



FINANCIAL SERVICES REGULATORY AUTHORITY SAINT LUCIA

GUIDANCE NOTES

REGISTERED AGENT AND TRUSTEE LICENSING ACT, Chapter 12.12 of the Revised Laws of 2008

**Revised by
Financial Services Regulatory Authority
March 30, 2015**

PREAMBLE

The Financial Services Regulatory Authority is empowered, under Section 15 of the Financial Services Regulatory Authority Act, No. 13 of 2011 (FSRA Act), to issue guidelines.

This publication has been prepared by the Financial Services Regulatory Authority (FSRA/Authority), Saint Lucia, to provide Registered Agents and Trustees guidance on some of the principal issues contained in the FSRA Act and the Registered Agent and Trustee Licensing Act (RATLA).

For all legal purposes the reader should refer to the official texts of the Acts and Regulations, and must not depend on this guide as a substitute for either.

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I. DUE DILIGENCE AND ANTI-MONEY LAUNDERING

Registered Agents and Trustees (RA&T) are bound by the Code of Conduct which forms part of the Regulations (Registered Agent and Trustee Licensing Regulations) and by the Money Laundering (Prevention) Act, No. 8, 2010 and the Anti-Terrorism Act 2003.

The RATLA and the Code of Conduct impose inter alia, the following obligations on Registered Agents and Trustees:

- (1) an obligation to act with due care and diligence towards their clients;
- (2) an obligation to take all reasonable measures to:
 - a. verify the identity of clients,
 - b. obtain references in respect of these clients,
 - c. ensure that their clients are in no way using the Registered Agents and Trustees' services as a conduit for the conduct of money laundering or similar offences.

The International Business Companies Regulations, Section 124 (Schedule 1 Form 1 Attachment 3) include a Due Diligence questionnaire which service providers are required to complete in discharging their statutory duty in respect of all IBCs. The International Trust (Form) Regulations, Section 56 (Form 1) contains an equivalent questionnaire in respect of international trusts.

Application of the General Law

The position at common law is that a RA&T would, in the event of litigation, be able to absolve himself of liability if he did all that was reasonable in the circumstances to prevent loss or damage from occurring. What is 'reasonable' will depend on the circumstances of each case.

These minimum standards therefore are not intended to override (nor could they) the general law but will serve as matters to be taken into account in determining whether a RA&T has met a reasonable standard in the performance of his statutory duty. As far as the regulatory regime of the Authority is concerned, these minimum standards are the ones against which we would judge the performance of

each RA&T. They may very well carry some evidential weight in the eyes of the court in any litigation.

Using an Intelligence Agency

Most of the clients with whom RA&Ts will come into contact would be non-St. Lucian. They may therefore find it necessary (though not compulsory) to employ the services of an international investigative agency. They may be prepared to use the services of at least one such reputable intelligence agency to check the identity and backgrounds of prospective clients, where the client's background and/or reputation is a cause for doubt or concern.

One possible way by which RA&Ts may seek to reduce the cost of due diligence is to form an Association of RA&Ts which can then negotiate a single rate for each of its members. The importance of networking cannot be overlooked, and RA&Ts should liaise with their local and overseas peers on matters pertaining to the reputation of potential clients. This is a useful source of intelligence gathering. Further, once such valuable intelligence is obtained on a "bad" client, all other RA&Ts and the Director should be promptly informed.

Minimum Due Diligence Checks

A. Verifying Client's Identity

The Money Laundering (Prevention) Act imposes a statutory obligation on all financial institutions to verify their clients' identities. For the purposes of this Act, RA&Ts are deemed "financial institutions" in keeping with Schedule 2 of the Money Laundering (Prevention) Act, No. 8 of 2010. It is not enough that RA&Ts obtain a copy of the client's identification records. Verification of identity requires that the RA&Ts also prove that the client actually is the person whom he proclaims to be. In short, RA&Ts need to ensure that the client standing before them is the lawful owner of the identification documents upon which they rely. Where possible they should meet the client in person and compare him with the photograph in his identification documents. RA&Ts should retain

a copy of the client's passport (certified copy) on his files for inspection by the Authority in due course.

Steps to be taken by RA&Ts in verifying identification.

- 1) Obtain copies of all passports held by the client. Where the RA&T has not seen the originals, he should ensure the copies are notarised or apostilled. It may also be prudent to obtain a signed declaration in respect of the number of passports held. This document should obviously show **Name, Date of Birth, and Place of Birth.**
- 2) Obtain copy of client's driver's licence, using the same principle as in (1) above.
- 3) Obtain evidence of the client's social security (or similar) number.
- 4) Obtain evidence of client's current address and a copy of a recent utility bill linking him with that address.
- 5) An up to date copy of the client's Curriculum Vitae.
- 6) A banker's reference in respect of the client.

Where the client is a corporation or trust, RA&Ts should obtain the appropriate documents in respect of each beneficial owner and also in respect of each nominee (where appropriate).

B. Verifying client's solvency, credit worthiness and reputation/character.

Under this heading, RA&Ts need to obtain three (3) types of references in respect of their prospective clients;

- 1) references pertaining to professional competence, qualifications and status and;
- 2) references pertaining to credit worthiness and solvency;
- 3) references pertaining to character.

Needless to say, the client will put forward the names and addresses of the reference providers. These would in turn be approached directly by the RA&T. This is the preferred approach, though some clients will deliver pre-prepared references to the RA&T.

As a general rule, references should not be provided by persons connected to the client, e.g. the RA&T himself, or a relative of the client. Such references are unacceptable. However, where a reference is provided by the client's own lawyer or accountant, such a reference will be accepted.

Where references are received from little-known reference providers, the bona fides of such a provider may itself need to be verified.

Where references are received on "unofficial" paper, or bear no address, telephone number or other means of contact with the provider of the references, such references should be discounted altogether.

For their own protection, RA&Ts may find it necessary to fix the provider of the reference with knowledge of the purpose for which the reference is to be used and in particular, to let it be known that reliance will be placed on the reference.

RA&Ts should use their judgement and discretion in determining what weight/reliance they wish to place on references which bear a disclaimer notice.

At the minimum, references should contain the following information:

- 1) the purpose for which the reference is being provided;
- 2) how long the reference provider has known the subject of the reference, i.e. the client;
- 3) an expression of opinion on the client's professional competence and personal integrity, and, in the case of a banker's reference, the client's financial stability.
- 4) some indication of the provider's own bona fides i.e. qualifications, etc. This is especially important in cases where references are on unofficial stationery or paper which bear no official letterhead.

In appropriate cases, (e.g. in the case of a disposition onto trust) or where the IBC is to establish a bank, insurance company or mutual fund, RA&T's should also seek the following from the client:

- 1) **"affidavit of solvency"**, stating that the disposition does not render the settlor/client insolvent.

- 2) **“affidavit of source of funds”** stating how the client came by the funds in question.
- 3) **“audited statement of net worth”** certified by the client’s chartered accountant should be required where the client (as shareholder) wishes to act as promoter to a company seeking a banking, insurance or mutual fund licence.

In addition, RA&Ts may consider whether the client should be required to sign a letter of waiver absolving the RA&T of any liability (to the Client) for loss suffered by the Client as a result of the RA&T’s reliance on the Client’s own representations. However, such a waiver would normally be included in the contract/engagement letter which each RA&T should have with his clients.

Steps to be taken by RA&Ts in verifying non-criminal activity.

In addition to the checks already referred to, RA&Ts (especially those acting as Registered Trustee), need to ensure that their business is not being used as a conduit for crime (including money laundering). In that regard, RA&Ts have a duty to confirm that their clients have no criminal record. Therefore, a **“police clearance”** should be required where the client (as shareholder) wishes to act as promoter to a company seeking a banking, insurance or mutual fund licence.

RA&Ts may find the following procedures a reasonable minimum to follow:

- (1) Be aware of, and discharge their responsibilities under the Money Laundering (Prevention) Act 2010. In particular, RA&Ts should always discharge their obligations under Part IV of the Act.
- (2) In discharging their statutory obligations, RA&Ts would be expected to:
 - a. observe the procedures already referred to above;
 - b. impose upon their clients a continuing duty to notify the RA&T and the Authority of adverse changes in the client’s criminal record, civil liabilities and the status of any application made or to be made in any jurisdiction in the world;

- c. monitor unusually large or systematic movements of funds in or out of the Client's account; The threshold is EC\$25,000.00 in keeping with the Money Laundering (Prevention) Act.
- d. report suspicious transactions to the Financial Intelligence Authority.

For a fuller exposition, RA&Ts should refer to the "Money Laundering (Prevention) (Guidance Notes) Regulations" published in 2010.

Due Diligence Enquiries by the FSRA

Where clients intend to seek an international banking, international insurance or international mutual fund licence, the Authority will commission further due diligence checks on the directors/shareholders/managers of such entities. (This safeguard however, does not relieve the RA&T of his own responsibilities stated above).

Where any promoter of the applicant fails the due diligence test, the licence application also fails and the Authority will recommend that the application be taken no further.

Such checks to be commissioned by the Authority include, but are not restricted to:

- 1) making enquiries through the local and international police;
- 2) making enquiries through other international regulatory bodies or persons;
- 3) seeking the consent of the home regulator where an existing foreign entity wishes to set up an offshoot in St. Lucia; or wishes to re-domicile here.

RA&Ts and their clients should note that where a home regulator objects, or fails to give the consent sought, the licence application will fail.

II. OTHER REGULATORY REQUIREMENTS

Annual Returns

In order to maintain statistical information and monitor the business of international financial services representation conducted by licensees, a Reporting Form is included as part of the monitoring process. This is an additional requirement in keeping with Section 15(2)(c) of the Registered Agent and Trustee Licensing Act, which states: **“the Director is entitled at all reasonable times to request any information, return or certificate from a licensee, either from time to time or on a regular basis”**.

The completed reporting form is required to be submitted within two (2) months of the end of the financial year of the licensee. The form can be forwarded to us via email at: finsersup@gosl.gov.lc.

ANNEX 1

Instructions for Reporting Forms for Registered Agents and Trustees

Reporting Instructions

- A. This form is to be completed by each licensed **Registered Agent and Trustee**, as at the date of its financial year end. Where an institution conducts only trustee services or only acts as a Registered Agent, only the relevant sections of the form need to be completed.
- B. Where a licence is permitted to include the operations of a subsidiary company, this should be noted in the response to question 1 of the form. Otherwise, however, the report is to be made purely on a solo basis – i.e. relating to the activities of the licensed entity alone.
- C. Where trust business is conducted within a bank licensed in the jurisdiction, and that business is already subsumed within the financial data provided in the bank’s own prudential reporting, there is no need to complete the balance-sheet information asked for in question 8 of this form.
- D. All amounts are to be reported in thousands of US dollars (USD 000s), using the exchange rates prevailing at the close of business on the date to which the figures relate, and employing a valuation methodology that is consistent with that used in the preparation of the company’s financial statements. Where such consistency is not possible for any reason, an explanation of any differences should be provided.
- E. Forms are to be submitted within **2 months** of the end of the financial year to which they relate.

Notes for Reporting Institutions

(Numbers relate to the question numbers in the form)

- 1 Give the full legal name of the entity

- 2 Specify whether the business relates solely to trust (company providing registered trustee services) or company management (company providing registered agent services), or includes both.

- 3 Provide the date of the year-end of the institution, to which the data relate.

- 4 The person completing the form should be of suitable competence and in a position to provide the necessary certification of its accuracy. If errors subsequently come to light, these must be notified as soon as practicable.

- 5 Names of all directors, senior managers and officers should be provided, together (where relevant) with details of all Board Committees or sub-Committees of which they are members. ‘Director’ includes any person who occupies the position of director, by whatever name called. ‘Senior manager’ includes a chief executive and any persons who, under the immediate authority of a director or chief executive, exercise managerial functions or are responsible for maintaining accounts or other financial records of the institution. Officer includes the secretary of a company.

- 6 Numbers of employees should exclude any employees listed in the response to question 5 above; identify also the number holding relevant professional qualifications; and where employees whose services are available to the institution are in fact employed by a separate entity (e.g. a holding company or sister subsidiary), please state name of employer.

- 7 Please identify insurance held against the major financial risks of the business – notably: errors

and omissions, directors and officers liability, fidelity and forgery, loss of property, computer crime, trust real property, and business interruption.

8 Only abbreviated balance-sheet information is required: however, please use the ‘other assets’ and ‘other liabilities’ lines as necessary to include items not otherwise specified. Only include within ‘client funds’ any portion of client assets that are accounted for. Total fiduciary assets held represent all assets for which the licensee acts as trustee, custodian or in a similar fiduciary capacity.

These need to be sub-divided between those held and managed at the discretion of the licensee as trustee and those over which the firm does not have discretionary control but acts in a ‘directed’ capacity. Whether to view an account as discretionary or non-discretionary should be based on the predominant responsibility of the licensee.

With regard to income and expenditure items, again only broad summary data are required. Where the licensee conducts both trust and company management business, it should try as far as possible to identify and allocate the fees for the two business streams separately. For example, where a trust relationship includes the management of underlying companies which hold some of the trust assets, the portion of fees relating to the management of the companies should, as far as possible, be omitted from the trust fee income and allocated to company management activity.

9 - 10 Complaints may be received in writing (letters, faxes, e-mails etc) or orally. Licensees should have procedures for identifying and dealing with complaints.

11 -12 Licensees should have procedures for identifying and dealing with errors and omissions. Data provided here should include all identified errors and omissions, whether or not they eventually resulted in a direct financial cost to the licensee and regardless of whether or not any resulting loss was the subject of a subsequent claim against the licensee’s insurers.

13-14 Licensees should have in place a program of routine review of trust and companies under management with a view to seeking to ensure that their obligations to clients are satisfactorily met

on an ongoing basis. Such review work can be conducted internally e.g. by a designated member of the licensee's professional staff or by a compliance department, or externally (e.g. by the external auditors or another professional firm).

15 Those conducting review work, whether internal or external persons, should be encouraged to identify potential issues or concerns relating to aspects of the licensee's control environment, with a view to minimising the risk of recurrence and the possibility of material financial costs being incurred.

16 and 17 Licensees need to ensure that they comply at all times with the requirements imposed under Proceeds of Crime Act, Money Laundering (Prevention) Act and Anti-Terrorism Act with regard to identifying their customers, establishing their bona fides, and monitoring transactions conducted in an account relationship. These arrangements need to include (question 17) regular review of existing clients to ensure that no material new information needs to be considered (e.g. that a client has subsequently become a Politically Exposed Person (PEP)).

18 "Introduced business" can represent a source of potential weakness for a licensee's client due diligence procedures. Licensees should never rely on due diligence conducted by intermediaries or other persons introducing business to them unless they have taken steps to satisfy themselves about the status of the introducer and the standards to which the introducer is subject. Where a licensee does not place reliance on the due diligence performed by the introducer but instead conducts his own full due diligence on a client, there is **no** need to include the relevant introducers in answering this question.

19 Please provide a broad percentage allocation of total trust business, based on the geographic origin of the settler(s) and beneficiaries. For this purpose, the relative scale of the assets of individual trusts should be ignored: allocate based on the total number of trust relationships.

20 Please provide a broad overview of the nature of the trusts concerned, again based on the total

number of trusts administered.

21 Please indicate if there were any new products added or any business or product lines discontinued.

22 Please identify the total number of trusts for which the licensee exercises investment discretion.

This would include situations in which the licensee is authorised to determine which securities or other property are to be purchased by or for an account, as well as situations in which the licensee makes the substantive recommendations as to the purchase or sale of securities or other assets, even if some other person may have responsibility for the formal investment decision.

23 It is appreciated that, for many trusts, current or recent market values may not be available. Where there is material reliance on e.g. historic cost data or substantial uncertainty about values that should be ascribed to trust assets, this should be noted in the response to the question.

24 This question seeks to focus on those trusts for which the management of liquid and other financial assets has been delegated to professional investment managers. Include within the data all trusts for which any portion of the assets has been outsourced to professional managers.

25 In listing the professional managers used by the licensee, please ensure that the location of the manager is clear in cases in which business is conducted in 2 or more jurisdictions.

26 Please provide a broad percentage allocation of company management business, based on the total number of companies managed and the geographic origin of their beneficial owner(s).

27 Please indicate the number of clients for which management services were provided as at the reporting date

28 Please identify within the list all facets of the company management business provided by the

licensee.


ANNEX 2

Reporting Forms for Registered Agents and Trustees

The form, in its entirety can be download from:

<http://www.finance.gov.lc/departments/view/62>

Sample:

	
FINANCIAL SERVICES REGULATORY AUTHORITY	
Reporting Package for Registered Agents and Registered Trustees	
Reporting Institution:	
2) Type of Licence:	Registered Trustee / Registered Agent / both (Delete as ap
3) Report Period:	
Date of Submission:	
Contact Information:	
Name of person completing form	
Position Held	
Email Address	
Telephone Number	
I certify that this information provided in this return accurately reflects the position of the above institution as at the reporting date. If I subsequently become aware of information indicating that any information may be incorrect in a material particular, I will advise the FSRA accordingly.	
(Signature & Name of Director/Senior Manager)	

