



4th March 2015

Dear Stakeholders:

Re: Corporate Service Providers Business Act 2012 Code of Practice

The Bermuda Monetary Authority (the “Authority”) would like to thank industry participants for their continued engagement and feedback as the Authority develops its corporate service provider (“CSP”) framework for the Bermuda market.

RESPONSE TO INDUSTRY FEEDBACK

In September 2014 the Authority reached out to industry for feedback on the Code of Practice (the “Code”), developed under section 7 of the Corporate Service Provider Business Act 2012 (the “Act”), which came into effect on 1st January 2013. A substantial amount of information that was previously part of the Act’s Guidance Note has now been incorporated into the Code.

Due to the volume of feedback received, the Authority would like to respond to the most prevalent concerns and issues expressed in the submissions as follows.

Proportionality Principle

Summary of comments: Concerns were raised by industry regarding the Authority’s application of the Proportionality Principle.

Resolution: As with other sectors the Authority regulates, with differing types of operations, the nature, scale and complexity of the CSP’s business and corporate structure, will be considered when making a determination on how to apply the Code. The Authority will use the Proportionality Principle to ensure that the Code is applied fairly and consistently across the diverse group of CSPs licensed under the Act. CSPs obtaining an unlimited licence will be expected to maintain a more sophisticated management and control framework than those providing more restricted services under a limited licence.

Determinations to be made by the Authority

Summary of comments: Clarity was requested on how the Authority would determine whether a CSP has effective systems and management and appropriate risk frameworks among other prudential assessments.

Resolution: The Authority will use a combination of desk-based reviews and on-site visits to make a determination of the suitability of the CSP's systems and management. Each CSP's business is unique and therefore it is expected that particular solutions will be tailored to manage that specific business. Each CSP should be prepared to discuss their arrangements with the Authority's team during the supervisory process and explain why it is suitable for their business.

Accounting and other Record Keeping

Summary of Comments: Concerns were raised regarding the Code's requirement to "keep and preserve appropriate records in Bermuda which will at least include such records as are appropriate for their functions, as required by any applicable law". Commenters noted that such an approach would be consistent with existing Bermuda law but questioned what the position would be for structures not governed by Bermuda law.

Resolution: The Authority understands that many of the licensed CSPs will be providing services to structures not formed under Bermuda law. As noted above, the Code states that records must be kept "as required by any applicable law". If the law of Bermuda does not apply to the structure in question, then the application of the other jurisdiction's law is a matter for the CSP and its client and expectations. The Authority would expect the CSP to carry out its business with appropriate due diligence when dealing with overseas clients. Furthermore, if the CSP has not been contracted to be responsible for the client's recordkeeping functions the Authority would not expect it to adhere to such procedures, but to comply with prudent business standards.

Regulatory Co-operation

Summary of comments: Questions were raised as to what types of information the Authority would consider "material" or "significant" enough to merit notification.

Resolution: It would be impossible to definitively describe all the considerations which should be used to decide what is "material" and "significant". Each CSP is encouraged to maintain an open dialogue with the Authority regarding their business and any changes thereto. If the CSP is in doubt as to whether a change would be considered "material" or "significant" it is encouraged to contact the Authority for guidance. "Significant" changes to staffing may include changes to senior staff or directors or substantial changes to the responsibilities of existing staff members. "Material" changes to the business may include mergers, opening of new offices or changes to the corporate services offered. In implementing this new regime, the Authority will work with industry to develop good working relationships and information flow to ensure a smooth transition.

Exemptions

Summary of comments: Representations have been made to the Authority from a number of groups within the CSP industry regarding exemptions from the licensing requirements of the Act. Requests have been made for confirmation of which entities will be exempted.

Resolution: Subject to any conditions imposed under the Act, the specified persons listed below are exempt from the prohibition of section 8 of the Act.

1. Fund administrators licensed under section 42 (1) of the Investment Funds Act 2006 (“Investment Funds Act”) providing registrar and transfer services, in connection with the services to be provided by a fund administrator under section 2 (2) of the Investment Funds Act;
2. Companies carrying on corporate service provider business with members of its group only. For the purposes of this Order, “group” means:

“Consisting of a parent undertaking, its subsidiaries, affiliates, and any entities in which the parent undertaking or its subsidiaries hold shares”; and
3. Companies which meet the following criteria:
 - a. The corporate service business activities of the company are restricted to providing the services of director (as that term is defined under the Act); and
 - b. The company is owned by one shareholder controller who is the sole employee of the company engaged to provide the services set out in paragraph (a).

Transition Period

On a technical note, the Authority has recommended that the transition period be extended for an additional one-year period commencing 1st April 2015.

The Authority thanks stakeholders for their feedback, and remains committed to working with industry and other interested parties to ensure that the results achieved are in the best interests of the Bermuda market.

Yours sincerely,
Bermuda Monetary Authority