

A **RISK** Based Approach for **Trust and Corporate Service Providers**

As at September 30th 2019, there were 46 Corporate Service Providers, four (4) Trust Businesses and two (2) Captive Insurance Managers licensed by the Financial Services Regulatory Commission (FSRC) St. Kitts Branch. These entities provide a full range of corporate and trust services to individuals and entities incorporated within the Federation of St. Kitts and Nevis. Pursuant to Section (4) (2) of the FSRC Act, Cap 21.10, the FSRC is the ultimate regulatory body responsible for financial services and Anti Money Laundering/Countering the Financing of Terrorism (AML/CFT) for St. Kitts and Nevis. The FSRC is also responsible for monitoring finance businesses, which include Trust and Corporate Service Providers (TCSPs), carried on in or from within St. Kitts and Nevis and can take legal action against persons conducting unauthorized business.

TCSPs Defined

The Financial Services (Trust and Corporate Business) Regulations, 2019 defines corporate business as “the carrying on of and the provision of services in relation to the business of (a) incorporating or establishing, as may be appropriate, companies, foundations or limited partnerships;

(b) providing nominee shareholders, directors, chief executives or managers, as may be appropriate, for companies, foundations or limited partnerships.;

(c) maintaining the registered office or the office for service, as may be appropriate, for companies, foundations or limited partnerships.;

(d) managing or administering, as may be appropriate, companies, foundations or limited partnerships; and

(e) acting as a local representative person for foreign ships registered on the Saint Kitts and Nevis International Ship Registry.”

Trust Business is defined as the carrying on of, and the provision of services in relation to, corporate business and the business of:

(a) undertaking or executing trusts;

(b) providing trustees or protectors for trusts;

(c) maintaining the office for the service of trusts; and

(d) managing or administering trusts.

As outlined above, TCSPs provide a wide range of services and activities which differ based on their delivery methods, duration of relationships, customers and the size of the operation. Therefore, the risks commensurate with each activity are vastly different and it is incumbent upon the TCSPs to identify, assess and understand the money laundering (ML) and terrorist financing (TF) risks to which they are exposed.

The most appropriate risk mitigation measures should be employed based on the risks identified. This approach is known as a Risk Based Approach and it allows TCSPs to focus their resources where the risks are determined to be higher.

The Financial Action Task Force (FATF) issued Forty (40) Recommendations which set standardized procedures to address risks associated with money laundering, terrorist financing and the proliferation of weapons of mass destruction for individuals/entities such as TCSPs.

Vulnerabilities of TCSPs

Individuals may use the opportunity to maintain control of criminally derived assets while evading the ability of law enforcement to trace the origin and ownership of the assets. Furthermore, companies and trusts are often regarded by criminals as useful vehicles to conceal underlying beneficial ownership information or enhance the perception of legitimacy. Special attention must be paid to ‘shell companies’ as criminals may attempt to misuse these companies to create the impression that the company is reputable because of the number of years it has been in existence. Shelf companies are also used to create complex entity structures making it increasingly difficult for authorities to trace beneficial ownership information.

FATF Recommendations Applicable to TCSPs

The major purpose of the FATF Recommendations in respect of TCSPs is to ensure that their operations and services are not used to facilitate criminal activities and ML/TF.

Customer Due Diligence and Record Keeping Requirements set out in FATF Recommendations 10-12, 15, and 17 apply to TCSPs when conducting business.

Recommendation 23 requires TCSPs to report a suspicious transaction for a client when engaging in Trust and Corporate Service Business on behalf of a client.

Countries are expected to establish the most appropriate regulatory regime, tailored to address relevant ML/TF risks which includes the activities and services of TCSPs.

The FATF Recommendations are available in detail on the FATF’s Website:

<https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>



Topics Discussed:

- ⇒ TCSPs defined
- ⇒ Vulnerabilities of TCSPs
- ⇒ FATF Recommendations Applicable to TCSPs
- ⇒ Risk Based Approach for TCSPs
- ⇒ Key Elements of the Risk Based Approach
- ⇒ The FSRC’s Role in the Supervision and Monitoring of TCSPs

VULNERABILITY

Risk Based Approach For TCSPs

The Risk Based Approach (RBA) is central to the effective implementation of the FATF Recommendations. For TCSPs, identifying and maintaining an understanding of the ML/TF risks faced by the sector will require the investment of resources and training.

It is important to note that the RBA is not a 'zero failure' approach since there may be instances where even though a TCSP has taken all reasonable and proportionate measures to guard against ML/TF, it is still used for illicit purposes. Money laundering and terrorist financing are serious crimes and TCSPs must ensure that all necessary measures are taken to avoid the misuse of their services.

Key Elements of the Risk Based Approach

The key features of an RBA are summarized in the figure below:



◆ Risk Identification and Assessment

TCSPs should take appropriate steps to identify and assess enterprise-wide risks given their particular client base. Consideration should be given to all relevant factors before making a determination of the overall level of risk and the appropriate level of mitigation to be applied. The identification of ML/TF risks associated with clients and services will allow for TCSPs to determine and implement reasonable and proportionate measures to mitigate these risks.

◆ Risk Management and Mitigation

TCSPs should have policies and controls in place that enable them to effectively mitigate risks. These procedures should be accepted and approved by Senior Management and the Board of Directors and be consistent with local legislation and international guidelines. The implementation of these controls should be monitored to determine areas that require improvement.

◆ Ongoing Monitoring

TCSPs should analyse clients' transactions and have the appropriate mechanisms in place to identify any suspicious activity or transaction carried out using trusts, companies or other legal entities. This includes the scrutiny of activity during the relationship and enquiries into source of funds and wealth.

◆ Documentation

To effectively demonstrate a sound understanding of ML/TF risks, TCSPs should document risk assessments to ably show their basis for actions taken. Completing risk assessments in a timely manner is integral in the identification of suspicious activity.

Risks could be assessed using indicators such as Low, Medium and High Risk. A short narrative outlining the conditions for each rating should be included as well as an overall risk rating.

Where TCSPs are involved in long-term relationships, risk assessments should be completed at various intervals across the life of the transaction or relationship to ensure that no significant risk factors have changed.

The FSRC's Role in the Supervision and Monitoring of TCSPs

FATF Recommendation 28 outlines that Designated Non Financial Businesses and Professions (DNFBPs), which include TCSPs should be subjected to effective oversight through the supervision of an authority which ensures that they comply with their obligations to combat money laundering and terrorist financing.

Supervisors should have adequate powers to perform their supervisory function which include the following:

- * Monitoring;
- * Imposition of Sanctions;
- * Financial & Human Resources



Licensing and Registration

One (1) of the fundamental mechanisms to identify TCSPs is the implementation of a licensing or registration process. This system enables TCSPs to be monitored whilst allowing the Supervisor to perform a gate-keeper role over individuals and businesses licensed as TCSPs. The licensing and registration framework should clearly define the activities which are subject to supervision and prohibit unlicensed persons from operating. All requirements for licensing or registration should be clear, publicly available and consistently applied.

The Table Outlines the Licensing Requirements for TCSPs in St. Kitts & Nevis

| Requirements for Trust and Corporate Service Provider (TCSP) Applicants | |
|---|--|
| The following is required for each Shareholder, Director and Senior Management: | Additional Requirements for Companies: |
| Certified Copies of Qualifications | Company must be incorporated. |
| Police Record | Confirmation Letters from the Company's Lawyer and Auditor |
| Professional Letter of Reference | Audited Financial Statements for at least three (3) years/ Pro Forma Statements (New Companies Only) |
| Résumé | Business Plan |
| Two (2) Pieces of Government Issued Identification | Minimum Net Assets or Share Capital (EC\$270,000.00) or (US\$100,000.00) |
| Personal Questionnaire | Trust Companies Minimum Net Assets or Share Capital: |
| Bank Reference Letter from a recognized Bank | Restricted: EC\$4,000.00 |
| Other Application Requirements: | Unrestricted: EC\$540,000.00 |
| Applicant must be a Lawyer or Certified Accountant | |
| Application Fee (EC\$1,080.00) or (US\$400.00) | |
| Annual Licence Fee (EC\$5,400.00) or (US\$2,000.00) | |
| Due Diligence Fees (US\$7,500.00) | |

Fit and Proper Tests

In St. Kitts and Nevis, Fit and Proper Tests form a fundamental part of determining whether a TCSP is licensed and whether on an ongoing basis, the licensees remain fit and proper to continue to function in their roles. The ultimate decision of an individual's fitness and propriety may be based on a number of factors including his/her competency, probity, expertise, judgment and integrity.

Monitoring and Supervision

The nature of monitoring and supervision for TCSPs will depend on the risk profile determined for each entity. Various aspects of monitoring include onsite and offsite inspections.

Training and Guidance

Training is vital to ensure that TCSPs understand their regulatory obligations and AML/CFT responsibilities. Information and guidance should be relevant, timely and accessible. The FSRC provides quarterly and annual training seminars as well as targeted training for regulated entities. Monthly newsletters and international publications are also forwarded regularly to TCSPs.

REFERENCES

- FATF Guidance: RBA for TCSPs
- St. Christopher and Nevis FSRC Act Cap 21:10
- The Financial Services (Trust and Corporate Business) Regulations