services” means services provided by a TSP to directly or indirectly enable it to discharge the duties specified under the terms of any trust in relation to which it has been appointed as trustee and the duties provided under the applicable law of the trust;

“Management Company” means a holder of management licence under section 77 of the FSA and providing or advertising to provide corporate trusteeship services;

“Qualified trustee” has the same meaning as in the Trusts Act;

“Relevant Acts” has the same meaning as in the Financial Services Act and includes Regulations and FSC Rules;

“relevant officer” means any officer or staff of the TSP who is involved in corporate trustee services or other trust related services;

“trust” has the same meaning as in the Trusts Act.

3.0 PRACTICE NOTES

3.1 Conduct of Qualified Trustees and Management Companies when providing Corporate Trusteeship Services

3.1.1 A Qualified Trustee which is not a Management Company should observe the same standards of conduct as set out in these Notes for a Management Company. When a Qualified Trustee is not a body corporate, it should comply with the principles of the standards of conduct insofar as they apply to an individual.

3.1.2 A Qualified Trustee should not act in any manner which would cause it to breach:

- a) its fiduciary duties under the terms of a trust;
- b) its duties under the Trusts Act and/or the applicable law of a trust;
- c) any other law, rule or regulation which may be applicable to it.

3.1.3 A Management Company should:

- a) conduct its business with honesty, fairness, integrity and professionalism;
- b) act with due care, skill and diligence in the conduct of its business activities;
- c) organise and control its affairs in a responsible, efficient and timely manner; and
- d) comply with all guidelines, laws, rules and regulations issued by the FSC regarding conduct of business in the global business sector.

3.2 Integrity

A TSP should observe the highest standards of integrity and fair dealing in the conduct of its business and should ensure that any delegation of their duties is done in accordance with the Trusts Act or other relevant Trust law and by the terms of a trust

3.3 Code of Conduct and Ethics

- 3.3.1 A TSP should have in place a Code of Conduct and Ethics which provides for a set of rules of conduct and behavior for its relevant officers in their discharge of their duties regarding corporate trusteeship services.
- 3.3.2 The TSP should ensure that its relevant officers are fully conversant with the Code of Conduct and Ethics, which provides for disciplinary actions and sanctions in case of breach or non-compliance thereof.

3.5 Interaction with Clients

- 3.5.1 A TSP should continually ensure that its relevant officers have full understanding of the duties and functions arising under the applicable trust laws and the administration and affairs of clients for whom the TSP is acting. Its relevant officers should furthermore have skills and knowledge of the requirements and regulatory framework of the other jurisdictions from which the clients of the TSP are carrying out business and in which their assets are held/managed. Where same is required, TSPs should retain the services of other professionals.
- 3.5.2 A TSP should ensure that all transactions entered into or undertaken by or on behalf of clients are appropriately dealt with and that such transactions are authorized or handled by persons with the appropriate level of skill, knowledge, and experience.
- 3.5.3 Any correspondence or document shared between a TSP and its clients such as emails, faxes, notes should be kept in the files of the clients. A TSP may, at its own discretion keep correspondences or documents in an electronic format.
- 3.5.4 A TSP should inform its clients of the means by which complaints about the corporate trusteeship services can be made.

3.5.5 Qualified Trustees providing corporate trusteeship services should comply with any applicable standards set out in the Guidelines for Management Companies regarding handling of clients' money.

3.6 Managing Trust Assets/ Investments

TSPs acting as a trustee are under a fiduciary duty to manage the trust property so as to preserve and enhance so far as is reasonable, the value of the trust property and are thus under the absolute obligation to act solely for the benefit of the trust's beneficiaries. In particular, TSPs should -

- a) invest, distribute or otherwise manage each trust's assets under their trusteeship, in accordance with the law and the trust deed;
- b) manage the investment and safe keeping of trust assets professionally and responsibly and engage the services of appropriate professionals as may be necessary;
- c) maintain the highest standard of confidentiality except where disclosure of information is required or permitted by any applicable law/trust deed, or where authorised by the person to whom the duty of confidentiality is owed;
- d) ensure that the funds of different trusts are kept separately from each other and from the MC's own funds; and
- e) deal within a reasonable time frame and in the best interests of the beneficiaries with any valid instruction for transfer to other trustees/termination of trusteeship services.

3.7 Conduct of Corporate Trustees

TSPs providing corporate trusteeship services and its relevant officers should be fully conversant with the Trusts Act and the trust deed in each case and may seek legal or other advice where necessary. TSPs and its relevant officers should:

- a) understand and discharge fiduciary and other duties;
- b) when establishing a trust, use their best endeavours to ensure that settlors receive any necessary professional advice and that the trust is suitable for their needs;

- c) once a trust has been established, identify and act in the best interests of the beneficiaries and avoid or deal properly with any conflict of interest between the trusts and its beneficiaries or between the Trustee and the beneficiaries of the trust; and
- d) keep and preserve appropriate records of trust transactions in accordance with section 29 of the FSA.

3.8 Know your client

- 3.8.1 TSPs should fully comply with the FIAMLA (Financial Intelligence and Anti-Money Laundering Act), FIAMLR (Financial Intelligence and Anti-Money Laundering Regulations) and the FSC AML/CFT Code and any such standards set up by international organisations such as the FATF, OECD, amongst others.
- 3.8.2 TSPs should conduct verification of the identity of underlying principals such as settlors, protectors and beneficiaries of the trust.

3.9 Fees

- 3.9.1 TSPs should ensure that prior to the start of a fiduciary relationship, the settlor of a trust agrees in writing to a clear fee structure and charge fees in accordance with the established agreement, in a fair and transparent manner. The basis upon which fees are assessed must also be clearly spelt out in the agreement.
- 3.9.2 Any exit fees should clearly feature on the fee structure agreement in order to be charged to the client.
- 3.9.3 Any increase of fees charged by TSPs should be mutually agreed in writing between the TSP and the client or its legal representative.

In the event a trust deed allows a TSP to increase fees without the express consent of the designated persons set out in the trust deed, the TSP should seek the direction of a Court empowered to apply the relevant law of the trust before implementing any increase.

3.9.4 With respect to any dispute on fees (including on any increase of fees), the TSP should seek, at its own costs, the direction of a Court empowered to apply the relevant law of the trust.

3.10 Removal of Trustee

All TSPs should comply with its legal obligation under section 31(3) and section 31 (4) of the Trusts Act or any other relevant trust law when it ceases to be a corporate trustee of a trust. TSPs should not refuse or delay to transfer trust documents and property to an incoming trustee, where it has been signified by written notice, of the valid termination of its trusteeship. TSPs should have the duty and obligation to transfer as soon as reasonably practical, but in any case not exceeding one month, all trust documents and property to the designated incoming trustee, except where, mutually agreed otherwise, between the incoming trustee and the relevant TSP.