



INDUSTRY BRIEFING

FINANCIAL AND CORPORATE SERVICE PROVIDERS

Tuesday 8 August 2017
British Colonial Hilton, New Providence



Securities Commission of The Bahamas –
Inspector of Financial and Corporate Services



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OPENING REMARKS

HON. K. PETER TURNQUEST

DEPUTY PRIME MINISTER & MINISTER OF FINANCE



Securities Commission of The Bahamas –
Inspector of Financial and Corporate Services



LEGISLATIVE DEVELOPMENTS

CHRISTINA R. ROLLE

EXECUTIVE DIRECTOR

SECURITIES COMMISSION OF THE BAHAMAS



Securities Commission of The Bahamas –
Inspector of Financial and Corporate Services



OVERVIEW

Factors driving changes to Legislation:

- Background
- Regulatory Environment & Global Trends
- Policy Matters



CARIBBEAN FINANCIAL ACTION TASK FORCE

➤ Background

- Objective: Prevention and control of money laundering and combatting the financing of terrorism and proliferation of weapons of mass destruction
- Tests compliance with FATF Recommendations
- Produces Mutual Evaluation Reports
- Non- Compliance may result in sanctions and reputational damage for the jurisdiction



CFATF ASSESSMENT 2015

- Need to Implement Risk Based Supervision
- Gaps in regulation
 - Escrow services
 - Pawnbrokers
 - Secondhand dealers in precious metals and stones
- Lack of AML/CFT specific sanctions
 - Need to demonstrate that sanctions are effective, proportionate and dissuasive; and
 - Need to apply administrative sanctions for breaches.



OECD GLOBAL FORUM

PEER REVIEW – JULY 2017

➤ Background

- Exchange of Tax Information
- Operation
- Peer Review

➤ Significance of Compliance/ Non- Compliance

- Sanctions
- Reputational Damage (Jurisdiction)



OTHER REGULATORY ISSUES

➤ Enhancement to legislative and regulatory framework needed for:

- Corporate Services;
- Money Lending;
- Escrow Services;
- Mortgage Broking;
- Bill Paying Services;
- Credit Extension and Financial Leasing;
- Debt Collection;
- Etc.



THE WAY FORWARD

- Public Consultation, 20 July – 1 September 2017:
 - Draft Financial and Corporate Service Providers Bill, 2017;
 - Financial and Corporate Service Providers (Money Lenders) Rules; and
 - Financial And Corporate Service Providers (Fees) Rules

- Anticipating a single Act with Rules to address specific activities. Additional draft Rules to be issued for consultation.



LEGISLATIVE DEVELOPMENTS

- Overview of the Proposed Financial and Corporate Service Providers Legislative Regime, 2017



Presenter: Ms. Odecca Gibson
Deputy Legal Counsel, Office of Legal Counsel



AIMS OF PROPOSED FCSPA, 2017

- ❑ Establish a robust regulatory regime & eliminate deficiencies and inconsistencies in the current legislation;
- ❑ Enhance regulatory authority and oversight of the Inspector;
- ❑ Clarify and establish clear and distinct categories of activities that are considered financial or corporate services and that are licensable;
- ❑ Establish appropriate standards of conduct and obligations for financial and corporate service providers;
- ❑ Establish appropriate capital, financial and reporting obligations that are commensurate with the various services being provided; and
- ❑ Provide appropriate transitional provisions.



WHAT WERE THE CONSIDERATIONS?

INTERNAL REVIEW

Authorizations
Market
Surveillance
Enforcement



EXTERNAL CONSULTATION

Licensees
Legal Advice



BENCHMARKING

Domestic
International



WHAT ACTIVITIES ARE REGULATED

- ❑ Definition of “financial and corporate services” s.2 Financial and Corporate Service Providers Act, Ch. 369 (2000)
- ❑ Public Notice No. 5 of 2012 adopting the World Trade Organization’s definitions of “financial and corporate services”
- ❑ Domestic legislation identifying who is required to have a Financial and Corporate Services Licence



WHAT ACTIVITIES ARE REGULATED

Financial Leasing Credit Extension Money Brokers

IBC Registration, Management & Administration

IBC Directors, Officers, Nominee Shareholders

Exempted Limited Partnership Partners Exempted

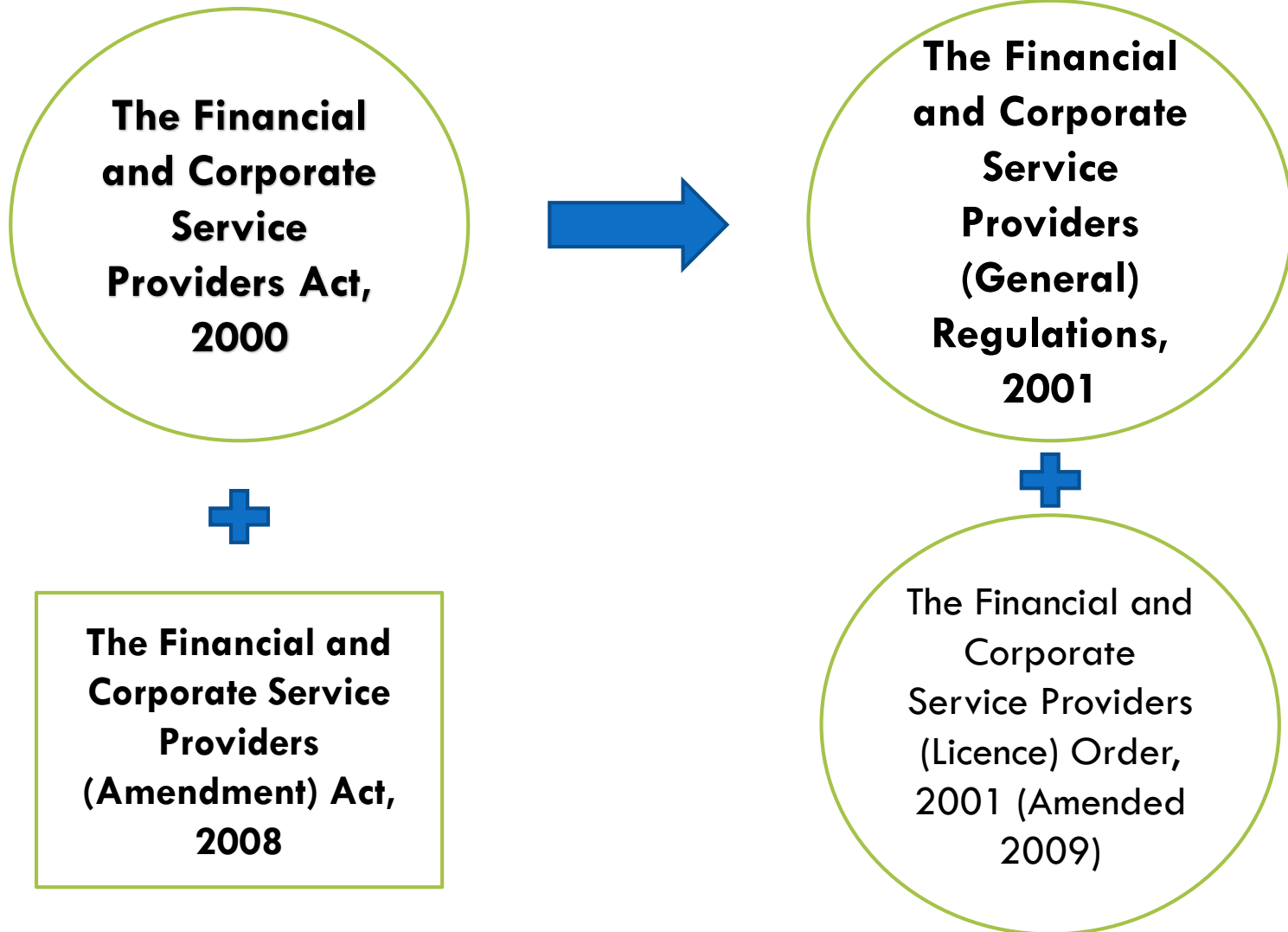
Limited Partner Registered Agents/Office Services

Mortgage Brokers Money Lenders Escrow Services

Payday and Cash Advances Financial Advisory

/Consultancy Services Financial Intermediation

EXISTING LEGISLATIVE REGIME



PROPOSED LEGISLATIVE REGIME

THE FINANCIAL AND CORPORATE SERVICE PROVIDERS ACT, 2017



THE FINANCIAL AND CORPORATE SERVICE PROVIDERS (FEES) RULES, 2017

THE FINANCIAL AND CORPORATE SERVICE PROVIDERS (CORPORATE SERVICE PROVIDERS) RULES, 2017

THE FINANCIAL AND CORPORATE SERVICE PROVIDERS (**FINANCIAL SERVICE PROVIDER**) (MONEY LENDERS) RULES, 2017

THE FINANCIAL AND CORPORATE SERVICE PROVIDERS (**FINANCIAL SERVICE PROVIDER**) (MONEY BROKERS RULES), 2017

The Financial and Corporate Service Providers (Fees) Regulations, 2016

The Financial and Corporate Service Providers (Certificate and Licence) Regulations, 2016

PROPOSED LEGISLATIVE REGIME

THE FINANCIAL AND CORPORATE SERVICE PROVIDERS ACT, 2017

THE FINANCIAL AND CORPORATE SERVICE PROVIDERS (FINANCIAL SERVICE PROVIDER) (FINANCE AND CONSUMER CREDIT) RULES, 2017

THE FINANCIAL AND CORPORATE SERVICE PROVIDERS (FINANCIAL SERVICE PROVIDER) (ESCROW SERVICES) RULES, 2017

THE FINANCIAL AND CORPORATE SERVICE PROVIDERS (FINANCIAL SERVICE PROVIDER) (FINANCIAL SERVICES) RULES, 2017

THE FINANCIAL AND CORPORATE SERVICE PROVIDERS (FINANCIAL SERVICE PROVIDER) (BILL PAYING SERVICES) RULES, 2017

The Financial and Corporate Service Providers (Fees) Regulations, 2016

The Financial and Corporate Service Providers (Certificate and Licence) Regulations, 2016



PROPOSED CORPORATE SERVICE PROVIDERS RULES

ACTIVITY	
Registration, Management, Administration of an IBC	Natural Persons
Provision of Registered agent/office services to an IBC	
Provision of Directors, Officers, or Nominee Shareholders to an IBC	
Provision of Partners, Registered agent/office services to ELP	
Appointment as Executive Entity Agent	
Appointment as Trustee of an Authorized Purpose Trust	
Appointment as the Registered Representative of a Foundation	
Appointment as Registered Representative of Securities Firm	
Appointment as Governing Administrator of Investment Condominium	
Appointment as Registered Representative of Private Trust Company	
Appointment as Representative of Segregated Accounts Company	Legal Persons



FINANCIAL SERVICE PROVIDERS

ACTIVITY	PROPOSED RULES
MONEY LENDING	MONEY LENDERS RULES
MORTGAGE LENDING	
PAYDAY AND CASH ADVANCES	
CREDIT EXTENSION	FINANCE AND CONSUMER CREDIT RULES
DEBT COLLECTION	
FINANCIAL LEASING	
MONEY BROKING	MONEY BROKING SERVICES RULES
MORTGAGE BROKING	
ESCROW SERVICES	ESCROW SERVICES RULES
FINANCIAL ADVISORY/CONSULTANCY SERVICES	FINANCIAL SERVICES RULES
FINANCIAL INTERMEDIATION	
BILL PAYING SERVICES	BILL PAYING SERVICES RULES



THE FINANCIAL AND CORPORATE SERVICE PROVIDERS BILL, 2017



Securities Commission of The Bahamas –
Inspector of Financial and Corporate Services

EXPANDED DEFINITIONS (Part I)

Introduction of activity specific definitions

Delineation between financial services and corporate services

Application section reinforces delineation between financial services and corporate services



FEATURES OF PROPOSED FCSPA, 2017

IMPROVED ADMINISTRATIVE POWERS (Part II)

Inclusion of Inspector's Functions

Expanded Powers of the Inspector

Improved Inspection and enhanced
Investigation Powers

Introduction of Power of entry and Power
to require provision of information

Enhanced cooperation powers



FEATURES OF PROPOSED FCSPA, 2017

EXPANDED LICENSING REGIME

(Part III)

Introduction of dual
Registration and
Licensing process

Public Register and
Publication of
Licensees

REGULATION OF FINANCIAL AND CORPORATE SERVICE PROVIDERS

(Part IV)

Introduction of
Indemnity Insurance
Requirement

Licensees' General
Duties - Second
Schedule



FEATURES OF PROPOSED FCSPA, 2017

EXPANDED ENFORCEMENT POWERS (Part V)

Power to suspend
license

Power to deregister
and reregister

Power to impose
administrative penalty

Power to wind-up
Licensee

CRIMINAL PENALTIES (Part VI)

Unlicensed activity
criminalized

Personal liability of
directors and
corporate liability



FEATURES OF PROPOSED FCSPA, 2017

TRANSITIONAL (Part VII)

Existing Licensees
continue to be licensed

Public Register and
Publication of Licensees

SCHEDULES

Improved Application
Form

General Duties and
Obligations of Licensees

Administrative
Penalties



THE FINANCIAL AND CORPORATE SERVICE PROVIDERS RULES, 2017



Securities Commission of The Bahamas –
Inspector of Financial and Corporate Services



Financial and Corporate Service Providers (Fee) Rules, 2017

PRELIMINARY (Part I)

Stipulates the fees payable for applications and renewals

Stipulates commencement date

SCHEDULE

Stipulates Fees for Corporate Services offered by individuals and legal entities

Stipulates Fees for Financial Services



PROPOSED CORPORATE SERVICE PROVIDERS RULES

ACTIVITY		
Registration, Management, Administration of an IBC	Natural Persons	
Provision of Registered agent/office services to an IBC		
Provision of Directors, Officers, or Nominee Shareholders to an IBC		
Provision of Partners, Registered agent/office services to ELP		
Appointment as Executive Entity Agent		
Appointment as Trustee of an Authorized Purpose Trust		
Appointment as the Registered Representative of a Foundation		
Appointment as Registered Representative of Securities Firm		
Appointment as Governing Administrator of Investment Condominium		Legal Persons
Appointment as Registered Representative of Private Trust Company		
Appointment as Representative of Segregated Accounts Company		

CORPORATE SERVICES PROVIDERS RULES, 2017

PRELIMINARY (Part I)

Exempts attorneys and CPAs acting in their individual professional capacities

Excludes banks and trust companies.

REGULATION OF CORPORATE SERVICE PROVIDERS

(Part II)

Imposes a duty to act fairly and a fiduciary duty on service providers

Stipulates the minimum terms to be included in client agreements

Requires service providers to implement effective management and systems



FINANCIAL SERVICE PROVIDERS

ACTIVITY	PROPOSED RULES
MONEY LENDING	MONEY LENDERS RULES
MORTGAGE LENDING	
PAYDAY AND CASH ADVANCES	
CREDIT EXTENSION	FINANCE AND CONSUMER CREDIT RULES
DEBT COLLECTION	
FINANCIAL LEASING	
MONEY BROKING	MONEY BROKING SERVICES RULES
MORTGAGE BROKING	
ESCROW SERVICES	ESCROW SERVICES RULES
FINANCIAL ADVISORY/CONSULTANCY SERVICES	FINANCIAL SERVICES RULES
FINANCIAL INTERMEDIATION	
BILL PAYING SERVICES	BILL PAYING SERVICES RULES



THE MONEY LENDERS RULES - FEATURES

PRELIMINARY (Part I)

Applies to the money lender and all money lending contracts

Excludes non-interest loans, insurance companies, credit unions, pawnbrokers and persons deemed non-resident for exchange control

REGULATION OF MONEY LENDING OPERATIONS (Part II)

Imposes the duties of fair dealing and responsible lending on money lenders

Stipulates the minimum terms to be included in a money lenders contract

Stipulates that only simple interest can apply to money lenders contracts

Protects borrowers' right to make additional payments or early repayments



THE MONEY LENDERS RULES - FEATURES

REGULATION OF MONEY LENDING OPERATIONS

(Part II)

Stipulates how money lenders are to communicate with borrowers, and advertise their products

Prohibits and criminalizes harassment and assault of borrowers

REGULATION OF MONEY LENDER

(Part III)

Prohibits individuals from being money lenders

Stipulates how a money lender is to source funding

Imposes duties on the money lender concerning confidentiality, keeping records, implementing data protection measures, , due diligence, and reporting



THE MONEY LENDERS RULES - FEATURES

REGULATION OF MORTGAGE LENDING OPERATIONS

(Part IV)

Defines what constitutes mortgage lending

Stipulates what can happen with respect to a defaulted mortgage

GENERAL PROVISIONS

(Part V)

Criminalizes non-compliance

Provides for a transition period



FINANCIAL SERVICE PROVIDERS

ACTIVITY	PROPOSED RULES
MONEY LENDING	MONEY LENDERS RULES
MORTGAGE LENDING	
PAYDAY AND CASH ADVANCES	
CREDIT EXTENSION	FINANCE AND CONSUMER CREDIT RULES
DEBT COLLECTION	
FINANCIAL LEASING	
MONEY BROKING	MONEY BROKING SERVICES RULES
MORTGAGE BROKING	
ESCROW SERVICES	ESCROW SERVICES RULES
FINANCIAL ADVISORY/CONSULTANCY SERVICES	FINANCIAL SERVICES RULES
FINANCIAL INTERMEDIATION	
BILL PAYING SERVICES	BILL PAYING SERVICES RULES



THE FINANCE AND CONSUMER CREDIT RULES - FEATURES

PRELIMINARY (Part I)

Introduces new terms and definitions

Applies to all money lenders, vendors extending credit and financial leasing and credit agreements

Exempts financial leases made outside The Bahamas, occasional personal loans, and lay-away programs

Stipulates complementary legislation and legislative exemptions

REGULATION OF FINANCIAL LEASING ARRANGEMENTS (Part II)

Stipulates who is an eligible lender

Stipulates minimum terms for finance agreements

Imposes duties on the lessor and lessee concerning leasing arrangements

Stipulates what constitutes delivery and termination of a finance agreement



THE FINANCE AND CONSUMER CREDIT RULES - FEATURES

REGULATION OF CREDIT EXTENSION SERVICES

(Part III)

Stipulates what activity is
subject to regulation

Stipulates minimum terms to
be included in a credit
agreement

REGULATION OF DEBT COLLECTION ACTIVITIES

(Part IV)

Defines who is a creditor and
debt collector

Stipulates the role of a debt
collector

Stipulates what must happen
in debt collection activities



THE FINANCE AND CONSUMER CREDIT RULES - FEATURES

REGULATION OF DEBT COLLECTION ACTIVITIES

(Part IV)

Stipulates duties on debt collector in communicating with debtors, tracing debtors, and collecting debt

Prohibits harassment or abuse of debtors and the use of false, deceptive or misleading representations for debt collection

GENERAL PROVISIONS

(Part VII)

Criminalizes non-compliance

Provides for a transition period



FINANCIAL SERVICE PROVIDERS

ACTIVITY	PROPOSED RULES
MONEY LENDING	MONEY LENDERS RULES
MORTGAGE LENDING	
PAYDAY AND CASH ADVANCES	
CREDIT EXTENSION	FINANCE AND CONSUMER CREDIT RULES
DEBT COLLECTION	
FINANCIAL LEASING	
MONEY BROKING	MONEY BROKING SERVICES RULES
MORTGAGE BROKING	
ESCROW SERVICES	ESCROW SERVICES RULES
FINANCIAL ADVISORY/CONSULTANCY SERVICES	FINANCIAL SERVICES RULES
FINANCIAL INTERMEDIATION	
BILL PAYING SERVICES	BILL PAYING SERVICES RULES



THE MONEY BROKERS RULES - FEATURES

PRELIMINARY (Part I)

Defines who is a money broker

Applies to all money brokers and money broking contracts

Exempts persons where money broking is ancillary to a mortgage business, banks and trust companies and real estate brokers.

REGULATION OF MONEY BROKING OPERATIONS (Part II)

Stipulates minimum terms for money broker's agreement

Imposes duty on money brokers to verify the identity of borrowers, lenders and a borrower's legal authority

Imposes duties on the money broker concerning loan products

Prohibits exclusive arrangements between money brokers and lenders, appraisers and real estate agents or brokers



THE MONEY BROKERS RULES - FEATURES

REGULATION OF MONEY BROKING OPERATIONS

(Part II)

Prohibits inducements for
referral of business

Stipulates standard to be
applied to advertisement
and promotional material

REGULATION OF MORTGAGE BROKING OPERATIONS

(Part III)

Imposes a duty on mortgage
brokers to ensure borrower
suitability with mortgages

Stipulates the role of
mortgage brokers offering
appraisal or real estate
services

Provides that mortgage
brokers have a right of lien



THE MONEY BROKERS RULES - FEATURES

REGULATION OF MORTGAGE BROKING OPERATIONS

(Part III)

Stipulates standards regarding record keeping and the security of records

Stipulates what mortgage brokers must submit to a lender on behalf of a borrower

DISCLOSURES

(Part IV/V)

Stipulates what money brokers must disclose including information about fees, and potential conflicts of interest of

Stipulates general requirements for disclosure including the deadline

Criminalizes failure to disclose



THE MONEY BROKERS RULES - FEATURES

REGULATION OF MONEY BROKERS (Part VI)

Stipulates who may be a
money broker

Stipulates what constitutes
prohibited acts and practices

GENERAL PROVISIONS (Part VII)

Criminalizes non-compliance

Provides for a transition
period



LICENSING UPDATES

- Licensing Categories under Draft Bill
- Unlicensed Activities
- Application Requirements
- Application & Initial Licensing Fees
- Application Process & Processing Time



Presenter: Mrs. Omara Bingham
Manager, Authorisations Department



WHO WILL REQUIRE A FCSP LICENCE ?

Persons:-

- ❑ Individuals, “Legal Persons” i.e. Partnerships, Companies (as permitted)
- ❑ “In the business of”
- ❑ Conducting financial or corporate services “in or from within The Bahamas”

must obtain a licence for the specific activity being offered.

WHO ARE NOW CAPTURED?

CORPORATE SERVICES

■ To IBCs:

- Registration, Management, Administration, Registered Agent,
- Registered Office, Directors, Officers, Nominee Shareholders

■ To ELPs:

- Partners, Registered Agent

■ To ICONs:

- Governing Administrator

■ To Executed Entities:

- Agent

■ To Purpose Trusts:

- Trustee

■ To Foundations:

- Agent

■ To Private Trust Company:

- Registered Representative

■ To Segregated Accounts Company:

- Representative

WHO ARE NOW CAPTURED?

FINANCIAL SERVICES

- **Money Lending**
- **Financial Leasing**
- **Money Broking**
- **Payday and Cash Advances**
- **Credit Extension**
- **Mortgage Broking**
- **Escrow Services**
- **Financial Advisory/Consultancy Services**
- **Bill Paying Services**
- **Financial Intermediation Services**

WHO ARE EXCLUDED?

- A company licensed under the Banks and Trust Companies Regulation Act or IBC subsidiary
- Licensees of the Securities Commission of The Bahamas
- Licensees of the Insurance Commission of The Bahamas
- Trustee for a Purpose Trust, that is licensed by the Central Bank of The Bahamas or under the Securities Industry Act
- A registered Non-Profit Organisation
- International Business Companies engaged in non-Bahamian dollar loans to Non-Residents
- Attorneys providing Escrow Services

UNLICENSED ACTIVITIES



Any person who carries on the business of a financial or corporate service provider without first obtaining a licence; or



Any person who assists such person in carrying on the unlicensed activity

- commits an offence and is liable on conviction to a fine.
- Property confiscation proceedings and ex parte summons for a restraint order may also be instituted.

GENERAL APPLICATION REQUIREMENTS



- Evidence of Financial Resources and Solvency Broking
- Indemnity Insurance
- Annual Financial Statements
- Internal Control Procedures Manuals e.g. Administrative Manual, Audit Compliance Manual
- Duty to implement Data Protection Measures (personal data)



CATEGORY SPECIFIC ADDITIONAL REQUIREMENTS



- ❑ Specific requirements will be outlined in relevant accompanying Rules
 - e.g. Money Lender's Rules
 - Minimum terms that must be set out in Money Lending Contract
 - Maximum Rate of Interest
 - Service Provider can only be a Partnership or Company (Individuals not permitted)

PROPOSED APPLICATION & ANNUAL FEES

A. CORPORATE SERVICES

	Application Fee	Annual Fee
Individuals	\$ 500	\$ 1,000
Legal Entities*	\$ 1,000	\$ 3,000
*Plus \$75 for each entity where the provider acts as Registered Agent		

B. FINANCIAL SERVICES

	Application Fee	Annual Fee
Bill Paying Services / Debt collection / Escrow Services (excluding lawyers)		
Individuals	N/A	N/A
Legal Entities	\$ 1,000	\$3,000 minimum or 1% of gross annual income
Credit Extension / Financial Leasing		
Individuals	N/A	N/A
Legal Entities	\$ 1,500	\$4,500 minimum or 1% of gross annual income

PROPOSED APPLICATION & ANNUAL FEES

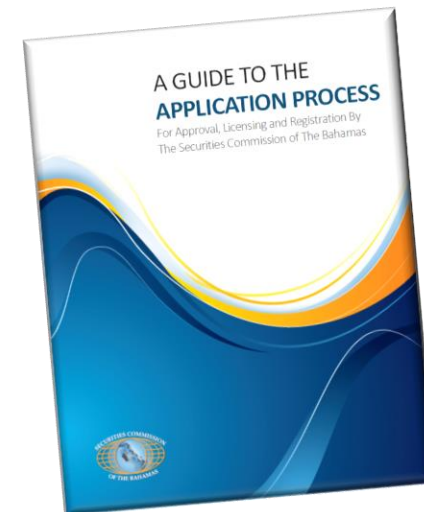
B. FINANCIAL SERVICES (cont'd)		
Financial Advisory / Consultancy Services		
Individuals	\$ 2,500	\$ 5,000
Legal Entities	\$ 5,000	\$ 10,000
Financial Intermediary		
Individuals	N/A	N/A
Legal Entities	\$ 2,500	\$ 5,000
Money Broking / Mortgage Broking		
Individuals	\$ 1,000	\$ 2,500
Legal Entities	\$ 3,000	\$ 5,000
Plus \$25 per completed transaction		
Money Lending / Payday Cash Advances		
Individuals	N/A	N/A
Legal Entities	\$ 2,500	\$10,000 minimum or 1% of gross annual income



APPLICATION PROCESS & PROCESSING TIMES



- Revised Category Specific Application & Registration Process
- Types of Applications: New, Re-categorization & Renewals
- Process & Outcomes
- Processing Time
- Application Booklet





UPDATES ON NEW ONGOING FILING REQUIREMENTS

- New Reporting Obligations
- Due Diligence Refresher Guidelines



Presenter: Ms. Sandra Duncombe
Manager, Market Surveillance Department



CONDUCT OF FINANCIAL & CORPORATE BUSINESS

New Requirements:

❑ Second Schedule Part 1 General Duties & Obligations:

❖ **Duty to Maintain Professional Conduct (Section 27)**

- Accounts to be kept and delivered to the Inspector
- Internal organization i.e. controls & measures to ensure compliance
- Client Relations
- Duty to permit examination and produce documents, etc.,
- Duty to implement data protection measures
- Duty of confidentiality
- Supervision of staff
- Conflict of Interest



CONDUCT OF FINANCIAL & CORPORATE BUSINESS (CONT'D)

- ❑ Second Schedule Part II – Due Diligence
 - Duty of due diligence
 - Ongoing monitoring
 - Internal policies, procedures and controls
 - New products, etc.
 - Audit and compliance management



CONDUCT OF FINANCIAL & CORPORATE BUSINESS (CONT'D)

- Adequate financial resources and solvency, inclusive of regulatory capital **Section 28**
- Indemnity Insurance **Section 29**
- Duty to comply and cooperate **Section 30**
- Prevention of money laundering, etc. **Section 31**



DUE DILIGENCE REFRESHER GUIDELINE

- Applicable to: **All Licensees and Registrants**
 - ❖ Requirements for Constituents under 5 years
 - On 5th anniversary
 - Updated passport, if expired
 - Proof of address
 - Personal Questionnaire with Attestation
 - ❖ Requirements for Constituents over 5 years
 - Updated passport, if expired
 - Proof of address
 - Personal Questionnaire with Attestation



INSPECTION MATTERS

- Examination Trends/Deficiencies
- FCSP Risk Rating



Presenter: Ms. Jerryse Rolle
Deputy Manager, Inspections Department



SUMMARY POINTS

PROPOSED FCSPA 2017, (Sec. 6)

- ❑ 1. An examination can be conducted as deemed necessary by the Inspector.
- ❑ 2. The Inspector can appoint auditors to conduct examinations on their behalf.
- ❑ 3. Books and records that support the transactions of the company must be kept.
- ❑ 4. Any other information that the Inspector requires to complete the examination.



COMMON BREACHES

- **AML training not received by employees of the registrant.**

(Financial Intelligence (Transaction Reporting) Regulations, 2001 (Reg. 6 (2) – Training procedures)

- **MLRO's approved by The Commission and registered with the FIU.**

(Financial Intelligence (Transaction Reporting) Regulations, 2001 (Reg. 5 (a) – Internal reporting procedures)

- **Duty to obtain due diligence from clients**

(Financial and Corporate Service Providers Act, 2000 (Section 14 (2)- Obligation of a licensee to clients)

- **Duty to maintain accounting records at the registered office.**

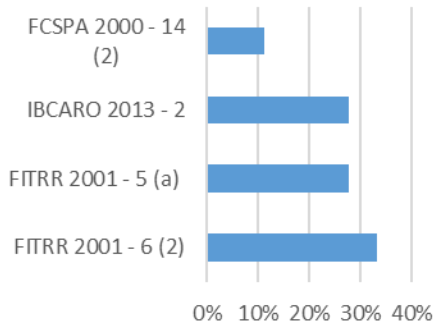
(International Business Companies (Accounting Records) Order, 2013 (Order 2)- Declaration of availability of accounting records to be kept at registered office)

- **Display of License**

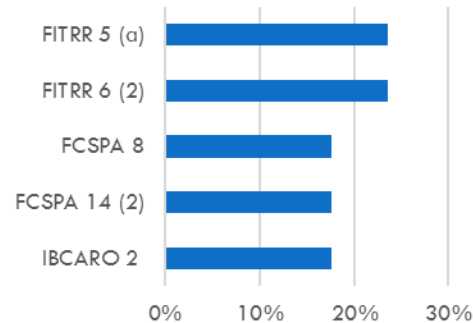
(Financial & Corporate Service Providers Act, 2000 (Section 8)- Display of License)

COMMON BREACHES

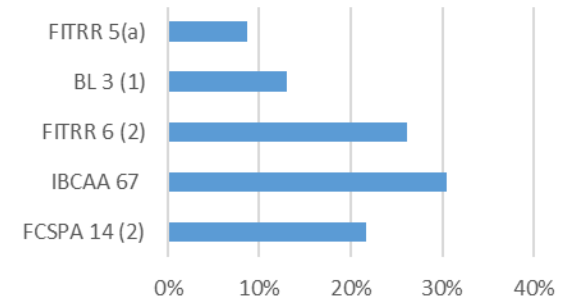
2016 Top Breaches



2015 Top Breaches



2014 Top Breaches



- **FITRR** – *Financial Intelligence (Transaction Reporting) Regulations, 2001 (Reg. 6 (2) – Training procedures*
- **FITRR** – *Financial Intelligence (Transaction Reporting) Regulations, 2001 (Reg. 5 (a) – Internal Reporting procedures*
- **FCSPA** – *Financial and Corporate Service Providers Act, 2000 (Section 14 (2)- Obligation of a licensee to clients*
- **IBCARO** – *International Business Companies (Accounting Records) Order, 2013 (Order 2)- Declaration of availability of accounting records to be kept at registered office*
- **FCSPA** – *Financial and Corporate Service Providers Act, 2000 (Section 8)- Display of license*
- **IBCAA** – *International Business Companies (Amendment) Act 2011-Maintenance of Accounting Records*



FCSP RISK RATING

- ❑ Risk rating of FCSPs
- ❑ Frequency for submission of routine examinations

Overall Risk Rating	Frequency to Submit Onsite Examination	Next Examination Period	Due Date
High	Annual	2017	June 2018
Medium	Every 3 Years	2019	June 2020
Low	Every 5 Years	2021	June 2022
Not Rated	Annual	2016	June 2018



FCSP EXAMINATION

- FCSP's are required to contact an Authorized Agent to conduct the routine examination of the Licensee.
- The FCSP exam is completed and submitted online.
- The Inspector evaluates the results and assigns a risk rating to the FCSP.
- The Inspector issues a non-deficiency or deficiency report with a risk rating to the FCSP.
- FCSP's have 30 days to respond to the deficiencies noted in the report.



HOW TO IDENTIFY THE ULTIMATE BENEFICIAL OWNER

- Know Your Customer
- KYC – Natural Persons
- KYC – Legal Persons
- KYC – Investment Condominiums
- Source of Funds



Presenter: Mr. Wilfred Bain
Legal Officer, Enforcement Department



KNOW YOUR CUSTOMER “KYC”



Property of the Inspector of Financial and Corporate
Services



WHAT IS “KYC”?

....also referred to as customer due diligence, is designed to ensure that reasonable steps are taken to satisfy the firm that the client is who he claims to be and that his funds are derived from a legitimate source or are not intended to be used for terrorism.



KYC - OBLIGATIONS

- ❑ The Financial Transactions Reporting Act, 2000;
- ❑ The Financial Transactions Reporting Regulations, 2000;
- ❑ Anti-Money Laundering & Anti-Terrorism Financing Handbook & Code of Practice for Financial and Corporate Service Providers;
- ❑ Securities Industry (Anti Money Laundering and Countering the Financing of Terrorism) Rules, 2015; and
- ❑ Investment Condominium Act, 2014.



CONDUCTING KYC ON 'NATURAL' PERSONS



KYC - NATURAL PERSONS

- ❑ Full and correct name
- ❑ Proof of permanent address
- ❑ Date and place of birth
- ❑ Purpose of account and nature of business relationship
- ❑ Potential activity
- ❑ Written confirmation that the customer is the beneficial owner; where the customer is an intermediary or nominee, identification and KYC of the UBO is required separately



KYC - NATURAL PERSONS cont'd

- ❑ Passport, driver's license, voter's card or other identification with photo which establishes identity
- ❑ Signature
- ❑ Telephone and fax number
- ❑ Source of Funds
- ❑ Other documentary evidence or otherwise which reasonably establishes identity
- ❑ For non-resident clients - Social security number social insurance or national insurance number



CONDUCTING KYC ON 'LEGAL' PERSONS



WHO ARE LEGAL PERSONS?

- ❑ Companies (regular companies and international business companies (“IBC”))
- ❑ Trusts
- ❑ Foundations
- ❑ Partnerships



KYC - COMPANIES

- ❑ Certified copy of certificate of incorporation
- ❑ Resolution of the Board of Director authorizing the opening of the account and conferring authority on the person who will operate the account
- ❑ Certified copy of the memorandum and articles of association
- ❑ Names and addresses of all directors and officers
- ❑ Names and addresses of the beneficial owner(s)



KYC – COMPANIES cont'd

- ❑ Purpose of business activity and parameters
- ❑ Confirmation that the corporate entity has not been struck off the register or in the process of being wound up
- ❑ Written confirmation that the client corporate entity is the beneficial owner. Where the client entity is an intermediary, KYC on beneficial owner is to be provided separately along with declaration of trust



KYC - CORPORATE DIRECTORS/SHAREHOLDERS

- ❑ Certified copy of certificate of incorporation
- ❑ Certified copy of memorandum and articles of Association
- ❑ Address of Registered Office
- ❑ Register of Directors, Officers, Shareholders
- ❑ Evidence of License/Registration with regulatory body
- ❑ Identification of each director and shareholder
- ❑ Passport & address of each director and shareholder



KYC - TRUSTS

- ❑ Certified copy of trust deed
- ❑ Certified extracts covering the appointment and powers of the trustees from/or the original trust deed, and any subsidiary deed evidencing the appointment of current trustees
- ❑ Disclosure of trustee, settlor and any other person having power to appoint or remove trustees or fund managers



KYC – TRUSTS cont'd

- ❑ KYC for trustees, settlors, asset contributors and beneficiaries
- ❑ Confirmation of trust capacity by potential client
- ❑ Where potential client seeks to undertake transaction as professional adviser, business or company acting as trustee or nominee in relation to a third party, the FCSP must verify the identity of the trustee, nominee or fiduciary and the nature of their trustee or nominee capacity or duties along with declaration of trust



KYC – TRUSTS cont'd

- Source of funds
- Nature of transactions



KYC - FOUNDATIONS

- ❑ The foundation's charter
- ❑ Certificate of registration (or equivalent if from a foreign jurisdiction)
- ❑ Source of funds and verification of identity of any person other than founder who provides funds to the foundation
- ❑ Full KYC for founder(s) and for any officers and council members who may be signatories for the foundation's accounts
- ❑ Full KYC on beneficiaries who hold vested interest



KYC - PARTNERSHIPS

- ❑ Verification of all partners or beneficial owners
- ❑ Certified copy of partnership agreement (if any) or other agreement establishing the unincorporated business
- ❑ Mandate from the partnership or beneficial owner authorizing the opening of the facility and conferring authority on those who will operate the facility on behalf of the partnership or unincorporated business
- ❑ Documentary evidence in respect of partnership or beneficial owner(s)



KYC – PARTNERSHIPS cont'd

- ❑ Written confirmation that the client entity is the beneficial owner. Where the client entity is an intermediary, KYC on beneficial owner is to be provided separately along with declaration of trust
- ❑ Purpose and intended nature of the business relationship



INVESTMENT CONDOMINIUM



KYC

INVESTMENT CONDOMINIUMS

- ❑ Certificate of Establishment
- ❑ Certificate of Conversion (if applicable)
- ❑ Governing Regulations (and any amendments)
- ❑ Register of participant interests (“participation interest registers”)
- ❑ KYC on persons holding participation interest in Investment Condominium
- ❑ Accounting records



SOURCE OF FUNDS



SOURCE OF FUNDS INDIVIDUAL

- ❑ Pay slip/job letter (Salary)
- ❑ Employment contract
- ❑ Statement from Bank or Savings Institution (Savings/Bank Loan)



SOURCE OF FUNDS SELF EMPLOYED

- ❑ Business license
- ❑ Financial reference
- ❑ Financial statements (most recent)
- ❑ Bank statement for company's account
- ❑ Licenses/approvals from any other regulatory agency(s)/licensing bodies



SOURCE OF FUNDS CORPORATE ENTITIES

- ❑ Business license
- ❑ Bank statements
- ❑ Financial statements
- ❑ Tax returns



THANK YOU



QUESTIONS & ANSWERS





CONTACT INFORMATION

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