



4th October, 2013

Dear Industry Stakeholders,

Re: Corporate Service Provider Business Amendment Act 2013 (the “Bill”)

The Bermuda Monetary Authority (the Authority) wishes to thank the stakeholders for their continued support of our key initiatives. In August 2013 the Authority issued a stakeholder letter on proposed changes to the licensing regime under the Corporate Service Provider Business Act 2012 (the “Act”). The Authority is committed to engaging our stakeholders in such initiatives as we strive to achieve our supervisory objectives.

The Authority’s responses to the key substantive comments that were received are outlined below.

I. SCOPE OF ACTIVITIES

Nominee Shareholders

There were questions raised about the scope of activities which may be carried out by a person holding a limited licence, in particular, acting as a nominee shareholder.

The Authority confirms that the holder of a limited licence may act as a nominee shareholder. Recently, the OECD Peer Review set down standards for transparency when dealing with access to information about beneficial ownership. Regarding nominee shareholders, the key issue identified was the obligation to “know the client” for whom they acted as nominee shareholder. There was no outright prohibition. A Corporate Service Provider (CSP) that acts as a nominee shareholder will be subject to customer due diligence requirements, and any licensee carrying out this CSP activity must verify the beneficial owner of its client and continue to monitor the ownership. The licensee holder will be required to meet prudential standards for carrying out this service and comply with the minimum criteria as appropriate for their business model.

Non-Executive Directors

Question was raised as to whether a company which offers services as a non-executive director came within scope of the Act.

The Authority confirms that under a strict interpretation of the Act, a CSP offering services of a non-executive director would come within the scope of the Act but this matter is being reviewed by the Authority.

II. POWER TO IMPOSE A CONDITION ON THE SCOPE OF ACTIVITIES

A query was raised as to the nature of the new power to limit the scope of activities which a licensee may carry on as a CSP.

The Bill proposes a new power to enable the Authority to limit the scope of activities which a licensee may carry on as a CSP. This power is similar to the power vested in the Authority under the Investment Business Act 2003 and allows the Authority to designate specific activities the licensee may carry out. The rationale for this power is two-fold. Firstly, in some cases the applicant puts forward a business plan to only carry out certain activities and does not seek to carry on other types of CSP activities. They seek to have their business model assessed on the limited scope. To address this situation, the Authority can limit the scope. Secondly, there may be situations in which the Authority will approve a licensee's application based on the details of the business plan proposed and the structures put in place, provided the scope of business is limited to only specific activities.

III. STATUTORY MINIMUM CRITERIA

Non-Executive Directors

Clarification was sought as to when the Authority would expect a licensee to appoint non-executive directors, as set out in the Minimum Criteria. Queries were also raised about the value of the "four-eyes" principle, especially for CSPs which are part of a group. As well, a query was raised as to whether a director within a group who is not directly involved in the day-to-day business may act as non-executive director or must the director be "outsider directors".

The circumstances under which the Authority would expect a licensee to appoint a non-executive director are set out in the proposed Statement of Principles which the Authority must issue outlining how it interprets the Minimum Criteria. In determining whether a licensee should consider appointing a non-executive director or require oversight by two persons, the Authority will assess the nature, size, complexity, and risk profile of the business, and other factors within the group structure. Given many CSPs are owned by professional firms, such factors may be taken into consideration.

Regarding the appointment of non-executive directors who are independent, the key factor is to ensure that the director has the independence, in fact, to assess the day-to-day operations.

Prudent Manner

Questions have been raised as to why the Minimum Criteria includes a requirement to comply with the obligations under the Companies Act 1981.

The objective is to ensure CSPs comply with minimum licensing requirements and the wider statutory requirements as a company carrying on business in Bermuda. The Statement of Principles will be amended to reflect the Authority's position after taking into consideration the feedback received.

IV. EXEMPTIONS

Various respondents requested information on the exemptions.

The exemptions are now being reviewed by the Authority and will be issued shortly. There will be an opportunity for industry stakeholders to review and offer comments.

Yours sincerely,

Bermuda Monetary Authority

Enclosure