

[made by the Anguilla Financial Services Association and brought into operation on the 15th October 2002 pursuant to Article 2.2 of the Constitution of the Anguilla Financial Services Association]

Preliminary

1. In this Code, unless the context otherwise requires,

“Anti-Money Laundering Regulations” means the Anti-Money Laundering Regulations (R.R.A. M 100-1) and Guidance Notes enabled under the Money Laundering Reporting Authority Act (R.S.A. c M 100);

“Association” means the Anguilla Financial Services Association

“Board” means the Appeal Board established in accordance with section 23;

“Client” means a person who contracts the services of a service provider;

“Dispute Settlement Action” means an action brought by a client or service provider before the Dispute Settlement Committee of the Association for resolution in accordance with the provisions of section 15;

“Dispute Settlement Committee” means a committee constituted under the rules and procedures of the Association for the purposes of this Code;

“Disciplinary Committee” means a committee constituted pursuant to section 18 of this Code;

“End user client” means a client of a service provider who contracts the services of that service provider for the benefit of the client;

“Government” means the Government of Anguilla;

“Professional Service Client” means any organisation or person, such as a law firm, an accountant, a bank, a trust company or other similar organisation or person which or who contracts the services of a service provider on behalf of the clients of the organisation or person;

“Registrar” means the Registrar of Companies

“Service Provider” means a person who

- (a) is licensed as a bank or trust company under the Banking Act (B 10) or the Trust Companies and Offshore Banking Act (T 60)
- (b) is licensed to carry on the business of company management under the Company Management Act (C 75);
- (c) is licensed to carry on business pursuant to the Securities Act (11/2001);
- (c) is a member of good standing of any professional association approved by the Executive Council of the Association.

Object and Purpose

- 2. (1) The objects and purposes of this Code are
 - (a) to ensure that service providers conduct their businesses in and from within Anguilla in a sound professional manner so as to maintain and enhance the reputation of the Anguilla as an international financial centre;
 - (b) to ensure that measures are adopted to secure and protect the interests of service providers and deter the use of Anguilla for criminal and/or money laundering purposes;
 - (c) to maintain sound ethical conduct and practice between service providers and their clients and to foster co-operation in investigative matters conducted in accordance with the laws of the Anguilla; and
 - (d) to provide a mechanism for self-regulation amongst service providers to ensure the integrity of the financial services sector.

Internal Procedures

- 3. (1) Every service provider shall
 - (a) maintain a high standard of professional conduct in the performance of his duties as a service provider and to conduct themselves in a like manner;

- (b) maintain financial resources commensurate with the nature and volume of business conducted by such service provider as may be required by this Code; and
 - (c) refrain from engaging himself or any of his employees in any illegal or reprehensible conduct.
 - (2) No service provider shall indulge in any promotional or marketing activity, whether within or outside the Anguilla, that may reflect adversely on other service providers or the reputation of the Anguilla as an international financial centre.
- 4.
 - (1) A service provider shall employ staff who are able to provide competent service in relation to the type of service offered or provided by the service provider.
 - (2) Every service provider shall develop a continuing education and training programme for his staff and, in particular, shall provide at least once every year, training and guidance to his staff in relation to the Anti-Money Laundering Regulations, the provisions of this Code and any rules made thereunder and the obligations of the service provider under other laws with respect to the business of the service provider.
- 5. Every service provider shall prepare and maintain in his internal monitoring, for use by his staff, a manual outlining the monitoring procedures to be adopted in the office for purposes of ensuring compliance with the Anti-Money Laundering Regulations and the provisions of this Code.
- 6.
 - (1) Every service provider shall appoint or designate staff, as may be approved by the Director of Financial Services, as a Compliance Officer for the purposes of the Anti-Money Laundering Regulations and this Code.
 - (2) A Compliance Officer shall
 - (a) be a senior officer with necessary qualifications and experience to enable him to respond sufficiently well to enquiries relating to the organisation and its business;
 - (b) be responsible for establishing and maintaining a manual of compliance procedures for use by his organisation as required by the Anti-Money Laundering Regulations;

- (c) be responsible for ensuring compliance by the members of his organisation with the compliance procedures established by him under paragraph (b) and with the provisions of this Code and any rules made thereunder and any other laws relating to the business of the service provider by whom he is appointed or designated;
- (d) act as the liaison between his organisation and the Financial Services Department in matters relating to compliance with the provisions of this Code and any rules made thereunder and any other laws relating to the business of the service provider by whom he is appointed or designated;
- (e) provide the Association and Financial Services Department with annual reports on the measures adopted by his organisation in complying with the requirements of this Code and any rules made thereunder and any other law relating to his service provider's business, and
 - (i) any policies and procedures that the Association may formulate from time to time; and
 - (ii) any directives that the Director of Financial Services may issue from time to time.

Client Relations

7. (1) In order to efficiently and effectively provide a client with a professional service, a service provider shall endeavour at all times and adopt such measures as may be necessary to know the client.
- (2) A service provider shall
- (a) not place his own financial gains before the legitimate needs or benefits of his clients;
 - (b) subject to paragraph (d), take such measures as may be necessary to protect the confidentiality of his client's documents in his custody;
 - (c) endeavour to charge just and proper fees and avoid fee levels that may lead to a lowering of professional standards in the provision of services to clients; and

- (d) be guided at all times by the highest standards of client confidentiality and, in particular, shall
 - (i) not give or disclose to a third party information pertinent to the affairs of a client without the written approval of the client or unless the giving or disclosure of such information is required by law; and
 - (ii) not, except as provided in sub-paragraph (i), make public any communication between the service provider and the client.
- (3) For the purposes of
 - (a) sub-section (2)(b), “documents” includes information stored in electronic form; and
 - (b) sub-section (2)(c), the question as to whether the fees charged by a service provider are just and proper
 - (i) shall be determined by the Association and where the Association so determines the service provider concerned shall comply with any directions that the Association may give; or
 - (ii) may be made the subject of a complaint under section 20.
- 8. Subject to any contractual, professional or legal rights and obligations, a service provider shall
 - (a) accord full co-operation to the Government to ensure the proper operation of the financial sector; and
 - (b) assist generally in the improvement and practice of the law in matters relating to the financial sector through the Association.
- 9. A service provider shall maintain information required by the law of Anguilla on a file about each professional service client and end user client so as to enable any investigation duly sanctioned by law to be carried out with regard to such client.
- 10. (1) A service provider shall obtain from each professional service client who instructs him,

- (a) details of the professional service client's principal place of business, business address, telephone, facsimile and telex numbers and the professionals concerned in the professional service client;
 - (b) written evidence of the first hand involvement of the professional service client in the verification of the details provided under paragraph (a); and
 - (c) satisfactory sources of reference to provide adequate indication on the reputation and standing of the professional service client.
- (2) A service provider shall keep a record in respect of each professional service client, including any information obtained under subsection (1).
- (3) Where the service provided to a professional service client is for any reason discontinued, the record kept in his pursuant to sub-section (2) shall continue to be maintained for a period of not less than six years from the date of discontinuation.
- (4) Before a service provider undertakes to form a company on the instructions of a professional service client, he shall take such steps as are necessary to ensure that the professional service client has adequate due diligence procedures in place which accord with the standards prescribed or envisaged by the Anti-Money Laundering Regulations and this Code.
- (5) Where, pursuant to sub-section (4), a service provider
 - (a) finds that a professional service client does not have due diligence procedures in place, or
 - (b) is of the opinion that the due diligence procedures established by a professional service client do not accord with the standards prescribed or envisaged by this the Anti-Money Laundering Regulations and this Code,

he shall refuse to undertake to form the company instructed by the professional service provider, unless the professional service provider complies fully with the requirements of sub-section (4).

- (6) Where, prior to the coming into force of this Code, the information referred to in subsection (1) is not in the possession of a service provider in respect of a professional service client, the service provider shall as soon as practicable, and in any case within one year after the coming into force of this Code, obtain the information.
11. (1) A service provider shall
- (a) prepare and maintain written procedures that will ensure that the identity of each end user client to whom he provides a service is known;
 - (b) maintain on his records a reference from a recognised banking organisation or other professional service organisation in respect of an end user client that he serves; and
 - (c) maintain on his records details of the end user client's address and telephone, facsimile and telex numbers.
- (2) Where the service provided to an end user client is for any reason discontinued, the records kept in his case pursuant to sub-sections (1) and (2) shall continue to be maintained for a period of not less than six years from the date of discontinuation.
- (3) Where a service provider is instructed by an individual end user client, the service provider shall, in addition to the information obtained pursuant to subsection 1 (a) to (c) above, maintain on his records a photographic identification (such as a passport or identity card) of the individual end user client.
- (4) Where, prior to the coming into force of this Code, the records referred to in sub-sections (1) and (2) are not in the possession of a service provider, in respect of an end user, the service provider shall as soon as practicable, and in any case within one (1) year after the coming into force of this Code, obtain and keep the records.
12. A service provider shall, to the extent relevant to the services provided by him, maintain
- (a) a record of the opening of bank and investment accounts and copies of statement of those accounts as they relate to the service provider; and
 - (b) in respect of clients for whom it provides fiduciary services,

- (i) copies of minutes of meetings of shareholders, directors and committees;
- (ii) copies of registers of directors and officers;
- (iii) copies of registers of mortgages, charges and other encumbrances; and
- (iv) copies of any documents or materials required to be kept by such service provider under the relevant statute under which the entity was formed or incorporated.

13. A service provider should clearly understand that a professional fiduciary has all the duties of a non-professional fiduciary. To this end, a service provider that provides fiduciary services should

- (a) be aware and understand the obligations and responsibilities imposed on him by the relevant legislation;
- (b) be aware of , understand and obey the constitution of the relevant company and deal with the assets of such company in accordance with the constitution;
- (c) promote the objectives of the company and act in its best interests;
- (d) not delegate its powers and should exercise independent judgement;
- (e) exercise the appropriate care, skill and diligence;
- (f) avoid conflicts of interest; and
- (g) should not use the property of the relevant company, or knowledge acquired through acting as director for his own personal benefit.

14. Where a service provider receives instructions to act as a trustee for a trust, he shall, as regards the person giving the instructions, comply with the requirements of section 11(1)(b) and (c) and (4) and the reference in those provisions to end user client shall, for the purposes of this sub-section, be construed as a reference to the person giving the instructions to the service provider and to the settlor or beneficiary of the trust where appropriate.

Termination of Services

15. (1) A client who engages the services of a service provider may at any time terminate those services after settling his liabilities with the service provider.
- (2) Notwithstanding sub-section (1), where a client who terminates his engagement with a service provider
- (a) disputes his liability with the service provider and has lodged a dispute settlement action with the Association under sub-section (3), or
 - (b) has commenced legal action in court against the service provider,
- he may engage the services of another service provider, but this is without prejudice to his liability, if any, to the first service provider.
- (3) Where
- (a) a client who intends to terminate his engagement with a service provider disputes any liability claimed by the service provider, or
 - (b) a service provider makes a claim which the client disputes and does not settle before terminating his engagement with the service provider,
- he may lodge a dispute settlement action with the Association
- (i) outlining his relationship with the party with whom he is in dispute and the nature of the dispute or claim;
 - (ii) indicating, in the case of the client, his actual liability, if any, with the service provider;
 - (iii) indicating, in the case of the service provider, his actual claim; and
 - (iv) requesting a settlement of the dispute by the Association.

- (4) Where the Association receives a request to settle a dispute, the Executive Council shall, within ten days thereof constitute a Dispute Settlement Committee which shall notify the other party and invite both parties and any other party who, in the opinion of the Dispute Settlement Committee, may be interested to agree to be bound by any decision regarding the instant matter and if the parties so agree, the Dispute Settlement Committee may invite the parties to present their cases before the Dispute Settlement Committee.
- (5) Any party to a dispute settlement action may appoint a barrister-at-law to represent him before the Dispute Settlement Committee.
- (6) The decision of the Dispute Settlement Committee on any dispute settlement action shall be final and the parties to the action shall be bound by decision subject to sub-section (4).
- (7) Notwithstanding anything contained in this section, where a client engages the services of a new service provider, that service provider shall ascertain the client's liability, if any, with his previous service provider and assist as far as possible in ensuring that the client settles such liability.
- (8) Where a service provider has been instructed by a client who has terminated his engagement with another service provider, he shall, before accepting the business of the client, ascertain in writing from the other service provider whether to the best of that other service provider's knowledge
 - (a) there are any professional or ethical reasons why he should not accept the business of the client;
 - (b) the client has engaged in any act which has tarnished or is likely to tarnish the reputation of the Anguilla as an international financial centre; and
- (9) Where information is requested of a service provider under sub-section (8), he shall, subject to the provisions of the Confidential Relationships Act (C 85) and any other law of Anguilla, within seven days after the receipt of the information, provide a written response to the request.
- (10) A service provider whose services with a client are terminated shall, within thirty days from the date of such termination,
 - (a) inform the Registrar of that fact and the date of termination; and

- (b) deliver to the client or the client's new service provider all relevant books and records relating to the client, including the client's Articles of Association, certificate of incorporation, share register, record of appointment of first directors, copies of minutes and resolutions and impression of the corporate seal.
- (11) Where a dispute settlement action is lodged in accordance with sub-section (3), and subject to subsection (4), a service provider may not comply with the requirements of sub-section (10) until the Dispute Settlement Committee gives its decision, and the period referred to in sub-section (10) shall begin to run a day after the Dispute Settlement Committee has given its decision as if that were the date on which the service provider's services with the client had been terminated.
- 16.
 - (1) A service provider shall not file documents or settle fees with, or restore a struck off company to, the Registrar for a client that he does not represent as a service provider, unless he obtains the consent of the service provider of record, which consent shall not be unreasonably withheld.
 - (2) Where a third party intends to bring legal action against a struck off company, he may, notwithstanding sub-section (1), take such measures as are necessary to restore the company for purposes of instituting the legal action and may in this respect file any documents and settle any fees that may be required.
 - (3) For the purposes of sub-section (1), "service provider of record" means the service provider whose services are retained by the client and have not been terminated as provided in section 15.
- 17.
 - (1) No service provider shall charge a client an "exit fee" for the termination of services of the service provider.
 - (2) Sub-section (1) does not apply if at the time of accepting the client's business the service provider informs the client in writing that upon the termination of the service provider's services
 - (a) the client will be required to pay an "exit fee" as may be determined by the service provider; and
 - (b) the client accepts in writing to pay the exit fee that service provider may charge.
 - (3) For the purpose of this section, "exit fee" means the fee charged by a service provider for the transfer by a client from that service provider to another service provider but does not include any fee charged by the Companies Registry as a consequence of any change as aforesaid.

Disciplinary Committee

18. (1) There shall be established a Disciplinary Committee which shall perform such functions and exercise such powers as are imposed or conferred on it by or under this Code in relation to persons who are members of the Association.
 - (2) The members of the Disciplinary Committee shall be constituted as follows:
 - (a) three persons, from amongst the membership of the Association, who shall be appointed by the Executive Council of the Association;
 - (b) one barrister-at-law appointed by the Executive Council of the Bar Association; and
 - (c) the Director of Financial Services or his representative, *ex officio*.
 - (3) The members of the Disciplinary Committee shall be appointed for such period of one (1) calendar year or for such period as the Association may determine in accordance with its rules and procedures.
 - (4) The Disciplinary Committee shall appoint from amongst the members of the Committee a chairman who shall preside at the proceedings of the Disciplinary Committee.
19. The person appointed as Secretary to the Association shall also act as secretary to the Disciplinary Committee and he shall be responsible for
 - (a) receiving complaints on behalf of the Disciplinary Committee;
 - (b) keeping the records of the Disciplinary Committee; and
 - (c) performing such other functions as the Disciplinary Committee may determine.
20. (1) A service provider or any other person may lodge a complaint to the Disciplinary Committee in respect of any matter relating to an alleged breach by a person of the provisions of this Code or any rule made thereunder.

- (2) The Executive Council of the Association may refer to the Disciplinary Committee any matter which, in the opinion of the Executive Council, may constitute a breach of conduct by a service provider or constitutes conduct which is not in accordance with the requirements or is contrary to the prohibitions, of the provisions of this Code or any rule made thereunder.
 - (3) Every complaint shall be in writing addressed to the Disciplinary Committee and shall state
 - (a) the nature of the complaint;
 - (b) the person to whom the complaint relates and his address;
 - (c) the name of the complainant and his address; and
 - (d) the evidence relating to the complaint.
 - (4) No complaint shall be received under this section which relates to, or could be made the subject of, a dispute settlement action under section 14 unless that and evidence is received that such procedure has been considered and rejected by one of the parties to the dispute.
- 21.
- (1) Upon receiving a complaint under section 20, the Disciplinary Committee shall notify the person against whom the complaint relates informing him of the grounds of the complaint and inviting him to respond to the complaint in a formal hearing to be held by the Disciplinary Committee.
 - (2) The Disciplinary Committee shall fix the date of the hearing of the complaint which shall be held at such time and place as the Disciplinary Committee may determine.
 - (3) In hearing a complaint under this section, the Disciplinary Committee
 - (a) shall determine its own rules of procedure;
 - (b) may invite the parties to the proceedings to submit written and oral evidence to the Disciplinary Committee;
 - (c) may request the attendance of any person as a witness before the Disciplinary Committee; and

- (d) may request any person who may have records relevant to a matter before the Disciplinary Committee to produce those records for the purposes of the hearing subject to the provisions of the Confidential Relationships Act (C 85) and any other law of Anguilla.
 - (4) The complainant and the person against whom the complaint relates may, at the hearing of the complaint, elect
 - (a) to be represented by a barrister-at-law of his choice;
 - (b) to make representations before the Disciplinary Committee either orally or in writing or both, unless the Disciplinary Committee directs otherwise.
- 22. (1) Upon concluding a hearing into a complaint, the Disciplinary Committee shall
 - (a) take its decision by a majority of its members who heard the complaint;
 - (b) prepare and issue a written report comprising its decision to the parties to the complaint and the Council; and
 - (c) act in accordance with the requirements of subsection (2).
- (2) The Committee shall, after concluding a hearing into a complaint,
 - (a) dismiss the complaint; or
 - (b) where it finds against the person to whom the complaint relates,
 - (i) admonish him;
 - (ii) impose a fine not exceeding five thousand dollars (EC\$ 5,000.00) on him;
 - (iii) suspend or disqualify the membership of the service provider of the Association;
 - (iv) make such recommendation as it considers fit to the Government in relation to the person; or

- (v) make such order as it considers fit in relation to the person, having regard to the circumstances of the complaint.
- (3) Where the Committee imposes a fine on a person under sub-section (2)(b)(ii), it may, if of the opinion that exceptional circumstances existed in respect of the complaint for which the person is fined, order that the fine shall not take effect unless, during a period specified in the order, the person is found guilty with regard to another complaint brought under this Code.
- (4) Where a person is found guilty of another complaint while a fine against him is suspended under sub-section (3), he shall, in addition to any penalty imposed upon him under sub-section (2) for that other complaint, pay the fine which was suspended under sub-section (3).
- (5) Subject to sub-section (3), any fine imposed pursuant to this section shall be paid into the fund, and any failure to pay the fine shall be dealt with in accordance with the powers of the Disciplinary Committee as conferred by sub-section (2) (ii) to (v).

Appeal Board

- 23. (1) There is established a board to be known as the Appeal Board which shall perform the functions and powers imposed or conferred on it by or under this Code.
 - (2) The members of the Board shall be constituted as follows:
 - (a) one barrister-at-law in the public service who shall act as chairman of the Board, appointed by the Attorney General; and
 - (b) two persons, not being members of the Association or the Disciplinary Committee, appointed by the Executive Council of the Association.
 - (3) The members of the Board shall be appointed on such terms and conditions as the Association may determine.
- 24. The person appointed as Secretary to the Association shall also act as secretary to the Board and he shall
 - (a) be responsible for preparing the records of appeal where an appeal is lodged under section 25 and keeping the records of the Board; and

- (b) perform such duties as the Board may direct.
- 25.
 - (1) Any person who is aggrieved by a decision of the Committee may, within twenty-one days of the decision, file a notice of appeal against the decision to the Board.
 - (2) A notice of appeal under sub-section (1) shall be in writing addressed to the Board setting out the grounds of appeal and it shall be in such form as the Board may determine.
- 26.
 - (1) Upon receipt of a notice of appeal, the Board shall proceed to hear the appeal on such date and time as the Board may determine.
 - (2) In hearing an appeal under sub-section (1), the Board shall
 - (a) adopt such rules of procedure as it may determine;
 - (b) have regard to the written decision of the Disciplinary Committee and any other document that forms part of the record of appeal; and
 - (c) allow any party to the proceedings before the Board to be represented by a barrister-at-law of his choice.
- 27.
 - (1) The Board shall, after hearing an appeal,
 - (a) dismiss the appeal;
 - (b) allow the appeal;
 - (c) make an order remitting the case to the Disciplinary Committee for further hearing with such directions as it may consider fit; or
 - (d) vary the decision of the Committee in such manner as it considers fit.
 - (2) The decision of the Board on an appeal shall be final.

Miscellaneous

- 28.
 - (1) There is established a Fund to be known as the Service Providers Fund.
 - (2) The Fund shall consist of

- (a) donations, grants, bequests and gifts made by persons approved by the Executive Council of the Association;
 - (b) contributions made by service providers in accordance with rules made by the Association;
 - (c) returns realized from any investment made under sub-section (4); and
 - (d) any other monies that may vest in or accrue to the Fund, whether in terms of this Code or otherwise.
- (3) For the purpose of the Fund, the Executive Council of the Association shall open an account with such bank in the Anguilla as the Executive Council may consider fit.
- (4) Where monies credited to the Fund are not immediately required for the purposes of this Code, those monies may be invested in such manner and for such purpose as the Executive Council may determine.
- (5) Any expenses incurred by the Executive Council of the Association, Dispute Settlement Committee, Disciplinary Committee, Board or other committee or sub-committee established by the Executive Council of the Association in the performance of any function or the exercise of any power under this Code shall be paid out of the Fund.
29. (1) The Council shall maintain proper books of account in which shall be recorded the financial transactions relating to the Fund.
- (2) The Fund shall be audited annually by a qualified auditor appointed for the purpose by the Council.
30. The Executive Council of the Association may make rules providing such measures as it considers necessary for the efficient and effective carrying out of the objectives of this Code.

Approved by the membership of the Anguilla Financial Services Association
this 15th day of October, 2002.