



13th August 2013

Dear Stakeholders:

Re: Corporate Service Providers Business Act 2012 Statement of Principles
Corporate Service Provider Business Licence Application
Guidance Notes - Corporate Service Providers Business Act 2012

The Bermuda Monetary Authority (the “Authority”) would like to thank industry participants for their comments and suggestions submitted in response to our consultation and for their continued engagement and assistance in building a corporate service provider (“CSP”) framework for the Bermuda market.

RESPONSE TO INDUSTRY FEEDBACK

On 1st January 2013, the Corporate Service Provider Business Act 2012 (the “Act”) came into effect and is the basis on which the above-mentioned documents are predicated. Further proposed changes to the Act stemming from initial industry comments and ongoing consultation by the Authority are attached for review. In light of the impact of the legislation on a wide range of providers to ensure that the overall framework is appropriate for the Bermuda market the Authority invites industry representatives and other interested parties to provide comments with regard to the proposed legislation by Friday, 6th September 2013.

Due to the level of feedback received from a number of participants, the Authority has chosen to respond to the most prevalent concerns and issues expressed in the submissions, which are outlined below.

1. STATEMENT OF PRINCIPLES

Tiered Licensing

Summary of Comments: The possibility of utilising a tiered licensing structure, or a varied licensing classification system, based on scope of services or volume of business generated by the CSP were raised. Commenters noted that such an approach had been previously discussed with, and even suggested by, the Authority.

Resolution: Based on recent industry feedback and to better identify the services being offered by individual CSPs, the Authority supports a tiered licensing structure for the new CSP regime. This approach will not only make the regime more transparent to external parties but also assist the Authority in its licensing application process by determining what the CSP should have in place to demonstrate that they meet the minimum licensing criteria necessary to manage their business in a prudent manner.

The tiered licensing structure will be as follows:

Unlimited Licence: Persons licensed to provide any or all corporate services under the definition of corporate service provider business in the Act.

Limited Licence: Persons licensed to provide any or all corporate services under the definition of corporate service provider business, excluding the corporate service under sections 2(2)(a) and 2(2)(c)(vii) of the Act.

Submission of Financial Documents and Information

Summary of Comments: Concerns were raised regarding the Authority's requirement for an undertaking to submit financial and other information about their business, along with questions as to the type of financial information requested and the frequency and purpose of such submissions, since CSPs are designated non-financial businesses ("DNFB"). Commenters noted that the submission of financial information was inconsistent with the Authority's previous position as stated in a Consultation Paper issued in October 2011 entitled *Regulation of Corporate Service Providers* (the "CP") that indicated financial data would not be required and the contents of the annual return submission would be focused on activities rather than financial matters.

Resolution: In consideration of the feedback and concerns expressed by industry, the Authority has decided that the submission of financial statements will not be required, as CSPs do not directly manage client's money.

Non-Executive Directors

Summary of Comments: Clarification was sought around the requirement, if any, for an undertaking to have non-executive directors or independent directors. Commenters considered the imposition of the "four eyes" and independent director requirements as unnecessary.

Resolution: Due to the diverse nature of the CSP business structure the Authority will not impose a mandatory requirement to adhere to the "four-eyes" principle. However, CSPs will be subject to the Corporate Governance Policy that is presently being developed for the trust, investment business, and fund administration sectors, in which the "four-eyes" principle is applied proportionally, taking into account the nature and scale of an entity's business. The

Minimum Criteria for Licensing, Schedule 1 in the Act, will be amended to incorporate Corporate Governance.

To that end, an individual CSP's governance policy must reflect the complexity of the business, which may mean application of the "four-eyes" criterion requiring at least two individuals to direct the business. In assessing compliance with the criterion the Authority would take into consideration the seniority and authority of the two individuals. Additionally, at least one of the individuals responsible for conducting the day-to-day business operations must reside in Bermuda.

Similarly, the appointment for non-executive directors will be determined based on the nature and scale of the business.

Insurance Coverage

Summary of Comments: It was suggested that CSPs be required to carry insurance given the nature of the work they perform and that it is a licensing requirement in other financial sector regimes. The financial impact this requirement would impose on smaller CSP businesses was also noted.

Resolution: Similar to other regimes in the financial services sector, it is required that CSPs would purchase the necessary and adequate amounts of insurance coverage, or be able to demonstrate why any particular type of coverage would not be necessary for the business which they intended to undertake. In making its determination, the Authority will take into account the nature and scale of the CSP's business activities.

Business to be Conducted in a Prudent Manner

Summary of Comments: Concern was raised over the Authority's expectation that a licensed undertaking has the responsibility of ensuring that its client company's obligations, under the Companies Act 1981 (the "Companies Act"), are fully met and satisfied.

Resolution: Paragraph 2.5g of the draft Statement of Principles¹ has been modified to address this concern. The Authority expects a CSP providing contracted services to be responsible for fulfilling the contractual obligations related to the company's compliance with the Companies Act.

In carrying out its duties, a CSP is expected to possess and maintain the level of knowledge and skill needed in order to fulfill its obligations and deliver the services it undertakes as a CSP. If the Authority determines that there are complaints or other evidence of lack of due diligence,

¹ The draft Statement of Principles published to the Authority's website on 31st December 2012.

knowledge, or skill on the part of the undertaking in carrying out such services, this could be grounds for assessing whether the undertaking is conducting its business in a prudent manner.

2. GUIDANCE NOTE

Customer Due Diligence

Summary of Comments: Concern was raised over the inclusion of language that required an undertaking to subject a professional intermediary to a “complete due diligence” process where the undertaking did not have direct sight of original documents and notarised copies were being accepted. Commenters noted that the Authority was applying a due diligence standard beyond the anti-money laundering/anti-terrorist financing (“AML/ATF”) requirements currently applied to banks, investment businesses, and investment funds.

Resolution: The intent is to cover situations in which documents have not been notarised by a public notary who is licensed and authorised to carry on the duties of a notary in the jurisdiction. In the event that the CSP does not have direct sight of the originals and must rely on validation of authenticity by an overseas professional intermediary, the CSP is required to conduct appropriate checks on the intermediary before accepting the documents.

3. BUSINESS LICENCE APPLICATION

Summary of Comments: Concerns were raised over the licensing application requirement that as part of the business plan an undertaking would have to submit its financial statements, projections of its balance sheet, cash flow statement, and profit and loss statement.

Resolution: The Authority has reconsidered its requirement for the submission of financial information, and consequentially the business licence application has been duly revised.

4. OTHER BUSINESS

Code of Practice

The Authority will issue a Code of Practice (the “Code”), pursuant to section 7 of the Act. As a result, a substantial amount of information that was previously part of the Guidance Note has now been incorporated into the Code. A draft copy of the Code will be posted on the Authority’s website for consultation shortly.

Exemptions

The Authority is still deliberating on which persons and what CSP activities would be exempt from the requirements of the Act. In any case, when a decision has been made, the exemptions will come into effect by a statutory order made by the Minister of Finance. Those persons qualifying for the exemption would automatically be exempted and no application to the Authority would be necessary.

Amendments to the Act

In light of the above resolutions, such as the requirements for tiered licensing and insurance, inclusion of the “*four-eyes*” principle, and an adjustment to the transition period, the Act will need to be amended.

Transition Period

The Authority acknowledges that there has been a delay in commencing the CSP licensing process, and will amend the transition period for a two-year period or a date declared by way of a statutory order by the Minister of Finance and published in the Official Gazette.

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.

In light of the ongoing discussions related to the implementation of this new regime, the Authority seeks the views of industry stakeholders and interested parties on the legislative changes. Submissions should be sent to policy@bma.bm by **Friday, 6th September 2013**.

Yours sincerely,

Bermuda Monetary Authority

Enclosure