

CHAPTER 369

FINANCIAL AND CORPORATE SERVICE PROVIDERS

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CHAPTER 369

FINANCIAL AND CORPORATE SERVICE PROVIDERS

An Act to provide for the licensing and regulation of financial and corporate service providers and for connected purposes.

[Commencement 29th December, 2000]

*41 of 2000
18 of 2001
S.I. 128/2001
S.I. 36/2005
19 of 2007
35 of 2008*

PART I PRELIMINARY

1. This Act may be cited as the Financial and Corporate Service Providers Act. Short title.
2. In this Act — Interpretation.
 - “auditor” means a public accountant licensed under the provisions of the Public Accountants Act; Ch. 364.
 - “court” means the Supreme Court; 35 of 2008, s. 2.
 - “financial and corporate services” means the provision of financial and corporate services for profit or reward in or from within The Bahamas and includes —
 - (a) the conduct or the carrying on of financial services in or from The Bahamas, including on-line financial services; S.I. 128/2001.
 - (b) the registration or management and administration of international business companies incorporated or existing under the International Business Companies Act; Ch. 309.
 - (c) the provision of registered agent services and registered office services for companies mentioned in paragraph (b);
 - (d) the provision of directors or officers for companies mentioned in paragraph (b);
 - (e) the provision of nominee shareholders for companies mentioned in paragraph (b);
 - (f) the provision of partners for partnerships registered and existing under the Exempted Limited Partnership Act; and Ch. 312.

- S.I. 128/2001.* (g) the provision of registered agent services and registered office services for partnerships registered and existing under the Exempted Limited Partnership Act;
- Ch. 312.
S.I. of 2008, s. 2. “Inspector” means the Inspector of Financial and Corporate Services appointed under section 11;
- S.I. 36/2005.* “licence” means a licence granted under subsection (3) of section 4;
- “licensee” means a person holding a licence under this Act;
- 19 of 2007, s. 2.* “Minister” means the Minister responsible for the administration of this Act.

PART II LICENCES

Requirement for licence.

3. Subject to section 20 and notwithstanding any other law or practice, no person shall carry on the business of financial and corporate services in or from within The Bahamas unless that person has obtained a licence under this Act for those purposes.

Application for licence.
Schedule.

4. (1) An application for a licence under this Act shall be made to the Inspector in the form specified in the Schedule.

(2) The Minister may by order prescribe different types of licences subject to such terms and conditions as is deemed necessary.

(3) The Inspector shall in granting a licence take into account the following —

- (a) whether the applicant is a fit and proper person;
- (b) whether the applicant is qualified to carry out the business of a financial and corporate service provider;
- (c) the professional reputation and experience of the applicant;
- (d) whether each officer, director or manager of the applicant is a fit and proper person to act as such;

- (e) in the case of an application by a partnership, whether each partner is a fit and proper person to act as such; and
- (f) whether the applicant, if an individual, is resident in The Bahamas or, if a company, is registered under the Companies Act. Ch. 308.
- (4) An appeal against a decision to refuse to grant a licence shall be made to the Supreme Court.
- (5) The Inspector shall cause notice of the grant of a licence under this Act to be published in the *Gazette*.
5. (1) An application under section 4 shall be accompanied by such fee as the Minister may by regulations prescribe. Fees.
- (2) The issue of a licence under section 4 shall be subject to the payment of such fee as the Minister may by regulations prescribe.
6. *Repealed.* 35 of 2008, s. 3.
7. Where a change occurs in the particulars of a licensee as set out in the application for the licence, the licensee shall within thirty days, inform the Inspector of the change. Notification of change in particulars of licensee.
8. A licence issued under this Act shall be prominently displayed on the premises where the business of financial and corporate services is carried on. Display of licence.
9. (1) The Inspector shall maintain a register in which shall be entered the following particulars — Register of management companies. S.I. 128/2001.
- (a) the name of the licensee;
- (b) the address of the licensee;
- (c) the location of the registered office; and
- (d) the date the licence was issued.
- (2) The register shall be open to inspection by the public.

PART III

TRANSFERABILITY OF SHARES AND CHANGES IN DIRECTORS

10. (1) No shares in a company or partnership licensed under this Act shall be issued, transferred or otherwise disposed of without the prior written approval of the Inspector. Shares, etc. not to be issued or transferred without approval.

(2) No appointment of directors of a company licensed under this Act shall be made without the prior written approval of the Inspector.

(3) Any change of officers of a company shall be notified to the Inspector.

PART IV ADMINISTRATION

Inspector of
Financial and
Corporate
Services.

11. (1) The Minister shall appoint an Inspector of Financial and Corporate Services for the purposes of ensuring the proper administration of this Act.

(2) The Inspector shall be a body corporate with perpetual succession and a common seal with power to acquire, hold and dispose of land and other property of whatever kind and to sue and be sued.

(3) The functions of the Inspector are —

(a) to maintain a general review of financial and corporate services in The Bahamas;

19 of 2007, s. 3.

(b) when an examination is deemed necessary by the Inspector, at the expense of the licensee, to conduct on-site and off-site examinations of the business of the licensee for the purpose of satisfying himself that the provisions of this Act, the Financial Transactions Reporting Act, the International Business Companies Act and any other law are being complied with and in such cases where the Inspector is unable to conduct such examination, to appoint an auditor, at the expense of the licensee, to conduct such examination and to report thereon to the Inspector.

Ch. 368.

Ch. 309.

(4) In the performance of his duties under this Act the Inspector may at all reasonable times —

(a) require a licensee to produce for examination such of his books, records and other documents that the licensee is required to maintain pursuant to section 15; and

(b) require a licensee to supply such information or explanation,

as the Inspector may reasonably require for the purpose of enabling him to perform his functions under this Act.

(5) The Inspector may, with the approval of the Minister authorise in writing any person or persons to

assist him in the performance of his functions under this Act.

(6) The Inspector may from time to time issue rules, guidelines, and directives for the better management of financial and corporate service providers licensed under this Act. *35 of 2008, s. 4.*

12. (1) Subject to subsections (2) and (3), the Inspector or any officer, employee, agent or adviser of the Inspector who discloses any information relating to — *Confidentiality. 18 of 2001. s. 3.*

- (a) the affairs of the Inspector;
- (b) any application made to the Inspector;
- (c) the affairs of a licensee; or
- (d) the affairs of the client of a licensee,

that he has acquired in the course of his duties or in the exercise of the Inspector's functions under this or any other law is guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years.

- (2) Subsection (1) shall not apply to a disclosure —
 - (a) lawfully required or permitted by any court of competent jurisdiction within The Bahamas;
 - (b) for the purpose of assisting the Inspector to exercise any functions conferred on him by this Act, by any other Act or by regulations made thereunder;
 - (c) in respect of the affairs of a licensee or of a client of a licensee, with the consent of the licensee or client, as the case may be, which consent has been voluntarily given;
 - (d) where the information disclosed is or has been available to the public from any other source;
 - (e) where the information disclosed is in a manner that does not enable the identity of any licensee or of any client of a licensee to which the information relates to be ascertained;
 - (f) to a person with a view to the institution of, or for the purpose of —
 - (i) criminal proceedings;
 - (ii) disciplinary proceedings, whether within or outside The Bahamas, relating to the exercise by a counsel and attorney, auditor, accountant, valuer or actuary of his professional duties;

- (iii) disciplinary proceedings relating to the discharge by a public officer, or a member or employee of the Inspector of his duties; or
 - (g) in any legal proceedings in connection with —
 - (i) the winding-up or dissolution of a licensee; or
 - (ii) the appointment or duties of a receiver of a licensee.
- (3) Subject to subsection (6), the Inspector may disclose to an overseas regulatory authority information necessary to enable that authority to exercise regulatory functions including the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority.
- (4) In deciding whether or not to exercise its power under subsection (3), the Inspector may take into account —
- (a) whether the inquiries relate to the possible breach of a law or other requirement which has no close parallel in The Bahamas or involve the assertion of a jurisdiction not recognised by The Bahamas; and
 - (b) the seriousness of the matter to which the inquiries relate and the importance to the inquiries of the information sought in The Bahamas.
- (5) The Inspector may decline to exercise his power under subsection (3) unless the overseas regulatory authority undertakes to make such contribution towards the cost of the exercise as the Inspector considers appropriate.
- (6) Nothing in subsection (3) authorises a disclosure by the Inspector unless —
- (a) the Inspector has satisfied himself that the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking of confidentiality; or
 - (b) the Inspector has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Inspector; and

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- (c) the Inspector is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws, regulations and rules administered by that authority; and
- (d) the Inspector is satisfied that information provided following the exercise of his power under subsection (3) will not be used in criminal proceedings against the person providing the information.

(7) Where in the opinion of the Inspector it appears necessary in relation to any request for assistance received from an overseas regulatory authority to invoke the jurisdiction of a Stipendiary and Circuit Magistrate in obtaining information requested by the overseas regulatory authority, the Inspector shall immediately notify the Attorney-General with particulars of the request, and shall send him copies of all documents relating to the request, and the Attorney-General shall be entitled, in a manner analogous to *amicus curiae*, to appear or take part in any proceedings in The Bahamas, or in any appeal from such proceedings, arising directly or indirectly from any such request.

(8) The Inspector may cooperate with any other regulatory authority in The Bahamas, including, by sharing information that he has acquired in the course of his duties or in the exercise of his functions under this or any other law where he considers such cooperation or information may be relevant to the functions of such other regulatory authority, or as a necessary part of a framework for consolidated supervision, oversight or regulation of the financial services sector.

19 of 2007, s. 4.

(9) In this section —

“overseas regulatory authority” means an authority which in a country or territory outside The Bahamas exercises functions corresponding to any functions of the Inspector.

PART V
COMPLIANCE MEASURES FOR LICENSEES

Duty to maintain professional conduct.

13. (1) Every licensee shall —

- (a) maintain a high standard of professional conduct in the performance of his duties as a licensee; and
- (b) refrain from engaging himself or any of his employees in any illegal or improper conduct.

(2) No licensee shall indulge in any activity, whether within or outside The Bahamas, that may reflect adversely on other service managers or the reputation of The Bahamas as an international financial centre.

Obligation of a licensee to clients.

14. (1) Where any request is made to a licensee by a client to provide financial or corporate services, the licensee shall verify the identity of the client.

(2) A licensee shall obtain from each client who instructs him —

35 of 2008, s. 5.

- (a) details of the client's principal place of business, business address, telephone, facsimile numbers and electronic address of the principals or professionals concerned with the client;

35 of 2008, s. 5.

- (b) sufficient references to provide an adequate indication on the reputation and standing of the client.

(3) A licensee shall keep a record in respect of each client, including the name and address of the beneficial owners of all international business companies incorporated and or existing under the International Business Companies Act, and the name and address of all partners registered under the Exempted Limited Partnership Act on behalf of the client and any information obtained under subsection (1).

Ch. 309.

Ch. 312.

35 of 2008, s. 5.
18 of 2001,
s. 4.

(4) Subject to subsection (5) and to any directions or guidance issued by the Inspector, the following shall be exempt from the provisions of subsections (2)(b) and (3)

35 of 2008, s. 5.
Ch. 368.

- (a) a financial institution as defined in section 2 (1) of the Financial Transactions Reporting Act and which is subject to regulation through a licensing process, but only where such financial institution is instructing a licensee on behalf of its client;

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- (b) a foreign financial institution as defined in section 2(1) of the Financial Transactions Reporting Act which is subject to regulation through a licensing process, but only where such financial institution is instructing a licensee on behalf of its client; Ch. 368.
- (c) a publicly traded company or mutual fund listed on The Bahamas International Stock Exchange or any other Stock Exchange prescribed by regulations made under the Financial Transactions Reporting Act and approved by the Securities Commission of The Bahamas; Ch. 368.
- (d) a regulated mutual fund as defined in section 2(1) of the Mutual Funds Act or a regulated mutual fund located in a country specified in the First Schedule to the Financial Transactions Reporting Act and regulated by a body having equivalent regulatory and supervisory responsibilities to the Securities Commission of The Bahamas. Ch. 366.
Ch. 368.
- (5) The Minister may by order as the Minister deems appropriate in the circumstances — 35 of 2008, s. 5.
- (a) add to the list of exempted categories of financial institutions set out in subsection (4); and
- (b) attach conditions to an exempted category.
- (6) Where the service provided to a client is for any reason discontinued, the record kept in his case pursuant to subsection (2) shall continue to be maintained for a period of not less than six years from the date of discontinuation. 18 of 2001, s. 4.
35 of 2008, s. 5.
- 15.** In addition to the requirement of section 13(2), a licensee shall maintain adequate information on a file about each client so as to enable the licensee to fulfil the obligations under the Act and any rules and regulations made thereunder and any other law. Keeping record of clients.
- 16.** (1) Where the Inspector is of the opinion that a licensee is — Suspension of licence.
- (a) acting contrary to section 10 or fails to provide access to any document under section 11(4) or fails to obtain any information for the purposes of section 14; or
- (b) in contravention of this Act or any other law,
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the Inspector may require him forthwith to take such steps as may be necessary to rectify the matter, and may forthwith suspend the licence.

(2) A suspension shall not exceed a period of thirty days unless extended from time to time by an order of the court on application of the Inspector on the grounds that it is in the public interest that the suspension continue and specifying the duration of such period of further suspension, which shall not itself exceed sixty days each at any one time.

Revocation of
licence.
S.I. 128/2001.

17. (1) The Inspector may by order, revoke the licence of a licensee —

- (a) if the Inspector is of the opinion that the licensee is carrying on his business in a manner detrimental to the public interest, the interest of the companies managed by him or to the reputation of The Bahamas;
- (b) if the licensee has ceased to carry on financial and corporate services; or
- (c) if the licensee becomes bankrupt or goes into liquidation or is wound up or otherwise dissolved.

(2) An appeal under this section shall not operate as a suspension of the revocation.

Offences.

18. (1) Any person who carries on the business of financial and corporate services in or from within The Bahamas without obtaining a licence under this Act commits an offence and is liable on summary conviction to a fine of seventy-five thousand dollars and where the offence continues subsequent to conviction that person is liable to a fine of one thousand dollars for each day the offence continues.

(2) Subject to subsection (1), a person who with intent to deceive, by any act or omission contravenes any provision or requirement of this Act, commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars.

(3) Any licensee who advertises inviting either directly or indirectly other parties to commit breaches of the law of the country in which such advertisement appears or to which such advertisement is directed, commits an offence and is liable on summary conviction to a fine of fifty thousand dollars.

(4) Any person who with intent to deceive, for any purposes of this Act makes any representation that he knows to be false or does not believe to be true, commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars.

(5) Where a limited liability company is convicted of an offence under subsection (3), every director and every officer concerned with the management of the company is also liable to be convicted for that offence unless he satisfies the court that the offence was committed without his knowledge or consent or that he took all reasonable steps to prevent the commission of the offence.

(6) Any person who —

- (a) assaults or obstructs the Inspector or other person in the performance of his functions under this section;
- (b) contravenes any provision of this Act for which no punishment is specially provided,

commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

(7) Any licensee who fails to comply with section 14(3) commits an offence and is liable on summary conviction to a fine of fifty thousand dollars.

18A. (1) Notwithstanding section 18 or any other provision of this Act, where the Inspector is satisfied that a licensee has —

- (a) violated any rules, directives or guidelines issued pursuant to section 11;
- (b) violated any codes of practice issued by the Compliance Commission pursuant to section 47 of the Financial Transactions Reporting Act;
- (c) violated any guidelines issued by the Financial Intelligence Unit pursuant to section 15 of the Financial Intelligence Unit Act;
- (d) committed an offence under this Act; or
- (e) committed an offence under any other Act dealing with the regulation of financial services in The Bahamas,

Power of Inspector to issue sanctions including fines. *35 of 2008, s. 6.*

Ch. 368.

Ch. 367.

the Inspector may by order impose a penalty on the licensee which may include one or more of the following —

- (i) a public reprimand;

- (ii) a ban on carrying on certain operations;
- (iii) the temporary suspension of a manager;
- (iv) the removal of a director, responsible officer, or other senior manager;
- (v) the imposition of conditions on a licence; and
- (vi) an order for the licensee to pay a maximum fine not exceeding the amounts set out in section 18.

(2) Where the Inspector makes an order pursuant to subsection (1) —

- (a) the order shall be put into writing;
- (b) the order shall specify the offence which the licensee committed and the penalty imposed by the Inspector;
- (c) a copy of the order shall be given to the licensee;
- (d) upon payment by the licensee of a fine as ordered, the licensee shall not be liable to any further prosecution in respect of the offence and where any further prosecution is brought it shall be a good defence for the licensee to prove that the offence with which it is charged has been dealt with under this section; and
- (e) the order may be enforced in the same manner as an order of the court.

Appeals.

19. (1) An appeal lies to the Supreme Court from any decision of the Inspector —

- (a) revoking a licence under subsection (1) of section 17; or
- (b) suspending a licence under subsection (1) of section 16;
- (c) imposing a penalty on the licensee under subsection (1) of section 18A.

35 of 2008, s. 7.

(2) An appeal against the decision of the Inspector shall be by motion.

(3) The following procedure applies to appeals from the Inspector —

- (a) the appellant within twenty-one days after the day on which the Inspector has given his decision shall serve a notice in writing, signed by the appellant or his attorney, on the Attorney-General of his intention to appeal and of the

general grounds of his appeal, except that any person aggrieved by a decision of the Inspector may upon serving notice on the Attorney-General apply to the court within fourteen days after the day on which the Inspector has given his decision for leave to extend the time within which notice of appeal prescribed by this section may be served, and the court upon hearing the application may extend the time prescribed by this section as it deems fit;

- (b) the Attorney-General shall within twenty-one days of receiving the notice of appeal obtain a copy of the Inspector's decision and transmit to the Registrar of the Supreme Court without delay a copy thereof together with all papers relating to the appeal, except that the Inspector is not compelled to disclose any information if he considers that the public interest would suffer by such disclosure and a certificate given by the Inspector under the Public Seal is conclusive that disclosure is not in the public interest;
- (c) the Registrar of the Supreme Court shall set down the appeal for hearing on such day as is convenient, and shall cause notice of the hearing to be published, in such manner as, the court may direct; and
- (d) the court may adjourn the hearing of any appeal and may, upon the hearing thereof, confirm, reverse, vary or modify the decision of the Inspector or remit the matter with the opinion of the court thereon to the Inspector.

(4) An appeal against a decision of the Inspector shall not operate as a suspension of the decision of the Inspector.

20. This Act does not apply to a company licensed under the Banks and Trust Companies Regulation Act.

Act not applicable to Banks and Trust Companies Regulation Act. Ch. 316. Regulations.

21. The Minister may make regulations generally for carrying out the purpose and provisions of this Act into effect, and specifically —

- (a) prescribing anything by this Act authorized or required to be prescribed; and

(b) exempting any person or business, or class of persons or business, from any provision of this Act.

Minister may give directions.

22. The Minister may give to the Inspector directions of a general or of a specific nature as to the policy to be followed by the Inspector in the carrying out or pursuit of his functions as appear to the Minister requisite in the public interest and the Inspector shall give effect to any such directions.

Directions.

23. Without limiting or affecting section 21, the Minister may, from time to time, issue by publication in the *Gazette*, directions in relation to the inspection and such matters as he may think fit and appropriate and failure by any licensee to comply with the directions shall be taken into consideration when any action is proposed to be taken under section 16 or 17.

Transitional.

24. A person who at the date of the commencement of this Act is lawfully permitted to carry on the business of financial and corporate services including registered agents shall make an application within three months from the coming into force of this Act for a licence under this Act.

SCHEDULE
(Section 4(1))

**APPLICATION FOR A FINANCIAL AND CORPORATE
SERVICES LICENCE**

1. Name of applicant

2. Address of principal office of applicant and, in the case of a company, its registered office

3. In the case of a company, the names, addresses and nationalities of all directors

4. In the case of a company, the names, addresses and nationalities of all shareholders

5. In the case of a company, the names, addresses and nationalities of the beneficial owners of the company

6. In the case of a partnership, the names and addresses of all partners

7. In the case of a company, the names and addresses of all officers and managers

8. Names and addresses of attorneys, if any, for the applicant, together with a letter from the attorneys confirming that they act for the applicant

9. In the case of a company, the name and address of the registered office in The Bahamas upon which any required notices may be served

10. In the case of a company —
 - (a) a certified copy of a certificate of incorporation;
 - (b) a certified copy of Memorandum and Articles of Association; and
 - (c) a certificate of good standing.
11. A detailed resumé, two character references in writing, one financial reference from a bank or trust company registered under the Banks and Trust Companies Regulation Act, or registered in a country specified in the First Schedule to the Financial Transactions Reporting Act, a police certificate for the previous five years in respect of each shareholder, beneficial owner, officer and director.
12. Status for the purposes of the Exchange Control Regulations Act and any regulations made thereunder and in force at the date of the application.
13. A detailed overview/summary of internal control procedures to be put in place.

18 of 2001, s. 5.

Ch. 316

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