

SECTION 3

ONGOING REGULATORY REQUIREMENTS FOR FIDUCIARY BUSINESSES (CORPORATE AND TRUST SERVICE PROVIDERS)

Section 3(4) of the [Corporate Service Providers Act 2000](#), as amended by the Fiduciary Services Act 2005 ("the amended Act") empowers the Commission to issue fiduciary licences in respect of the provision of corporate and/or trust services (CSP and TSP licences). (See [Section 1](#) above.)

3.1 CLASSES AND CATEGORIES OF LICENCE

Fiduciary licences are designated by class of activity (CSP or TSP) and categorised in relation to the nature and scope of the activities the licenceholder is permitted to undertake (CSP or TSP Category 1, CSP or TSP Category 2 and Trust Corporation). The classes and categories of fiduciary licence are defined in paragraph 3 of the [Fiduciary Services \(General Requirements\) Regulatory Code 2005](#).

TSPs who carry out a range of trust services will normally require a category 1 TSP licence, unless they also undertake probate work and the functions reserved to Trust Corporations (as defined in section 65A of the Trustee Act 1961 as amended by the Fiduciary Services Act 2005). There is a separate category of licence for Trust Corporations and the Commission's licensing policy in respect of requiring that they be organisations of some substance, follows the previous practice adopted by the Courts in approving Trust Corporations (which preceded TSP licensing). Although the same financial resources requirements apply to a Category 1 TSP and a Trust Corporation licence, Trust Corporations are expected to have at least five directors or key persons who hold relevant qualifications and/or are appropriately experienced (see Table C of Appendix 1 to the [General Licensing Policy](#).)

CSPs which carry out a range of corporate services will require a category 1 CSP licence.

However, individuals whose sole corporate or trust service activity is acting as a director of client companies and/or acting as a co-trustee or protector of an express trust, will require a Category 2 CSP and/or TSP licence. A company (body corporate) is not permitted to hold a Category 2 CSP or TSP licence.

3.2 LICENCE CONDITIONS

A licence may also be subject to one or more conditions, for example a restriction on the nature and scope of the activities the licenceholder is permitted to undertake or in relation to its meeting the fitness and propriety criteria.

It is important that licenceholders appreciate the significance of licence conditions and that a breach of a licence condition may result in the Commission taking Enforcement Action (see [Section 1.9](#) above).

3.3 DEFINITION - REGULATORY CODES

Section 6 of the [amended Act](#) empowers the Commission to make regulatory codes ("the Codes"). The Codes set standards of good practice and behaviour. The Commission is empowered to take Enforcement Action (see [Section 1.9](#) above) in respect of any breach of the Codes. Such action will depend upon the seriousness of the breach.

The Codes for the conduct of CSP and/or TSP business are:-

[Fiduciary Services \(General Requirements\) Regulatory Code 2005](#) ("General Requirements Code"); and

[Fiduciary Service \(Clients' Money and Trust Money\) Regulatory Code 2005](#) ("Clients' Money Code").

3.4 APPLICATION OF THE CODES TO THE BUSINESS OF FIDUCIARIES

The Codes apply to all licenceholders and to a small number of fiduciary licence applicants which are operating under the transitional arrangement (see [section 1.4](#) above).

3.5 THE GENERAL REQUIREMENTS CODE

The Fiduciary Services (General Requirements) Regulatory Code 2005 including the guidance notes, can be found in [Appendix E1](#).

General Principles

Paragraph 2 of the [General Requirements Code](#) sets out the main objectives and a fiduciary's obligations for the general conduct of its business. These require a fiduciary to:

know its customer

act with due skill, care and diligence in providing any service which it provides or holds itself out as willing to provide;

act with high standards of integrity in its conduct as a fiduciary;

deal fairly with its clients in any transaction entered into or which it arranges to be entered into, on its client's behalf; and

maintain adequate financial resources.

The Code is expressly stated as not being intended to alter a fiduciary's obligations under company or trust law.

Know Your Customer

In addition to a fiduciary's obligations under the Criminal Justice (Money Laundering) Code 2007, paragraph 4 of the [General Requirements Code](#) specifically requires a CSP to -

"(a) identify its client; and

(b) identify the beneficial owner of each of its client companies, (if not the same person as the client)."

Guidance on the identification procedures is contained in [section 3 of the Anti-Money Laundering Guidance Notes](#).

The Criminal Justice Act 1990, as amended, contains comprehensive provisions relating to the countering of "all-crimes" money laundering. The Criminal Justice (Money Laundering) Code 2007 ("ML code") applies to the business of engaging in any regulated activity within the meaning of the Fiduciary Services Acts 2000 and 2005. It also provides that Fiduciary licenceholders are to be regarded as "eligible introducers" for the purposes of that code.

The Commission has produced [Anti-Money Laundering Guidance Notes](#) for all licenceholders. (See Anti Money Laundering Handbook.)

Additional guidance has been issued relating to a CSP's continuing anti money

laundering obligations in respect of services provided to companies registered under the Companies Act 2006. (See [Appendix E4.](#))

Client Agreement/Terms of Business

Fairness and transparency in the dealings between a fiduciary and its client is the principle behind requiring fiduciaries to provide a client agreement or terms of business. It may, however, not always be clear in particular circumstances as to who the client is and the Code includes some guidance in this respect. (See paragraph 5 of the [General Requirements Code](#) and the accompanying guidance.) Additional guidance has been issued in respect of resigning as a registered agent of a company registered under the Companies Act 2006. (See [Appendix E4.](#))

Key Persons

Paragraph 6 of the [General Requirements Code](#) requires that key persons must remain fit and proper. In applying the "fit and proper" test the Commission will consider, on a case-by-case basis, a fiduciary's staffing structure and what responsibilities any particular individual carries in relation to the regulated activities. The expression "key persons" as defined in paragraph 1(2) of the Code includes controllers, directors, managers, individuals whose appointment as directors or secretaries of client companies is arranged by the fiduciary and such other persons as appear to the Commission to have significant powers or responsibilities with respect to any regulated activity undertaken by the fiduciary. (See also section 3(3) of the [amended Act.](#))

Individuals whose appointment as a director or secretary of a client company is arranged by the CSP but who are not directly or indirectly employed by a CSP, are defined as "Professional Associates" (see paragraph 1(2) of the Code). As Professional Associates have significant responsibilities in relation to a CSP's regulated activities, they are also required to meet the "fit and proper" criteria.

Compliance systems and procedures

A fiduciary is required to organise and control its internal affairs in a responsible manner. It should be able to demonstrate to the Commission that it has in place documented control systems and procedures, which are appropriate to the level and scope of its business. (See paragraph 9 of the [General Requirements Code.](#)) Additional guidance has been issued in respect of services provided to companies registered under the Companies Act 2006, including acting as a registered agent. (See [Appendix E4.](#))

Provision of directors

Paragraph 10 of the [General Requirements Code](#) applies to CSPs and requires that they take reasonable steps to ensure that where they are responsible for arranging the appointment of directors of client companies, the individuals concerned are suitable and competent for that office and understand the duties and responsibilities of directors under all relevant laws. This includes the directors of corporate directors.

CSPs must also take reasonable steps to ensure that those individuals effectively carry out their responsibilities and duties in respect of each of those client companies in a diligent and proper manner.

This paragraph includes guidance on various issues such as the number of directorships any one individual may be competent to handle and considerations in respect of the delegation of a director's powers by power of attorney.

There are also a number of publications available that give guidance in respect of the duties and responsibilities of directors and the Commission has also issued

["Guidance Notes on the Duties and Responsibilities of Directors under the laws of the Isle of Man"](#) which can be found in Section 5.

Additional guidance has been issued in respect of services provided to companies registered under the Companies Act 2006, including acting as a corporate director of such companies. (See [Appendix E4](#).)

Financial resources, going concern and reporting requirements

The financial resources, going concern and reporting requirements are set out in paragraph 11 of the [General Requirements Code](#). A fiduciary's business must be able to meet its liabilities (taking into account contingent and prospective liabilities) as they fall due and be able to continue in operation for the foreseeable future (the "going concern" principle).

The accompanying guidance to paragraph 11 of the General Requirements Code expands on the going concern principle. Fiduciaries are expected to demonstrate that the business has adequate financial resources and the directors or partners of a fiduciary structured respectively as a company or partnership, are therefore expected to maintain a level of capital appropriate to that business. The guidance is 25,000 issued and paid up share or partners' capital as a minimum. However, as there was no specific capital requirement when CSP licensing was introduced, this minimum level of capital only applies to TSPs and to CSPs which apply for a TSP licence.

TSPs are also required to monitor their liquidity and submit a quarterly liquidity declaration to the Commission.

As a sole trader's business cannot be segregated from his/her personal assets and liabilities, the Commission's expectation is that a segregated bank deposit in the sum of 10,000 (CSP) or 25,000 (TSP) be maintained in respect of the business having adequate financial resources to meet unforeseen contingencies.

All fiduciaries (companies) are required to have their accounts audited.

The Fiduciaries (Civil penalties) Regulations 2006 which impose civil penalties for late submission of returns come into operation on 1st November 2006. See [Appendix E3](#).

Matters to be notified to the Commission

Paragraph 13 of the [General Requirements Code](#) sets out various occurrences that must be notified to the Commission whenever they arise as these matters are considered to be material to a fiduciary's licence.

The matters to be reported include legal proceedings and criminal convictions against the fiduciary, changes to the fiduciary's particulars or circumstances, and changes affecting the appointment or functions of "key persons" or the individual's particular circumstances where this may affect their fitness and propriety.

Avoidance of inappropriate conflicts of interest

Paragraph 16 of the [General Requirements Code](#) requires a fiduciary to use its best endeavours to avoid inappropriate conflicts of interest between itself and its clients and between one client and another; and where such a conflict arises, to notify the clients concerned.

3.6 THE CLIENTS' MONEY CODE

The Fiduciary Services (Clients' Money and Trust Money) Regulatory Code 2005 including the guidance notes, can be found in [Appendix E2](#).

The [Clients' Money Code](#) defines "clients' money" in paragraph 3 and "trust money" in paragraph 4.

As in some cases a picture is worth a thousand words, the three diagrams below have been included in an attempt to clarify the difference between clients' money, trust money and a fiduciary's own money. They illustrate in a simplistic way accepted industry best practice and the requirements of the Clients' Money Code, in respect of handling of the usual financial income and outgoings of a CSP ([diagram A](#)), a TSP ([diagram B](#)) and a fiduciary that has both CSP and TSP business ([diagram C](#)). Readers are, however, reminded that the purpose of this Handbook is to assist in understanding the legal framework that governs the licensing and regulation of fiduciaries. Whilst these illustrations may assist in understanding the Clients Money Code, the Code itself is the legal document that applies to the conduct of fiduciary business.

In particular it should be noted that the [Clients' Money Code](#) requires that clients' money and trust money be segregated from the fiduciary's own funds (see paragraph 6, "Duty to segregate (clients' money and trust money)"). There is also a duty to account properly for such moneys and the operational procedures relating to the handling of clients' money are set out in paragraphs 7 to 10. The requirements for a fiduciary to identify and reconcile trust money are set out in paragraph 11 of the Clients' Money Code.

Paragraph 2 of the [Clients' Money Code](#) clarifies that, except where expressly stated, the Code does not alter a fiduciary's obligations under company or trust law.