

EXPLANATORY MEMORANDUM
INTERNATIONAL CORPORATE AND TRUST
SERVICE PROVIDERS BILL, 2010

The *International Corporate and Trust Service Providers Bill, 2010* would provide for the licensing and regulation of persons who

- (a) act on behalf of companies and societies that apply for licences to operate as international business companies and international societies; and
- (b) perform services related to the registration of international trusts.

PART I
Preliminary

Clauses 1 and 2: provide for the short title and the definition of terms used in the Bill, respectively.

Clause 3: allows for its application to persons who provide international services for profit. Clause 2 defines the relevant international services as services related to the licensing of international business companies, foreign sales corporations and international societies and to the registration of international trusts.

Clause 4: states the Bill's objectives which are to

- (a) promote and maintain high standards of conduct, ethics and competence in the provision of international services;
- (b) ensure that international service providers adhere to modern, internationally acceptable standards of best practice;

- (c) provide for the establishment of procedures and policies to be followed by international service providers to enable international service providers to
 - (i) know and be able to identify and verify the identities of their clients; and
 - (ii) exercise due diligence in the provision of international services;
- (d) promote the operation of international entities in Barbados;
- (e) protect the interests of international entities and international service providers through the licensing and supervision of international service providers;
- (f) safeguard the reputation of Barbados as a premier jurisdiction for the operation of international entities; and
- (g) detect and prevent any illegal activity within the international services sector and in particular, money laundering and financing of terrorism.

Clause 5: provides for the Director of International Business, subject to the general direction and control of the Minister, to be responsible for the administration of the legislation and sets out the functions of the Director as follows:

- (a) the monitoring and examination of the businesses of international service providers to determine whether international service providers are in compliance with the legislation; and

- (b) the receipt and investigation of any complaints made against international service providers and the taking of appropriate action in respect of the complaints.

PART II

Licensing Requirements for International Service Providers

- Clause 6:** prohibits a person who provides an international service from doing so without a licence. Contravention of this provision would be an offence.
- Clause 7:** provides for an international service provider to apply to the Director for the issue of a licence and for the Director, having been satisfied that the applicant
- (a) is a fit and proper person to provide an international service;
 - (b) has the financial standing necessary to operate the business;
 - (c) is or has a representative who is resident in Barbados; and
 - (d) is not an international entity,
- to issue the licence.
- Clause 8 :** provides for a licence to remain valid for a year and for its renewal.
- Clause 9:** permits the Director to refuse to issue or renew a licence in the public interest.
- Clause 10:** addresses lost, defaced and destroyed licences.
- Clause 11:** requires a licensee to display his licence at his place of business.

Clause 12: provides for the licensee to notify the Director of certain material changes, for example, in the case of a company that is a licensee, where there are new directors.

Clause 13: provides for the surrender of licences.

PART III

Duties of International Service Providers

Clause 14: imposes a duty on an international service provider to keep records in respect of his business including records on clients.

Clause 15: requires an international service provider whose gross revenue exceeds \$1 000 000 to have his accounts audited by an auditor qualified in accordance with section 153 of the *Companies Act*, Cap. 308.

Clause 16: provides for an international 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.

**Clauses 17
and 18:**

imposes a duty on an international service provider to notify the Director of the occurrence of certain events, for example, where the international service provider or an employee or a director of the international service provider is convicted of an offence involving fraud or dishonesty or a director is disqualified from holding such an office, a merger or take-over involving the international service provider is intended or the international service provider is unable to continue to operate his business.

Clause 19: requires an international service provider to notify the Director where a client of the international service provider is charged or convicted of an offence or where an international entity ceases to be a client of the international service provider.

Clause 20: requires an international service provider to have insurance in respect of his business.

Clause 21: provides for an international service provider to comply with the Code of Practice set out in the *Schedule*. This Code of Practice requires, among other things, that the international service provider know and be able to identify his clients as well as the beneficial owners of his clients that are companies and societies.

The Code also requires the international service provider to have a written agreement with every client and to keep the client's money or other assets separate from his own money and assets, in an account designated as the client's account. The international service provider also has to acknowledge, record and deal appropriately with any complaint received in respect of the business or a client and take reasonable steps to avoid conflicts of interest with and among clients.

Clause 22: prohibits an international service provider from operating his business in a manner detrimental to the interest of the public or his clients.

Clause 23: requires an international service provider to ensure that any advertisement that he publishes is not damaging to the good reputation of Barbados and is fair and accurate.

PART IV*Administration and Enforcement*

Clause 24: empowers the Director to conduct an examination of the records and affairs of a licensee

- (a) to ascertain whether the licensee is in compliance with the legislation and any directives of the Director;
- (b) where the Director is of the view that the licensee is in contravention of the legislation; or
- (c) where the Director considers that an examination is otherwise necessary for the proper administration and enforcement of the legislation.

Clauses 25, 26 and 27: provide for the action that may be taken by the Director where, for instance, a licensee is in contravention of the legislation or a term or condition of his licence, has been charged with or convicted of certain offences or has failed to comply with a request or directive of the Director. Such action includes issuing a warning or reprimand to the licensee, giving directives to the licensee to take remedial action, imposing a pecuniary penalty on the licensee and refusing to renew, suspending or revoking his licence.

Clauses 28, 29 and 30: create certain offences such as pretending to be a licensee, fraudulently procuring a licence and submitting false or misleading information in respect of an application for or renewal of a licence or as regards any other matter governed by the legislation.

PART V
Miscellaneous

- Clause 31:** provides for the Director to maintain a register of licences issued, renewed, suspended, surrendered or revoked.
- Clause 32:** empowers the Director to make guidelines in respect of the standards to be observed and measures to be implemented by international service providers.
- Clause 33:** empowers the Minister to make regulations to give effect to the legislation.
- Clause 34:** provides for sums collected under the legislation to be paid into the Consolidated Fund.
- Clause 35:** makes transitional provision with respect to persons currently providing international services. Such persons would be given a period of 6 months from the commencement date to comply with the legislation.
- Clause 36:** exempts from the application of the legislation, except clauses 17 and 19 to 23, persons licensed under the *Financial Institutions Act*, Cap. 324A or the *International Financial Services Act*, Cap. 325.
- Clause 37:** provides for the legislation to bind the Crown.
- Clause 38:** provides for the coming into operation of the legislation.
- The Schedule:** contain a Code of Practice for International Service Providers.