



**PRACTICE NOTES FOR QUALIFIED TRUSTEES AND MANAGEMENT COMPANIES
WHEN PROVIDING CORPORATE TRUSTEESHIP SERVICES AND RECORDING
BENEFICIAL OWNERSHIP INFORMATION**

Updated on 31st of August 2020

1.0 PURPOSE AND SCOPE OF THE PRACTICE NOTES:

1.1 The Financial Services Commission, Mauritius (the “FSC”), the integrated regulator for the non-bank financial services sector and global business, is mandated under the Financial Services Act 2007 (The “FSA”) and has as enabling legislations, *inter alia*, the Trust Act 2001, the Securities Act 2005, the Insurance Act 2005 and the Private Pension Schemes Act 2012 to license, regulate, monitor and supervise the conduct of business activities in these sectors.

1.2 The FSC is committed to engage with various international standard setting bodies including the Financial Action Task Force (the “FATF”). The FATF is an independent inter-governmental body that develops and promotes policies to protect the global financial system against Money Laundering (“ML”), Terrorist Financing (“TF”) and the financing of the proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global standards in respect of Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT).

1.3 In the absence of a mechanism to ensure transparency, the use of legal arrangements may facilitate the movement of proceeds of crime by concealing:

- The identity of the beneficial owners;
- The true purpose of an account or the assets; and
- The origins of the assets or funds.

1.4 Anonymity is often sought through complex Legal Arrangements and recourse to jurisdictions that do not ensure a satisfactory degree of transparency.

1.5 The FATF revised its 2012 Recommendations which, *inter alia*, include recommendations on transparency and beneficial ownership information¹, customer due diligence² and record keeping obligations of Financial Institutions.³

1.6 The objective of these Practice Notes (the “Notes”) is to provide for guidance on maintaining beneficial ownership information for Qualified Trustees and Management Companies (“Trust Services Providers - TSPs”) when they provide corporate trusteeship services and to enhance transparency of Legal Arrangements.

1.7 These Notes are part of ‘Guidelines’ issued by the FSC pursuant to its powers under section 7(1) (a) of the FSA. The Notes neither derogate nor restrict the powers vested upon the FSC by statute, and should be read together with the relevant Acts as well as guidelines and Circulars issued by the FSC.

1.8 These Notes supersede the Practice Notes for TSPs Qualified Trustees and Management Companies when providing corporate trusteeship services which were issued by the FSC on 24th of August 2018.

¹ Recommendation 25 provides that countries should take measures to prevent the misuse of legal arrangements for money laundering or terrorist financing. In particular, countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settlor, trustee and beneficiaries, that can be obtained or accessed in a timely fashion by competent authorities. Countries should consider measures to facilitate access to beneficial ownership and control information by Financial Institutions and Designated Non-Financial Businesses (“DNFBPs”) undertaking the requirements set out in Recommendations 10 and 22.

² Recommendation 10 provides that financial institutions should be prohibited from keeping anonymous accounts or accounts in obviously fictitious names. It further sets out the criteria which would require financial institutions to carry out customer due diligence measures.

³ The FATF Standards apply to both financial institutions and DNFBPs. Under the FATF Standards, TSPs are considered to be DNFBPs, while under the FSC’s terminology, TSPs are categorized as financial institutions. The term “financial institution” should be understood to include TSPs in this document.

2.0 DEFINITIONS

In these Notes –

“*Beneficial Owner*” is defined as the natural person who ultimately owns or controls a customer or on whose behalf a transaction is being conducted in the Financial Intelligence and Anti Money Laundering Act 2002 (“FIAMLA”) and the Financial Intelligence and Anti Money Laundering Regulations 2018 (“FIAML Regulations”). A beneficial owner includes those natural persons who exercise ultimate control over a legal person or arrangement and such other persons as specified in regulations 6 and 7 of the FIAML Regulations and such other persons as may be prescribed.

The beneficial owners of a trust or other legal arrangement include the settlor, the trustee, the beneficiary and where applicable, a protector or an enforcer, and any other natural person exercising ultimate effective control over the legal arrangement, including through a chain of control or ownership, by virtue of Regulation 7 of the FIAML Regulations.

“*Beneficiary*” is defined under the Trust Act 2001 as a person, whether natural or corporate, entitled to benefit under a trust, or in whose favour a power to distribute trust property may be exercised;

“*Client*” means a person with whom a TSP has entered into an agreement to provide corporate trusteeship services or who has received or might reasonably be expected to receive the benefit of such services and includes beneficiaries of a trust;

“*Corporate Trusteeship Services*” means services provided by a TSP to directly or indirectly enable it to discharge the duties specified under the terms of any trust in relation to which it has been appointed as trustee and the duties provided under the applicable law of the trust;

“*Enforcer*” is defined under section 21 of the Trust Act 2001;

“*Express Trust*” is defined under the FIAML Regulations as a trust clearly created by the settlor, usually in the form of a document; and includes a written deed of trust;

“*Guidelines*” has the same meaning as in the FSA and includes Codes, Guidance Notes, Practice Notes and such other similar instruments issued by the FSC;

“*Legal Arrangement*” is defined under the FIAML Regulations as an express trust or other similar arrangement;

“*Management Company*” means a holder of management licence under section 77 of the FSA and providing or advertising to provide corporate trusteeship services;

“*Protector*” is defined under section 24 of the Trusts Act 2001;

“*Qualified Trustee*” is defined under the Trusts Act 2001 as a Management Company or such other person resident in Mauritius as may be authorised by the FSC to provide trusteeship services;

“*Relevant Acts*” has the same meaning as in the FSA and includes Regulations and FSC Rules;

“*Relevant Officer*” means any officer or staff of the TSP who is involved in corporate trustee services or other trust related services;

“*Settlor*” is defined under the Trusts Act 2001 as a person who provides trust property or makes a testamentary disposition on trust or to a trust;

“*Trust*” is defined under the Trusts Act 2001 as a trust referred to in section 3 of the Trust Act 2001 and includes:

(a) the trust property; and

(b) the functions, interest and relationships under the trust;

“*Ultimately Owns or Control*” means the ability to take relevant decisions within the legal arrangement and to impose those decisions.

3.0 CONDUCT OF QUALIFIED TRUSTEES

3.1 Conduct of Qualified Trustees and Management Companies when providing Corporate Trusteeship Services

3.1.1 These Notes aim at guiding the Qualified Trustees on their conduct, when providing trusteeship services. A Qualified Trustee which is not a Management Company should observe the same standards of conduct as set out in the laws and regulations for a Management Company. When a Qualified Trustee is not a body corporate, it should comply with the principles of conduct insofar as they apply to an individual.

3.1.2 A Qualified Trustee should not act in any manner which would cause it to breach:

- (a) its fiduciary duties under the terms of a trust;
- (b) its duties under the Trusts Act 2001 and/or the applicable law of a trust; and
- (c) any other law, rule or regulation which may be applicable to it.

3.1.3 A Management Company should:

- (a) conduct its business with honesty, fairness, integrity and professionalism;
- (b) act with due care, skill and diligence in the conduct of its business activities;
- (c) organise and control its affairs in a responsible, efficient and timely manner; and
- (d) comply with all guidelines, laws, rules and regulations issued by the FSC regarding conduct.

3.2 Integrity

A Qualified Trustee should observe the highest standards of integrity and fair dealing in the conduct of its business and should ensure that any delegation of duties is done in accordance with, the Trusts Act 2001, other relevant trust laws and the terms of a trust of business in the global business sector.

3.3 Code of Conduct and Ethics

3.3.1 A Qualified Trustee should have in place a Code of Conduct and Ethics which sets out the rules of conduct and behaviour for its relevant officers in their discharge of their duties regarding corporate trusteeship services.

3.3.2 The TSP should ensure that its relevant officers are fully conversant with the Code of Conduct and Ethics, which provides for disciplinary actions and sanctions in case of breach or non-compliance thereof.

3.4 Interaction with Clients

3.4.1 A TSP should continually ensure that its relevant officers have full understanding of the duties and functions arising under the applicable trust laws and the administration and affairs of clients for whom the TSP is acting. Its relevant officers should furthermore have skills and knowledge of the requirements and regulatory framework of the other jurisdictions from which the clients of the TSP are carrying out business and in which their assets are held/managed. Where same is required, TSPs should retain the services of other professionals.

3.4.2 A TSP should ensure that all transactions entered into or undertaken by or on behalf of clients are appropriately dealt with and that such transactions are authorised or handled by persons with the appropriate level of skill, knowledge, and experience.

3.4.3 Any correspondence or document shared between a TSP and its clients such as e-mails, faxes and notes should be kept in the files of the clients. A TSP may, at its own discretion keep correspondences or documents in an electronic format.

3.4.4 A TSP should inform its clients of the means by which complaints about the corporate trusteeship services can be made.

3.4.5 Qualified Trustees providing corporate trusteeship services should comply with any applicable standards set out in the Guidelines for Management Companies regarding handling of clients' money.

3.5 Managing Trust Assets/Investments

TSPs acting as a trustee are under a fiduciary duty to manage the trust property so as to preserve and enhance so far as is reasonable, the value of the trust property and are thus under the absolute obligation to act solely for the benefit of the trust's beneficiaries. In particular, TSPs should:

- (a) invest, distribute or otherwise manage each trust's assets under their trusteeship, in accordance with the law and the trust deed;
- (b) manage the investment and safe keeping of trust's assets professionally and responsibly as well as engage the services of appropriate professionals as may be necessary;
- (c) maintain the highest standard of confidentiality except where, disclosure of information is required or permitted by any applicable law/trust deed, or when authorised by the person to whom the duty of confidentiality is owed;
- (d) ensure that the funds of different trusts are kept separately from one another and from the Management Company's own funds; and
- (e) deal within a reasonable time frame and in the best interests of the beneficiaries with any valid instruction for transfer to other trustees/termination of trusteeship services.

3.6 Conduct of Corporate Trustees

TSPs providing corporate trusteeship services and its relevant officers should be fully conversant with the Trusts Act 2001 and the trust deed in each case and may seek legal or other advice where necessary. TSPs and its relevant officers should:

- (a) understand and discharge fiduciary and other duties;
- (b) when establishing a trust, use their best endeavours to ensure that settlors receive any necessary professional advice and that the trust is suitable for their needs;
- (c) once a trust has been established, identify and act in the best interests of the beneficiaries and avoid or deal properly with any conflict of interest between the trusts and its beneficiaries or between the trustee and the beneficiaries of the trust; and
- (d) keep and preserve appropriate records of trust transactions in accordance with section 29 of the FSA.

4. KNOW YOUR CLIENT AND MAINTAINING UPDATED BENEFICIAL OWNERSHIP INFORMATION

4.1.1 Legal Arrangements' unique status which often involve the use of complex multi-jurisdictional legal structures, make it easier to conceal the identities of the true beneficial owners and, in many respects, concealing the real reason for holding assets and conducting related transactions. As such, for criminals trying to circumvent AML/CFT measures, Legal Arrangements are an attractive way to disguise and convert the proceeds of crime before introducing them into the financial system.

4.1.2 With the increase in illegal activities associated with, and arising from misuse of Legal Arrangements including due to the lack of adequate, accurate and timely beneficial ownership information, the issue of transparency has received increased global scrutiny. A number of studies have been carried by, *inter alia*, the FATF. One of the means identified to deter the misuse of Legal Arrangement is by making information regarding the beneficial owner, in addition to the legal owner(s), of the Legal

Arrangement readily available to the authorities in a timely manner.

4.1.3 The FATF Guidance on risk-based approach on Trust and Company Services Providers issued in 2019⁴ also explains how beneficial ownership information of Legal Arrangements may be obscured through, *inter alia*, the use of complex ownership and control structures.

For example, a trust may be created in one jurisdiction and used in another to hold assets across jurisdictions to disguise the origins of criminal proceeds. It may be used to enhance anonymity by completely disconnecting the beneficial owner from the names of the other parties including the trustee, settlor, protector or beneficiary.

4.1.4 The FATF Recommendations issued in 2012 and updated in 2019, seek to increase transparency and to enable countries to successfully take action against illicit use of their financial system. Those recommendations are the internationally endorsed global standards against ML/TF. Amongst the 40 Recommendations issued by the FATF, Recommendations 10, 11 and 25 relate to customer due diligence, record keeping of information and transparency of beneficial ownership information of Legal Arrangements. These Recommendations are implemented in Mauritius through applicable law and regulations, such as FIAMLA and corresponding regulations.

4.1.5 The FIAMLA and its corresponding regulations have been amended to impose mandatory legal obligations on reporting persons to identify and take reasonable measures, to verify the identity of beneficial owners by obtaining information in relation to trust, on the identity of the settlor, the trustee, the beneficiaries or class of beneficiaries, and where applicable, the protector or the enforcer, and any other natural person exercising ultimate effective control over the trust, including through a chain of control or ownership. As far as other types of legal arrangements – such as fiducie, treuhand and fideicomiso – are concerned, information on the identity of the persons in equivalent or similar positions is equally required. In addition, the scope of the FIAMLA and the FIAML Regulations has been broadened such that Legal Arrangements are also subject to the suspicious transaction reporting obligations.

⁴ <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/rba-trust-company-service-providers.html>

- 4.1.6 A Qualified Trustee is required to keep a register of the names and the last known address of each beneficiary and settlor of the trust under its administration. To further enhance transparency, the FSA has been amended to, *inter alia*, place an obligation on every Qualified Trustee to keep and maintain, at all times, a register of beneficial owners, as well as, a register of any trust under its administration or trusteeship and record such information as the FSC may determine. Such information shall be made available to the FSC upon request.
- 4.1.7 Qualified Trustees should identify and verify the identity of beneficial owners of their clients and this includes the identity of the settlor, the trustee, the beneficiary or class of beneficiaries, and where applicable, the protector or the enforcer, and any other natural person exercising ultimate effective control over the trust, including through a chain of control or ownership.
- 4.1.8 The trustee is the person obliged to manage the property and/or assets and exerts control over an asset because the latter conducts day to day management and is legally bound to act in the interests of the beneficiary. The trustee shall not hold a beneficial interest under the trust when acting as a sole trustee of the trust or the sole beneficiary under the trust.
- 4.1.9 The settlor is the person who transfers property or assets to the trustees and therefore, contributed the assets to the trust. The protector of the trust is the person responsible for ensuring that the will of the settlor is respected. Both may continue to exert some level of control or influence over the trust, despite having relinquished legal ownership of the asset to the trustee for the benefit of the beneficiary.
- 4.1.10 A settlor may also be a trustee, a beneficiary, a protector or an enforcer, but shall not be the sole beneficiary of a trust of which he is a settlor.
- 4.1.11 The beneficiary is the person on whose behalf the property and/or assets are held and may retain control over a trust in some instances. A simple trust provision providing that a beneficiary (perhaps a surviving spouse) has the power to remove the trustee for any reason, can act as an important control over a trust.

4.1.12 A class of beneficiary is when the settlor uses generic descriptions for beneficiaries rather than their specific names. For instance, “the children of settlor X” would be a designated class, whereas “daughter A and son A of settlor X” would be specifically-named beneficiaries. Where the beneficiary or beneficiaries of trusts are designated by characteristics or class, Qualified Trustees should obtain sufficient information about the beneficiary to ensure that they will be able to establish the identity of the beneficiary at the time of payment of benefits or at the time the beneficiary intends to exercise vested rights.

4.1.13 Qualified Trustees should ensure that up-to-date beneficial ownership information is obtained before onboarding by collecting and taking reasonable measures to verify the following information (which is not exhaustive):

Data to be collected:	Permissible methods for verifying data:
<ol style="list-style-type: none"> 1. Legal name (including any former names, aliases and any other names used) 2. Sex 3. Date of birth 4. Place of birth 5. Nationality 	<ul style="list-style-type: none"> • current valid passport • current valid national identity card • current valid driving licence (where the Financial institution is satisfied that the driving licensing authority carries out a check on the holder's identity before issuing the licence) <p>In each case, the document must incorporate photographic evidence of identity. Where the legal person with which the natural person is associated is low or standard risk, then the method of verification for each required piece of data will normally suffice and can be one of the above methods. However where the legal person is high risk, or where a high risk rating would otherwise be attached to the individual principal, then the methods of verification will depend on the riskiness of the relationship and more than one method will be necessary</p>
<ol style="list-style-type: none"> 6. Current residential address. PO Box addresses are not acceptable 	<ul style="list-style-type: none"> • any of the identity sources listed above; • a recent utility bill issued to the individual by name;
<ol style="list-style-type: none"> 7. Permanent residential address (if different to current residential address) 	<ul style="list-style-type: none"> • a recent bank or credit card statement; or • a recent reference or letter of introduction from (i) a financial institution that is regulated in Mauritius; (ii) a regulated financial services business which is operating in an equivalent jurisdiction or a jurisdiction that complies with the FATF standards; or (iii) a branch or subsidiary of a group headquartered in a well-regulated overseas country or territory which applies group standards to subsidiaries and branches worldwide, and tests the application of, and compliance with, such standards. <p>'recent' means within the last three months.</p>

4.1.14 Qualified Trustees are required to maintain accurate updated information regarding the beneficial owners of their clients and make same accessible to the FSC in a timely manner, whenever same is required.

4.1.15 Qualified Trustees shall keep records of all actions taken with regards to the trust, including but not limited to actions taken to identify the beneficial ownership and

they shall retain those records for a period of not less than 7 years after the date on which the final distribution is made under the trust. The following actions which a Qualified Trustee is expected to take, *inter alia*:

(a) conduct and record all required customer due diligence (“CDD”) information, including:

(i) determining the beneficial owners (settlers, protectors, beneficiaries, and trustees) of the trust – this information will usually be found in the trust deed. In the event that any of these parties are legal persons or other Legal Arrangements, further documentation on the ownership and control structure of those entities must be obtained to determine the natural person(s) with ultimate effective control. The steps taken to determine the beneficial owner must also be recorded;

(ii) obtaining relevant information and/or documents from reliable sources to verify the identity of the beneficial owners – this includes documentation as outlined above under 4.1.13;

(iii) in determining whether the trust or a beneficial owner is a Politically Exposed Person (“PEP”) and/or designated person under targeted financial sanctions, as well as record the results of this screening;

(b) determine and record the nature of business relationship and transactions and monitor them on an ongoing basis;

(c) determine and record the risk of the client and apply increased vigilance to transactions and relationships posing higher risks of ML/TF.

4.1.16 Qualified Trustees should carry out further CDD and update information on the beneficial ownership information of their client in following instances (which are not exhaustive):

(a) adverse media reports or other relevant sources of information - for example, when there is any allegations of criminality or terrorism against the beneficial owner. The Qualified Trustee should determine the credibility of allegations on

the basis of the quality and independence of the source of the data and the persistence of reporting of these allegations, among other considerations;

(b) where the Qualified Trustee has any doubts about the veracity or accuracy of the customer's or beneficial owner's identity; and

(c) on a periodic basis, in line with the client's risk rating, with higher-risk clients being subject to more frequent and in-depth updates.

4.1.17 Qualified Trustees are required to maintain the information obtained through customer due diligence, including but not limited to information on beneficial ownership for a period of not less than 7 years after their involvement with the trust ceases.

4.1.18 Qualified Trustees shall keep and maintain, at all times, a register of the beneficial owners of each of its clients and record such information in an electronic form. Such information shall be provided to the FSC upon request within a set time period, either via email or by producing hard copies of the information as requested by the FSC. For the purpose of this section, electronic form refers to any information/documents/data inputted and stored on a computer system.

4.1.19. In addition, Qualified Trustee shall keep and maintain, at all times, a register of any trust under their administration or trusteeship and record such information in an electronic form. This applies to both existing and new clients, as the case may be.

4.1.20 The registers mentioned at paragraph 4.1.6 may be inspected by the FSC at any time pursuant to its powers under section 43 of the FSA (as amended by the Anti-Money Laundering and Combatting the Financing of Terrorism (Miscellaneous Provisions) Act 2020). The registers mentioned at paragraph 4.1.6 should, *inter alia*, contain:

(a) information on the identity of the settlor, trustee(s), protector (if any), beneficiary or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust.

(b) detailed particulars of the trust, including its business address and the nature of business/purpose of the trust; and

(c) basic information on other regulated agents of, and service providers to the trust, including investment advisors or managers, accountants and tax advisor.

4.1.21 Qualified Trustees should identify and assess the risks on the basis of their particular client-base that could be used for ML/TF. In addition, they should document those assessments, keep an updated record of those assessments and have proper mechanism in place to provide risk assessment information to the FSC and other relevant authority as and when required.

4.1.22 ML/TF risks can be grouped in the following three non-exhaustive categories:

- (a) country/geographic risk – this may include domestic or international geographical considerations;
- (b) client risk; and
- (c) transaction/service and associated delivery channel risk.

4.1.23 While more comprehensive list of risk indicators can be found in the FSC's AML/CFT Handbook, Qualified Trustees should consider the following non-exhaustive criteria when considering geographic risk:

- (a) inherent risks, such as the level and nature of crime in the area, and the characteristics of the financial sector.
- (b) strategic deficiencies in the AML/CFT legal and institutional framework, in particular in relation to -
 - (i) criminalisation of money laundering and terrorism financing;
 - (ii) measures relating to CDD;
 - (iii) requirements relating to record-keeping;
 - (iv) requirements to report suspicious transactions; and
 - (v) the availability of accurate and timely information of the beneficial ownership of legal persons and arrangements to competent authorities.

- (c) relevant evaluations, assessments or reports drawn up by international organisations and standard setters with competence in the field of preventing ML/CFT shall be taken into account. The FATF maintains a list of jurisdictions subject to a call for action and jurisdiction subject to increase monitoring.

4.1.24 While more comprehensive list of risk indicators can be found in the FSC's AML/CFT Handbook, Qualified Trustees should consider the following non-exhaustive criteria when considering client risk:

- (a) the risks associated with PEPs and the fact that family members or close associates of PEPs are deemed to pose a greater than normal money laundering risk by virtue of the possibility for them to have benefited from proceeds of corruption. In addition, the nature of the parties concerned in PEP scandals attracts worldwide media attention. They can therefore, be enormously damaging to the reputation of both, the organisations and the jurisdictions concerned;
- (b) the threat posed by a high net worth individual, who at its simplest, can be defined as a very wealthy person. Such individual can be identified from the assets that he owns;
- (c) whether the client is operating in a higher jurisdiction;
- (d) the risk associated to non-face-to-face business; and
- (e) whether there is any negative media coverage on a client and verify the veracity of such coverage.

4.1.25 While more comprehensive list of risk indicators can be found in the FSC's AML/CFT Handbook, Qualified Trustees should consider the following non-exhaustive criteria when considering service, transaction and delivery channel risk:

- (a) the level of transparency, or opaqueness, the service or transaction affords;
- (b) the complexity of the service or transaction; and
- (c) the value or size of the service or transaction.

4.1.26 Failure to adequately monitor customers' activities (including information on the beneficial owner of the customer) could expose a business to potential abuse by criminals and may call into question the adequacy of systems and controls, or the prudence and integrity or fitness and properness of the management of the business.

4.1.27 It is of paramount importance for Qualified Trustees to understand the business purpose and to conduct risk-based ongoing monitoring inasmuch as those are key elements that may help in identifying any suspicious activity.

4.1.28 There are two strands to effective ongoing monitoring:

(a) The first relates to the transactions and activity which occur on a day-to-day basis within a business relationship and need to be monitored to ensure they remain consistent with the financial institution's understanding of the customer and the product or service it is providing to the customer.

(b) The second relates to the customer themselves and the requirement for the financial institution to ensure that it continues to have a good understanding of its customers and their beneficial owners. This is achieved through maintaining relevant and appropriate CDD and applying appropriate ongoing screening.

4.1.29 In the event Qualified Trustees ⁵ are unable to comply with the relevant CDD measures for beneficial owners, he shall be in breach of the FSA, FIAMLA and FIAML Regulations and he shall:

(a) not open the account, commence the business relationship or perform a transaction; or

(b) terminate the business relationship; and

(c) in relation to the customer, file a suspicious transaction report under section 14 of the FIAMLA.

⁵ Reporting person is defined in the FIAMLA and includes Qualified Trustees.

5. FEES

- 5.1 Qualified Trustees should ensure that prior to the start of a fiduciary relationship, the settlor of a trust agrees in writing to a clear fee structure and charge fees in accordance with the established agreement, in a fair and transparent manner. The basis upon which fees are assessed must also be clearly spelt out in the agreement.
- 5.2 Any exit fees should clearly feature on the fee structure agreement in order to be charged to the client.
- 5.3 Any increase of fees charged by Qualified Trustee should be mutually agreed in writing between the Qualified Trustee and the client or its legal representative.
- 5.4 In the event a trust deed allows a Qualified Trustee to increase fees without the express consent of the designated persons set out in the trust deed, the Qualified Trustee should seek the direction of a Court empowered to apply the relevant law of the trust before implementing any increase.
- 5.5 With respect to any dispute on fees (including on any increase of fees), the Qualified Trustee should seek, at its own costs, the direction of a Court empowered to apply the relevant law of the trust.

6. REMOVAL OF TRUSTEE

All Qualified Trustees should comply with their legal obligation under section 31(3) and section 31 (4) of the Trusts Act 2001 or any other relevant trust law when it ceases to be a corporate trustee of a trust. TSPs should not refuse or delay to transfer trust documents and property to an incoming trustee, where it has been signified by written notice, of the valid termination of its trusteeship. TSPs have the duty and obligation to transfer as soon as reasonably practical, but in any case not exceeding one month, all trust documents and property to the designated incoming trustee, except where, mutually agreed otherwise, between the incoming trustee and the relevant TSP.

7. SUPERVISION OF QUALIFIED TRUSTEE BY THE FSC

The obligations of Qualified Trustees are supervised and enforced by the FSC through dissuasive and proportionate sanctions for failure to obtain, take necessary measures to verify, and maintain the required information in an adequate, accurate and timely manner and to carry out ongoing CDD measures in line with the requirements of the provisions of the FIAMLA and FIAML Regulations, or failing to grant the FSC timely access to information regarding the trust.

8. SANCTIONS FOR BREACH

An Enforcement Manual detailing, *inter alia*, the disciplinary actions which the FSC may take against its licensees for failing to comply with the requirements of the provisions of the FSA, FIAMLA and FIAML Regulations, has been issued on 12 June 2020 and published on the FSC website. Same may be accessed through the below link:

https://www.fscmauritius.org/media/84943/enforcement-manual_03aug2020.pdf