

TRUST AND COMPANY SERVICE PROVIDERS

STATEMENT OF BEST PRACTICE

Introduction

This statement of best practice has been prepared by a Trust and Company Service Providers Working Group set up by the Offshore Group of Banking Supervisors on which four G7 countries (France, Italy, Netherlands and United Kingdom) and three international organisations (FATF, IMF and OECD) were also represented. The terms of reference of the Working Group were –

“To produce a recommended statement of minimum standards/guidance for Trust and Company Service Providers; and to consider and make recommendations to the Offshore Group of Banking Supervisors for transmission to all relevant international organisations/authorities on how best to ensure that the recommended minimum standards/guidance are adopted as an international standard and implemented on a global basis”.

The Working Group decided that a statement of best practice should be prepared rather than a statement of minimum standards. At the present time many jurisdictions do not regulate trust and company service providers, and in some cases such providers are not presently embraced by anti-money laundering legislation. Accordingly it is considered that a statement of best practice is more appropriate.

This statement of best practice is intended for use by jurisdictions generally in reviewing the position of their trust and company service providers. It is also intended for use by international organisations such as the IMF when they are engaged in an assessment of individual jurisdictions in respect of their policy/procedures/practices from a financial regulatory/anti-money laundering standpoint.

Trust and company service providers are important for financial regulation, anti-money laundering and combating the financing of terrorism as intermediaries both as introducers of business to other institutions and as entities responsible for handling and/or managing funds/assets. Their importance is recognised in the Financial Stability Forum's report on Offshore Financial Centres and the Financial Action Task Force consultation paper on the review of the forty recommendations.

This statement of best practice is intended to fill the gap that exists at the present time where trust and company service providers generally are not subject to standards set by bodies such as the Basel Committee on Banking Supervision and IOSCO. However, in those cases where such standards do apply nothing in this statement of best practice alters the existing obligations to comply with those standards.

There is a wide range of different types of business or professionals that act as professional service providers for the creation and administration of companies, trusts, foundations and other legal entities or arrangements, and offer related management and advisory services. What are known generically as trust and company service providers ("Service Providers" for the purpose of this statement) refer to those who carry on a business that involves the provision of company administration services or trustee or fiduciary services and in the course of doing so provide one or more of the following services:-

- acting as a company or partnership formation agent;
- acting as (or arranging for another person to act as) a director or secretary of a company or a partner of a partnership;
- providing a registered office; business address or accommodation, correspondence or administrative address for a company, partnership or for any other person;

- acting as (or arranging for another person to act as) a trustee of an express trust;
- acting as (or arranging for another person to act as) a nominee shareholder for another person.
- arranging the establishment of, or providing services in relation to, any legal entities not covered by the foregoing (e.g. a foundation or anstalt).

In the following statement, Section A addresses the requirements for Service Providers responsible for handling and managing client funds; Section B considers some broader structural issues; and Section C gives recognition to the possible need for a lighter touch where a Service Provider does not handle client funds.

A. All countries/jurisdictions should require that where a Service Provider is responsible for handling/managing funds/assets -

1. Those individuals holding key positions providing the service should be persons of integrity and should exhibit evidence of meeting the following requirements –

(i) having no relevant adverse business/professional/personal history:

relevant considerations would include –

- professional or administrative reprimands;
- regulatory directions/public statements;
- disciplinary findings;
- civil fines;
- criminal convictions;
- declaration of bankruptcy;

- adverse personal credit rating

and would extend to a person's involvement as a director or senior manager/officer within a company that has been the subject of such considerations.

- (ii) having relevant and appropriate level of competence/capability:

relevant considerations would include –

- professional or other relevant qualifications;
- knowledge and/or experience relevant to the business concerned and appropriate to the employment status/role of the individuals concerned.

- 2. Those providing the service should exhibit evidence that their business will be or is being conducted in accordance with the following requirements under the headings of corporate governance, customer due diligence, conduct of client business, financial soundness, and systems and controls –**

Corporate Governance

The Service Provider should be able to demonstrate that they are in -

- (i) compliance with recognised general standards of corporate governance in respect of both the business itself and each company, partnership, trust and other legal entity (“the client(s)”);
- (ii) compliance with national regulations with respect to money laundering and the financing of terrorism;

- (iii) compliance with all relevant and applicable financial regulatory standards;
- (iv) compliance with all relevant and applicable domestic statutory requirements/obligations (e.g. companies law);
- (v) compliance with recognised standards in respect of directors/trustees responsibilities;

Customer Due Diligence

The Service Provider should be able to demonstrate that they are engaged in -

- (vi) effective customer due diligence - to satisfy the standards set out in the Basel Committee's Customer Due Diligence Paper, published in October, 2001, to the extent that the recommendations in that paper are relevant to non-banks.

This should include proper procedures for -

- customer identification;
- verification of identity of customer;
- risk profiling of customers (e.g. politically exposed persons);
- establishing the source of wealth;
- establishing the source of funds;
- ongoing monitoring of a customer's activities.
- adequate documentation to meet KYC requirements.

Specific issues on which attention should focus relate to information on the ultimate beneficial owner and/or controller of companies, partnerships and other legal entities, and the settlor/protector/beneficiaries of trusts, which should be known to the Service Provider and be adequately documented.

Conduct of Client Business

The Service Provider should be able to demonstrate that client business is being properly conducted through the -

- (vii) Identification and segregation of clients' assets and liabilities from the assets and liabilities of the Service Provider;
- (viii) effective handling of clients' assets covering –
 - safe custody of assets;
 - proper management of assets;
- (ix) maintaining adequate and orderly accounting records of clients' affairs;
- (x) maintaining adequate client documentation (e.g. trust deeds);
- (xi) ensuring that all transactions/decisions entered into, taken by or on behalf of clients are appropriately authorised/handled by persons with an appropriate level of knowledge, experience and status properly to effect such transactions or make the proper decisions according to the nature and status of the transactions/decisions involved; for example –
 - where discretion is exercised for or in relation to clients, all reasonable steps should be taken to obtain sufficient information in order to exercise that discretion or other powers in a proper manner and such discretion should only be exercised for a proper purpose;
 - any actual or perceived conflict of interest should be avoided or appropriately disclosed; and where conflicts arise and

cannot be resolved by disclosure and, internal rules of confidentiality, or rules on when or when not to act, the Service Provider should withdraw its services in an orderly manner;

- all business (including the establishing, transferring or closing of business relationships with its customers) should be transacted in an expeditious manner.

(xii) ensuring that, where appropriate, there is a full understanding of the duties arising under the laws relevant to the administration and affairs of clients for which they are acting in the jurisdictions in which they are carrying on business and in which the assets being handled/managed are held.

Financial Soundness

The Service Provider should be able to demonstrate that it is financially sound by -

(xiii) maintaining adequate and orderly accounting records of –

- the business of the Service Provider itself;
- the affairs of the clients.

(xiv) maintaining adequate financial resources including –

- paid up capital; and/or
- liquid capital;

to enable the business to continue as a going concern and for the affairs of each client to be managed properly for an appropriate period in the event of a trading difficulty being experienced

- (xv) providing evidence of compliance with any relevant financial regulatory standards;
- (xvi) providing evidence of compliance with international accounting standards;
- (xvii) maintaining adequate professional indemnity insurance cover.

Systems and Procedures

The Service Provider should be able to demonstrate that the following systems, procedures and controls are adequately addressed -

- (xviii) effective compliance functions – where appropriate a skilled and experienced person should be designated as a compliance officer;
- (xix) effective reporting procedures and effective systems to submit timely and accurate information to the appropriate authorities – where appropriate a skilled and experienced person should be designated as a money laundering reporting officer;
- (xx) an effective complaints handling system including maintaining a record of complaints and the actions taken to resolve them;
- (xxi) maintaining at an appropriate location in the jurisdiction adequate, orderly and up to date records of all business

transactions of the Service Provider and instructions received from clients,, including–

- the accounting records of the business;
- the accounting records of each client;
- records of the internal organisation and risk management systems;
- client documentation (e.g. client requirements, customer due diligence requirements);
- document retention policies appropriate to the business of the provider and in compliance with relevant legal obligations;

(xxii) maintaining a manual of appropriate policies and procedures for the operation of the Service Provider's business and the provision of services to each client; including business acceptance procedures, and documented systems and procedures intended to safeguard the business and the clients' and their assets and ensure that all authorised and proper transactions are undertaken;

(xxiii) maintaining an adequate span of control with a sufficient number of appropriately skilled and experienced persons able to exercise independent judgement in relation to the running of the Service Provider's business;

(xxiv) ensuring that those engaged in the business have appropriate relevant experience and qualifications;

[Note: exceptions to xxiii, xxiv may apply in respect of sole practitioners where, for example, an individual trustee function is controlled by the Court];

- (xxv) ensuring that continuous professional development requirements are satisfactorily met;
- (xxvi) maintaining effective procedures to ensure that no false or misleading information is provided (including advertisements).

3. There should be proper provision for holding, having access to and sharing of information, including ensuring that –

- (i) information on the ultimate beneficial owner and/or controllers of companies, partnerships and other legal entities, and the trustees, settlor, protector/beneficiaries of trusts is known to the service provider and is properly recorded;
- (ii) any change of client control/ownership is promptly monitored (e.g. in particular where a service provider is administering a corporate vehicle in the form of a “shelf” company or where bearer shares or nominee share holdings are involved);
- (iii) there is an adequate, effective and appropriate mechanism in place for information to be made available to all the relevant authorities (i.e. law enforcement authorities, regulatory bodies, FIU’s);
- (iv) there should be no barrier to the appropriate flow of information to the authorities referred to in 3 (iii) above;

- (v) KYC and transactions information regarding the clients of the Service Provider is maintained in the jurisdiction in which the Service Provider is located;
- (vi) there should be no legal or administrative barrier to the flow of information/documentation necessary for the recipient of business from a Service Provider who is an acceptable introducer to satisfy itself that adequate customer due diligence has been undertaken in accordance with the arrangements set out in the Basel Customer Due Diligence paper;

B. All countries/jurisdictions should make proper provision to ensure that –

- (i) the interests of customer/clients can be adequately safeguarded when the Service Provider is no longer able to carry on the business for any reason;
- (ii) external auditors with relevant experience and appropriate qualifications and track record are appointed to carry out a full audit of the Service Provider's business in accordance with international standards;
- (iii) external auditors have the statutory authority/protection to report to the competent authorities any breaches of relevant legislation or other material concerns;
- (iv) adequate provisions are in place to ensure that regular independent reviews are conducted of all Service Providers who carry on business in or from the country/jurisdiction to assess compliance with the statement of best practice; and that action can be taken where there is evidence of non-compliance;

- (v) for the purposes of compliance with A.2.(ii) above, Service Providers are embraced by national anti-money laundering legislation;

C. Conclusions–

Service Providers in all countries/jurisdictions should be expected to comply with the statement of best practice. However it is recognised that where the Service Provider is not responsible for handling/managing funds/assets and carries on business which might be perceived as lower risk, a lighter touch may be applied, according to the nature and scope of the business activity.

Examples of “lower risk” business might include business which consists solely of one of the following –

- formation of companies, partnerships, and other legal entities;
- providing a registered office or business address for a company or partnership;
- providing for the formation/administration of local trading companies only and where the provider does not act as –

- a director or secretary;
- a trustee;
- a nominee shareholder

In the case of such business the lighter touch could be in respect of –

- the span of control covering the number of persons engaged in the business;
- the level of qualifications/experience of the persons engaged in the business;
- the capital/professional indemnity insurance requirements;
- the audit requirements.

With the exception of the foregoing such service providers, and any other service provider not covered by the above provisions, would be expected to comply with all the requirements set out in Section A.

6th September, 2002