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This Bill would regulate the providers of certain corporate and trust services.

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BARBADOS

A Bill entitled

An Act to regulate the providers of certain corporate and trust services.

ENACTED by the Parliament of Barbados as follows:

PART I
PRELIMINARY

Short title

1. This Act may be cited as the *Corporate and Trust Service Providers Act, 2015*.

Interpretation

2. In this Act,

“affiliate” has, in relation to a company, the meaning assigned to it by section 448 of the *Companies Act, Cap. 308*;

“articles” has, in relation to

(a) a company, the meaning assigned to it by section 2(1)(a) of the *Companies Act, Cap. 308*; and

(b) a society, the meaning assigned to it by section 2(a) of the *Societies With Restricted Liability Act, Cap. 318B*;

“client” means the recipient of a corporate service or trust service;

“company” has the meaning assigned to it by section 2(1)(b) of the *Companies Act, Cap. 308*;

“corporate and trust service provider licence” means a licence which authorises the licensee to provide both corporate services and trust services;

“corporate service” means a service described in paragraph 2(1)(a) of the *First Schedule*;

“corporate service provider licence” means a licence which authorises the licensee to provide a corporate service;

“Director” means the Director of International Business;

“document” means any record of information and includes

- (a) anything on which there is writing;
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (c) anything from which sounds, images or writing can be reproduced with or without the aid of anything else; and
- (d) a map, plan, drawing or photograph;

“firm” has the meaning assigned to it by section 6 of the *Partnership Act*, Cap. 313;

“foreign sales corporation” has the meaning assigned to it by section 2(1)(a) of the *Barbados Foreign Sales Corporation Act*, Cap. 59C;

“foundation” has the meaning assigned to it by section 2 of the *Foundations Act, 2013* (Act 2013-2);

“international business company” has the meaning assigned to it by section 3 of the *International Business Companies Act*, Cap. 77;

“international society” has the meaning assigned to it by section 2(b) of the *Societies With Restricted Liability Act*, Cap. 318B;

“international trust” means a trust to which the *International Trusts Act*, Cap. 245 applies by virtue of section 4 of the Act;

“licence” means a licence issued pursuant to section 8;

“licensee” means a person who holds a licence;

“Minister” means the Minister to whom responsibility for international business is assigned;

“officer” has, in relation to a company, the meaning assigned to it by section 2(1)(f) of the *Companies Act*, Cap. 308;

“private trust company” has the meaning assigned to it by section 2 of the *Private Trust Companies Act, 2012* (Act 2012-22);

“service provider” means a person who engages in the business of providing corporate services or trust services;

“society” means a society with restricted liability organised pursuant to section 5 of the *Societies With Restricted Liability Act*, Cap. 318B but does not include an international society;

“specified entity” means an entity listed in paragraph 1 of the *First Schedule*;

“trust service” means a service described in paragraph 2(1)(b) of the *First Schedule*;

“trust service provider licence” means a licence which authorises the licensee to provide a trust service.

Application of Act

3. This Act applies to service providers who provide corporate services or trust services for profit.

Purpose of Act

4. The purpose of this Act is to

- (a) promote and maintain high standards of conduct, ethics and competence in the provision of corporate services and trust services;
- (b) ensure that service providers adhere to international standards and international best practices, including procedures and policies to enable them to
 - (i) know and be able to identify, and verify the identity of, their clients; and
 - (ii) exercise due diligence in the provision of corporate services and trust services; and
- (c) enable the protection the interests of specified entities and of service providers through the licensing and supervision of service providers.

Functions of Director

- 5.(1) The Director is responsible for the administration of this Act.
- (2) Without prejudice to the generality of subsection (1), in furtherance of his responsibility under that subsection, the Director shall
- (a) monitor and examine the businesses of service providers to determine whether service providers are in compliance with this Act; and
 - (b) receive and investigate any complaints made against service providers and take appropriate action in respect of the complaints.
- (3) The Director may require from any suitable person, information or expert advice, relevant to his functions.

PART II

LICENSING OF SERVICE PROVIDERS

Service provider to be licensed

- 6.(1) No person shall provide a corporate service or trust service except in accordance with a licence issued to him.
- (2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$50 000 or to imprisonment for 2 years or to both and, where the offence is a continuing one, to a further fine of \$8 000 for every day or part of a day during which the offence continues after a conviction is first obtained.

Application for licence

- 7.(1) A person may, in such form as the Director determines, apply to the Director for any of the following:
- (a) a corporate service provider licence;

- (b) a trust service provider licence; or
- (c) a corporate and trust service provider licence.

(2) An applicant shall submit with his application the prescribed fee and such information and documents as the Director **requires** to determine whether a licence should be issued to him.

Issue of licence

8.(1) Where the Director is satisfied that an applicant

- (a) is a fit and proper person to provide the service in respect of which his application is made;
- (b) has the financial standing necessary to carry on the business of providing the service;
- (c) is or has a representative who is resident in Barbados; and
- (d) is not a specified entity,

the Director shall, in such form as the Director determines and upon payment of the prescribed fee, issue a licence to the applicant authorising him to provide the service.

(2) Where the applicant is a firm, society or company, the Director shall not consider the applicant to be a fit and proper person to provide the service in respect of which the application was made unless the Director is satisfied that each partner, manager, member, director and officer of the firm, society or company and each person who, whether alone or in association with others, owns or controls the firm, society or company, as the case may be, is a fit and proper person to hold the position that he holds or is likely to hold.

(3) The Director shall, in determining whether a person is a fit and proper person to provide a corporate service or trust service, take into account the following factors:

- (a) the educational and professional qualifications of the person;

- (b) whether the person is a member of a professional association or other relevant body;
 - (c) the knowledge of the person of the legal and other professional responsibilities assumed or likely to be assumed;
 - (d) the procedures the person uses or is likely to use to determine the suitability of potential clients;
 - (f) whether the interests of clients will be threatened if the person
 - (i) assumes the office that he is likely to hold; or
 - (ii) continues to hold the office that he currently holds;
 - (g) any previous conduct of the person in business or financial matters; and
 - (h) any evidence that the person has
 - (i) engaged in a business practice or conducted himself in a manner which appears to the Director to
 - (A) be deceitful or oppressive or otherwise improper, whether lawful or not;
 - (B) reflect discredit on the manner in which he does business; or
 - (C) cast doubt on his competence or soundness of judgment;
 - (ii) contravened any law a purpose of which appears to be the protection of persons against financial loss due to dishonesty, fraud, incompetence, negligence, malpractice or the conduct of bankrupts or otherwise insolvent persons; or
 - (iii) committed an offence involving violence.
- (4) For the purpose of this subsection (1), the following are residents of Barbados:
- (a) an individual ordinarily resident in Barbados; or

(b) a body incorporated, organised or registered in Barbados, the majority of the shares, quotas or other ownership of which is beneficially held by persons ordinarily resident in Barbados.

(5) The Director may

(a) issue a licence subject to such terms or conditions; or

(b) vary or amend a licence in such manner,

as may be necessary to give effect to this Act.

(6) The Director shall set out in the licence, any terms or conditions imposed pursuant to subsection (5).

(7) It is a condition of a licence that the service provider pay the prescribed annual fee in respect of a year by 31st December of the preceding year.

(8) Notwithstanding subsection (1), the Director may refuse to issue a licence in the public interest.

Validity of licence etc.

9.(1) A licence remains valid unless suspended, revoked or surrendered.

(2) A licence is not transferable.

Lost, defaced or destroyed licence

10. A service provider whose licence is lost, defaced or destroyed may, upon payment of the prescribed fee, obtain a replacement.

PART III

DUTIES OF SERVICE PROVIDERS

Display of licence

11. A service provider shall display his licence at his principal place of business or registered office in a conspicuous place that is open to the public.

Advertisements

12. A service provider shall ensure that any advertisement that he publishes or causes to be published

- (a) is not damaging to the good reputation of Barbados; and
- (b) contains a fair and accurate indication of the service that he provides.

Agreements

13. A service provider shall have a written, duly executed agreement with each client for the provision of services and shall ensure that the agreement provides for

- (a) the calculation, charging, revision and recovery of fees;
- (b) the payment to the client of interest received on the money of the client; and
- (c) the conditions of termination of services and any consequential refund of fees.

Client property

14. A service provider shall

- (a) clearly designate and be able to identify any money or other assets that the service provider holds for or on behalf of a client as the monies or other assets of the client; and
- (b) unless the client instructs otherwise in writing, where the monies or other assets are held for more than 30 days, keep the monies or other assets separate from monies or other assets of the service provider, in an account designated as the account of the client.

Conflicts of interest

- 15.** A service provider shall
- (a) take reasonable steps to avoid conflicts of interest with and among his clients; and
 - (b) where a conflict of interest arises, as soon as reasonably practicable
 - (i) give the clients concerned written notice of the conflict; and
 - (ii) unless each client concerned agrees that the service provider may continue to provide services to the other clients concerned, cease to provide services to all the clients concerned.

Complaints

- 16.** A service provider shall
- (a) acknowledge, record and investigate promptly and thoroughly, any complaint that the service provider receives in respect of his business or a client;
 - (b) take appropriate action in respect of the complaint; and
 - (c) record the action taken.

Business disruption etc.

- 17.(1)** A service provider shall, in order to safeguard the interests of his clients, make adequate arrangements to address business disruption.
- (2) Without prejudice to the generality of subsection (1), a service provider shall purchase and maintain a policy of insurance in an amount sufficient to cover the risk of losses in respect of the conduct of his business.

Service provider not to act to detriment of clients or public

- 18.** A service provider shall not conduct his business in a manner that is detrimental to the interest of his clients or to the public interest.

Service provider to notify Director of change of circumstances

19.(1) Where a change referred to in subsection (4) is intended, a service provider shall give the Director written notice of the change at least one month prior to the intended date of the change.

(2) Notwithstanding subsection (1), the service provider may give the Director written notice of the departure of

- (a) a partner of a firm;
- (b) a manager or officer of a society; or
- (c) a director or officer of a company,

within one month after the departure.

(3) Where the Director receives notice of a change, the Director may require the service provider to furnish additional information or documents in respect of the change.

(4) For the purpose of this section “change” means, in a case where a service provider is

- (a) an individual, a change in respect of
 - (i) the name under which the individual provides corporate services or trust services; or
 - (ii) the address of his principal place of business;
- (b) a firm, a change in respect of
 - (i) the name or address of the principal place of business; or
 - (ii) the partners,of the firm;
- (c) a society, a change in respect of
 - (i) the name or address of the registered office;

- (ii) the articles;
- (iii) the ownership of the majority of the quotas;
- (iv) the beneficial ownership of the majority of the quotas; or
- (v) the managers or officers,

of the society; or

(d) a company, a change in respect of

- (i) the name or address of the registered office;
- (ii) the articles;
- (iii) the ownership of the majority of the shares;
- (iv) the beneficial ownership of the majority of the shares; or
- (v) the directors or officers,

of the company.

Service provider to notify Director of legal and other proceedings

20. A service provider shall give the Director written notice as soon as reasonably practicable where

- (a) a judgment in civil proceedings is given against the service provider;
- (b) the service provider or a partner, manager, member, director, officer or employee of the service provider or a person who, whether alone or in association with others, owns or controls the service provider, is charged with or convicted of an offence under a law referred to in section 8(3)(h)(ii) or an offence which involves
 - (i) the position he holds in respect of a business;
 - (ii) the formation, management or administration of a firm or body corporate; or
 - (iii) violence;

- (c) a summons, warrant or other order of court is issued or made in respect of the service provider or an employee, member, manager, director or officer of the service provider or a person who, whether alone or in association with others, owns or controls the service provider pursuant to the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011 (Act 2011-23)*, the *Prevention of Corruption Act, 2012 (Act 2012-31)*, the *Transnational Organized Crime (Prevention and Control) Act, 2011 (Act 2011-3)*, the *Drug Abuse (Prevention and Control) Act, Cap. 131* or the *Anti-Terrorism Act, Cap. 158*;
- (d) an inquiry into the affairs of the service provider is initiated, in writing, by an authority of any government or by a professional association or other relevant body of which the service provider is a member;
- (e) the service provider is refused legal authorisation in respect of any business or such authorisation is suspended or revoked; or
- (f) legal proceedings are initiated to disqualify a director, manager, secretary or other officer of the service provider from holding office as a director, manager, secretary or other officer of a body corporate.

Service provider to notify Director of client's circumstances

21.(1) A service provider shall

- (a) give the Director written notice as soon as reasonably practicable where criminal proceedings are instituted against a client or a director or officer of a client or any person who, whether alone or in association with others, ultimately owns or controls the client, or such a person is convicted of an offence; and
 - (b) provide a brief summary of the case.
- (2) A service provider shall give the Director written notice within one week after a person ceases to be a client of the service provider.

Service provider to notify Director of surrender, winding up etc.

22.(1) A service provider who desires to surrender his licence shall do so by written notice to the Director at least one month prior to the intended date of surrender.

(2) The service provider shall state in the notice referred to in subsection (1), the date on which the surrender takes effect, and from that date, shall cease to carry on the business of providing the service in respect of which the licence was issued.

(3) A service provider who is unable to continue to carry on business or in respect of whom

- (a) action is initiated for dissolution or winding up;
- (b) a receiver, a liquidator or an administrator is appointed; or
- (c) a composition or an arrangement is made with the creditors,

shall give written notice to the Director as soon as reasonably practicable.

(4) A service provider shall, in any case referred to in subsection (1) or (3), where practicable

- (a) arrange for the orderly winding up or transfer of his business; and
- (b) submit with the notice to the Director, details of the arrangement made.

(5) A service provider who ceases to provide services to a client shall as soon as reasonably practicable

- (a) give the client written notice of the fact, unless the service provider so ceased at the request of the client;
- (b) preserve the records of the client until the records are transferred to a successor of the service provider or to the client; and
- (c) cooperate with the client and any successor to ensure a smooth transition of the business of the client.

Accounts and audit

23.(1) A service provider shall, in such form as the Director determines, declare annually his gross revenue and assets.

(2) A service provider whose gross revenue or assets exceed the amount referred to in section 152(1)(b) of the *Companies Act*, Cap. 308 for the period referred to in relation to that amount shall

- (a) have the accounts of his business audited annually and at such other times as the Director may require, by a person who qualifies under section 153 of the *Companies Act*, Cap. 308 for appointment as an auditor of a company; and
- (b) submit to the Director, within 4 months of the end of the financial year, or within such longer period as the Director may permit, a statement of the audited accounts.

Records

24.(1) A service provider shall keep, in addition to the records required to be kept pursuant to the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23), such other records as may be necessary to establish the financial position of the service provider and his compliance with this Act and the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23).

(2) The service provider shall retain a record kept pursuant to subsection (1) for at least 6 years from the date of the making of the record.

PART IV
ENFORCEMENT

Provision of information to the Director

25. Without prejudice to any other provision of this Act, a service provider shall provide the Director, at such times as the Director may require, with

- (a) any of the books, records or other documents kept by the service provider in respect of his business; and
- (b) such other information as the Director may require for the proper administration and enforcement of this Act and, in particular, to determine whether the service provider
 - (i) continues to satisfy the requirements of this Act for the issue of a licence; and
 - (ii) is in compliance with the obligations of the service provider under the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23).

Examination of service providers

26.(1) The Director may examine or, by instrument in writing, appoint, at the expense of a service provider, a person to examine, the books, records and other documents kept by the service provider in respect of his business and any other matter in respect of the business of the service provider

- (a) to ascertain whether the service provider is in compliance with this Act or the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23); or
- (b) where the Director is of the view that
 - (i) the service provider may be in contravention of this Act or the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23); or

- (ii) an examination is otherwise necessary for the proper administration and enforcement of this Act or the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23).
- (2) The Director or a person appointed by the Director pursuant to subsection (1) may, in connection with an examination, require an auditor, director, officer, employee or affiliate of a service provider or a person who, whether alone or in association with others, owns or controls the service provider, to
- (a) furnish such information as the Director or the person may consider necessary for the purpose of the examination; and
 - (b) produce for examination any books, records or other documents in respect of the business of the service provider that are in his possession and contain or are likely to contain any such information.
- (3) The Director may impose on a service provider such charges as may be prescribed to meet the expenses relating to the examination.
- (4) An auditor, director, officer, employee or affiliate of a service provider who is required to make a disclosure to the Director or to a person appointed by the Director pursuant to subsection (1), shall not, by reason of making the disclosure, be regarded as being in breach of a duty to the service provider.

Directives

27. The Director may give directives to a service provider to ensure that the service provider complies with the Act; and the service provider shall comply with the directives.

Sanctions and other measures in respect of service providers

28.(1) The Director may take any action specified in subsection (2) where the Director is satisfied as to any of the following circumstances:

- (a) the service provider
 - (i) obtained his licence by the concealment or misrepresentation of any fact that the Director considers to be material to the application or the suitability of the service provider for the issue of a licence;
 - (ii) is contravening or has contravened
 - (A) this Act; or
 - (B) a term or condition of his licence;
 - (iii) failed to comply with a request of the Director;
 - (iv) is contravening or has contravened the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011 (Act 2011-23)*;
 - (v) is charged with or convicted of an offence under a law referred to in section 8(3)(h)(ii) or an offence which involves
 - (A) the position he holds in respect of a business;
 - (B) the formation, management or administration of a firm or body corporate; or
 - (C) violence;
 - (vi) is otherwise carrying on his business in an imprudent or unlawful manner; or
 - (vii) in any other circumstances, no longer satisfies the requirements of this Act for the issue of a licence; or
- (b) revocation of the licence of the service provider is in the public interest.

(2) Where the Director is satisfied as to any of the circumstances set out in subsection (1) in respect of a service provider, the Director may, as the Director considers appropriate

- (a) warn or reprimand the service provider;
- (b) give such directives to the service provider as the Director considers appropriate in the circumstances, including a directive
 - (i) requiring the service provider, within such period as the Director may specify, to take such remedial measures or action as the Director may specify;
 - (ii) requiring the service provider, within such period as the Director may specify, to cease engaging in such activity or behaviour as the Director may specify;
 - (iii) limiting, within such period as the Director may specify, any activities, functions or operations of the service provider in relation to his business;
- (c) in accordance with section 29, impose on the service provider, a pecuniary penalty; or
- (d) suspend or revoke the licence of the service provider.

(3) Subject to section 30, the Director shall not undertake any action specified in sub-paragraph (iii) of paragraph (b) or paragraph (c) or (d) of subsection (2) without first giving the service provider

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

(4) In this section “misconduct” includes any act or omission relating to the conduct of the business which is or is likely to be prejudicial to the public interest or the good reputation of Barbados.

(5) A service provider who is aggrieved by a decision of the Director under this section or section 29 or 30 may appeal to a Judge in Chambers against the decision.

Pecuniary penalty

29.(1) Where the Director is satisfied as to any of the circumstances set out in section 28(1) in respect of a service provider, the Director may impose on the service provider, a penalty of \$5 000.

(2) Where, under this Act, a service provider is required, by a specified time, to

- (a) take a certain measure or action; or
- (b) cease a particular activity or behaviour,

and the Director is satisfied that the service provider has failed to do so, the Director may impose on the service provider, in addition to the penalty specified in subsection (1), an additional penalty of \$500 for every day or part of a day that the service provider failed to take the measure or action or to cease the particular activity or behaviour.

(3) The penalty referred to in subsection (2)

- (a) may be imposed from the day following the day by which the service provider was supposed to have taken the measure or action or to have ceased the particular activity or behaviour; and
- (b) shall not be imposed in respect of a period of more than 30 days.

(4) Notwithstanding subsection (3), where the service provider

- (a) takes the measure or action; or
- (b) ceases the particular activity or behaviour,

the penalty referred to in subsection (2) shall cease to be imposed on the day preceding the day on which the service provider took the measure or action or ceased the particular activity or behaviour.

Suspension and revocation of licence in certain cases

- 30.(1)** Notwithstanding section 28(3), the Director may
- (a) suspend the licence of a service provider
 - (i) with immediate effect, for a period not exceeding 30 days, where the Director considers that the immediate suspension of the licence is in the public interest or that any delay in suspending the licence may be prejudicial to the public interest or the good reputation of Barbados;
 - (ii) from the date of the institution of criminal proceedings against the service provider for an offence referred to in section 28(1) or at any time thereafter; or
 - (b) revoke the licence of a service provider, upon conviction of the service provider for an offence referred to in section 28(1).
- (2) Where the Director suspends the licence of a service provider in connection with an offence, the suspension shall automatically cease upon the withdrawal or dismissal of the charge or, where there is more than one charge, upon the withdrawal or dismissal of all the charges.

Pretending to be a licensee

- 31.(1)** A person who, not being a licensee, knowingly holds himself out as a licensee or otherwise as a person carrying on the business of providing corporate services or trust services is guilty of an offence and is liable on summary conviction to a fine of \$50 000 or to imprisonment for 2 years or to both.
- (2) In criminal proceedings pursuant to section 6 and subsection (1), the absence of the name of the person charged from a list of licensees in any register to be kept pursuant to section 33 is *prima facie* evidence that the person is not a licensee.

False or misleading information and non-disclosure of material facts

32. A person who, in respect of an application for the issue of a licence or any other matter governed by this Act, knowingly or recklessly

- (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,

is guilty of an offence and is liable on summary conviction to a fine of \$25 000 or to imprisonment for one year or to both.

PART V
MISCELLANEOUS

Registers

33.(1) The Director shall cause to be kept

- (a) a register of the corporate service provider licences;
- (b) a register of the trust service provider licences; and
- (c) a register of the corporate and trust service provider licences,

issued pursuant to this Act.

(2) The Director shall cause to be recorded in each register

- (a) the name of each licensee;
- (b) the address of the registered office or principal place of business of the licensee;
- (c) the date on which his licence is issued;
- (d) any refusal to issue a licence;

- (e) any suspension, revocation or surrender of a licence; and
 - (f) such other information as the Director considers appropriate.
- (3) The registers shall be open to public inspection.

Confidentiality

34.(1) Subject to subsection (3), no person shall disclose any information relating to an application for a licence or to the affairs of a licensee, other than so far as such information forms part of a register referred to in section 33 or of the public record in the possession of the Registrar of Corporate Affairs and Intellectual Property or is otherwise available to the public, except where authorised by the applicant or the licensee or where lawfully required by a court of competent jurisdiction to do so.

(2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of \$10 000 or imprisonment for a term of 2 years or to both.

(3) Subsections (1) and (2) do not apply to any person carrying out any duty imposed on him by the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011* (Act 2011-23), the *Income Tax Act, Cap. 73* or any other enactment or otherwise acting in pursuance of an international agreement to which Barbados is a party.

Director may issue guidelines

35.(1) The Director may issue guidelines in respect of the standards to be observed and measures to be implemented by a service provider in connection with his obligations under this Act; and the service provider shall comply with the guidelines.

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

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

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

Minister may make regulations

36. The Minister may make regulations for giving effect to this Act and for prescribing anything required by this Act to be prescribed.

Fees

37.(1) The fees set out in the first column of the *Second Schedule* are payable in respect of the matters set out opposite thereto in the second column.

(2) The Minister may, by Order, amend the *Second Schedule*.

Exemption

38.(1) Notwithstanding anything to the contrary in this Act and subject to subsections (2) and (3), a company or society that holds a licence issued pursuant to

(a) the *Financial Institutions Act*, Cap. 324A; or

(b) the *International Financial Services Act*, Cap. 325,

and provides a corporate service or trust service is exempt from the application of this Act, except for sections 12 to 18, 20 and 21.

(2) Where in respect of a company or society referred to in subsection (1), the person who issued a licence to the company or society pursuant to an Act referred to in that subsection is satisfied that the company or society is contravening or has contravened any of the sections referred to in that subsection, the person shall have in relation to the contravention of the company or society, the powers set out in section 28(2)(a), (b) and (c).

(3) For the avoidance of doubt, where a company or society referred to in subsection (1) establishes or uses a subsidiary to provide a corporate service or trust service, this Act shall apply to the subsidiary.

Transitional provisions

39.(1) Notwithstanding anything to the contrary in this Act, a person who immediately before the commencement of this Act was engaged in the business of providing corporate services or trust services for profit may, subject to subsection (2), continue to provide such services after the commencement of this Act as if the person were a licensee.

(2) Subsection (1) shall cease to be in effect 6 months from the commencement of this Act.

Repeal of Act 2011-5 and consequential amendments

40.(1) The *International Corporate and Trust Service Providers Act, 2011* (Act 2011-5) is repealed.

(2) The enactments set out in the first column of the *Third Schedule* are amended in the manner set out opposite thereto in the second column.

Act binds Crown

41. This Act binds the Crown.

Commencement

42. This Act shall come into operation on a day to be fixed by Proclamation.

FIRST SCHEDULE*(Section 2)***SPECIFIED ENTITIES AND SERVICES****Specified entities**

1.(1) The following entities are specified entities for the purpose of this Act:

- (a) an international business company;
- (b) an international society;
- (c) an international trust;
- (d) a foreign sales corporation;
- (e) a foundation;
- (f) a private trust company; and
- (g) any other entity which
 - (i) conducts international business; and
 - (ii) has obtained specific permission from the Exchange Control Authority to deal in foreign currency.

(2) For the purpose of sub-paragraph (1)(g) “international business” has the meaning assigned to it by section 2 of the *International Business Companies Act*, Cap. 77.

Corporate and trust services

2.(1) The services listed in sub-paragraph (2) shall be treated as

- (a) corporate services, where provided to a specified entity other than an international trust or a private trust company; and
- (b) trust services, where provided to an international trust or a private trust company.

- (2) The services referred to in sub-paragraph (1) are:
- (a) acting as agent for the formation, registration or licensing of a specified entity;
 - (b) providing the services of a registered office or otherwise acting as a person authorized to accept service or correspondence for the specified entity;
 - (c) filing statutory forms, resolutions, returns and notices on behalf of the specified entity;
 - (d) acting as, or fulfilling the function of, or arranging for another person to act as or fulfil the function of, an officer, a director or a secretary, alternate, assistant or deputy secretary, of the specified entity or in a similar relationship to the specified entity;
 - (e) acting as a shareholder or a quota holder of the specified entity;
 - (f) providing other services involving the control of the whole or a substantial part of the assets of the specified entity.
- (3) Notwithstanding sub-paragraph (2) and section 6, an individual does not require a licence to act as, or fulfil the function of, a director of a specified entity.

SECOND SCHEDULE*(Section 37)***FEES**

<i>Matters for which Fees are Payable</i>		<i>Amount to be Paid</i>
		\$
1.	Application for a licence	250.00
2.	Corporate service provider licence	2 500.00
3.	Trust service provider licence	2 500.00
4.	Corporate and trust service provider licence	2 500.00
5.	Annual licence fee	2 500.00
6.	Replacement of lost, defaced or destroyed licence	100.00

THIRD SCHEDULE

(Section 40)

CONSEQUENTIAL AMENDMENTS

Column 1	Column 2
Enactments	Amendments
<p>1. <i>International Business Companies Act, Cap. 77.</i></p>	<p>1. In section 3(1),</p> <p style="padding-left: 40px;">(a) delete the definition of "international service provider";</p> <p style="padding-left: 40px;">(b) in the definition of "securities", substitute the full stop with a semi-colon; and</p> <p style="padding-left: 40px;">(c) insert in alphabetical order, the following definition:</p> <p style="padding-left: 80px;">" "service provider" has the meaning assigned to it by section 2 of the <i>Corporate and Trust Service Providers Act, 2014</i> (Act 2014-);".</p> <p>2. In section 7(3), delete the words "an international" and substitute the word "a".</p> <p>3. In section 25(3), insert after the word "by", the words "the <i>Corporate and Trust Service Providers Act, 2014</i> (Act 2014-),".</p> <p>4. Delete section 26(2) and substitute the following:</p> <p style="padding-left: 40px;">"(2) Subsection (1) does not apply to a licensee which is not required to comply with section 22(1A).".</p>

THIRD SCHEDULE - (Cont'd)

CONSEQUENTIAL AMENDMENTS - (Cont'd)

Column 1	Column 2
Enactments	Amendments
<p>2. <i>Societies With Restricted Liability Act, Cap. 318B.</i></p>	<p>1. In section 2, delete the definition of "international service provider" and insert in alphabetical order, the following definition:</p> <p style="padding-left: 40px;">" "service provider" has the meaning assigned to it by section 2 of the <i>Corporate and Trust Service Providers Act, 2014</i> (Act 2014-);".</p> <p>2. In section 40(2), delete the words "an international" and substitute the word "a".</p> <p>3. In section 49(3), insert after the word "by", the words "<i>Corporate and Trust Service Providers Act</i> (Act 2014-),".</p>
<p>3. <i>Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011</i> (Act 2011-23).</p>	<p>In the <i>Third Schedule</i>, in</p> <p>(a) Part I, delete paragraph (n) and substitute the following:</p> <p style="padding-left: 40px;">"(n) a service provider licensed under the <i>Corporate and Trust Service Providers Act, 2014</i> (Act 2014-), the <i>Corporate and Trust Service Providers Act, 2014</i>."; and</p> <p>(b) Part II, delete paragraph (k) and substitute the following:</p> <p style="padding-left: 40px;">"(k) a service provider licensed under the <i>Corporate and Trust Service Providers Act, 2014</i> (Act 2014-), the Director of International Business."</p>

THIRD SCHEDULE - (Concl'd)
CONSEQUENTIAL AMENDMENTS - (Concl'd)

Column 1	Column 2
Enactments	Amendments
4. <i>Private Trust Companies Act, 2012</i> (Act 2012-22).	In section 2, in the definition of "Registered Agent", delete paragraph (b) and substitute the following: "(b) a person licensed under the <i>Corporate and Trust Service Providers Act, 2014</i> (Act 2014-);".
5. <i>Foundations Act, 2013</i>	In section 5(4), delete paragraph (c) and substitute the following: "(c) a person licensed under the <i>Corporate and Trust Service Providers Act, 2014</i> (Act 2014-); and".

Read three times and passed the House of Assembly this
day of _____, 2015.

Speaker

Read three times and passed the Senate this _____ day of
_____, 2015.

President

EXPLANATORY MEMORANDUM

The *Corporate and Trust Service Providers Bill, 2014* would regulate the providers of certain corporate and trust services.

PART I - PRELIMINARY

- Clause 1:** provides the short title.
- Clause 2:** defines the terms used in the legislation, including the concept of corporate and trust services, which are more particularly described in the *First Schedule*.
- Clause 3:** stipulates that the legislation applies to persons who provide corporate and trust services for profit.
- Clause 4:** states the legislation's objectives.
- Clause 5:** provides for the Director of International Business to be responsible for the administration of the legislation and sets out the functions of the Director.

PART II - LICENSING OF SERVICE PROVIDERS

- Clause 6:** prohibits a person who provides a corporate or trust service from doing so without a licence. Contravention of this provision would be an offence.
- Clause 7:** sets out the procedure to apply for a licence and the types of licence available.
- Clause 8:** sets out the criteria to be satisfied to obtain a licence.
- Clause 9:** provides, among other things, for licences to remain valid indefinitely unless suspended, revoked or surrendered.

Clause 10: addresses lost, defaced and destroyed licences.

PART III - DUTIES OF SERVICE PROVIDERS

Clause 11: requires a service provider to display his licence at his place of business.

Clause 12: governs advertisements by a service provider.

Clause 13: requires a service provider to have a written agreement with his clients.

Clause 14: provides for the management of a client's property.

Clause 15: addresses conflicts of interest.

Clause 16: speaks to the manner in which a service provider must deal with complaints.

Clause 17: requires a service provider to have insurance and generally to make provision for business disruption.

Clause 18: prohibits a service provider from acting to the detriment of his client's interest or the public interest.

Clause 19: provides for a service provider to notify the Director of certain material changes, for example, in the case of a company, where there are new directors.

Clause 20: imposes a duty on a service provider to notify the Director of the occurrence of certain events, for example, where the service provider or an employee or a director of the service provider is convicted of certain offences or a director is disqualified from holding such an office.

Clause 21: requires a service provider to notify the Director where a client of the service provider is charged or convicted of an offence.

Clause 22: mandates a service provider to notify the Director where he wishes to surrender his licence or is unable to carry on business.

Clause 23: requires a service provider to have his accounts audited in certain cases.

Clause 24: provides for the keeping of records.

PART IV - ENFORCEMENT

Clause 25: provides for a service provider to deliver to the Director such records or information as the Director may require for the proper administration and enforcement of the legislation.

Clause 26: empowers the Director to conduct an examination of the records and affairs of a service provider.

Clause 27: empowers the Director to issue directives to a service provider.

Clause 28: stipulates the measures that can be taken against a service provider in respect of breaches of the legislation or other undesirable behaviour.

Clause 29: makes specific provision for the imposition of pecuniary penalties on a service provider.

Clause 30: addresses the suspension or revocation of a licence where a service provider is the subject of criminal proceedings.

Clause 31: makes it an offence to pretend to be licensed as a service provider.

Clause 32: makes it an offence to submit false or misleading information in respect of an application for a licence or as regards any other matter governed by the legislation.

PART V - MISCELLANEOUS

Clause 33: provides for the Director to maintain registers of the licences issued.

Clause 34: speaks to the confidential treatment of information regarding applications for a licence and the affairs of service providers.

Clause 35: empowers the Director to make guidelines in respect of the standards to be observed and measures to be implemented by a service provider.

Clause 36: empowers the Minister to make regulations to give effect to the legislation.

Clause 37: provides for the fees to be paid for a licence and for related matters. These are set out in the *Second Schedule*.

Clause 38: exempts from the application of the legislation, except for certain provisions, persons licensed under the *Financial Institutions Act*, Cap. 324A or the *International Financial Services Act*, Cap. 325.

Clause 39: makes transitional provision with respect to persons currently providing corporate and trust services. Such persons would be given a period of 6 months from the commencement date to comply with the legislation.

Clause 40: repeals the *International Corporate and Trust Service Providers Act, 2011* (Act 2011-5) and provides for consequential changes to be made to several pieces of legislation. These are set out in the *Third Schedule*.

Clause 41: provides for the legislation to bind the Crown.

Clause 42: provides for the coming into operation of the legislation.