



**BERMUDA MONETARY AUTHORITY**



**CORPORATE SERVICE PROVIDERS**

**DECEMBER 2012**

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## **I. INTRODUCTION AND BACKGROUND**

1. This document provides guidance on the regulatory requirements applicable to licensed Corporate Service Providers (CSP) offering company and partnership formation services and, or in the alternative, administrative and secretarial services. The publication of this Guidance coincides with the coming into force of the Corporate Service Provider Business Act 2012, (the CSP Act 2012 or the Act). The Guidance will be of particular relevance to the boards, senior management, money laundering reporting officer (MLRO), risk and compliance officers of a CSP. Comments from members of the public and other interested parties on the proposals in this paper are invited no later than 31<sup>st</sup> January 2013. Responses should be sent to Tamara Anfossi at [tanfossi@bma.bm](mailto:tanfossi@bma.bm).
2. The CSP Act 2012 came into effect 1<sup>st</sup> January 2013 and makes changes to the procedure for forming Bermuda companies. In particular, The Bermuda Monetary Authority (the Authority) will no longer receive details of proposed beneficial owners and undertake “pre-vetting” on each non-regulated Bermuda company formation application, nor will there be a requirement to obtain from the Controller of Foreign Exchange permission for share issuances and transfers. Therefore, there will be an increased focus on the role of CSPs as “gatekeepers” when forming entities.
3. The CSP must comply with the requirements of the CSP Act 2012 and also with the Corporate Service Provider (Beneficial Owner) Regulations 2012, the Proceeds of Crime Act 1997 (POCA) and the Regulations made thereunder. CSPs will be included in the definition of “AML/ATF regulated financial institution” in Regulation 2(2) of the AML Regulations. CSP attention is also drawn to the provisions of the Proceeds of Crime Regulations (Supervision and Enforcement) Act 2008 (the SEA Act), which provides for the regulation of AML/ATF regulated financial institutions by the Authority, and the AML General Guidance. The AML Guidance will assist the licensee to meet their AML/ATF obligations.
4. It should be noted that compliance with the provisions of the Companies Act 1981 is not part of the regulatory oversight of the Authority and compliance with the obligations under that Act is a matter for the Registrar of Companies. In the event that issues arise under the Companies Act 1981 that are so significant or frequent that they call into question the general competence of the CSP or its officers to operate within the terms of the licence, then it may become relevant to the Authority (refer Parts 4 and 5 of the CSP Statement of Principles).

## **II. OBJECTIVES**

5. It is not intended that the Guidance contained herein be applied broadly. The Authority expects CSPs under its supervision to address the management of risk

in a thoughtful and considered way, establishing a control framework that is appropriate and proportionate to the risks identified by the CSP.

6. This document also provides guidance on:
  - a. interpretation of the requirements of the CSP Act 2012;
  - b. industry best practice in carrying on CSP activities;
  - c. expectations on the design and implementation of key systems and controls that are applicable to the risks that a CSP faces;
  - d. role of gatekeepers and the importance the Authority places on good corporate governance controls;
  - e. reputational risk and the board's responsibility for the effective management of key risks.

### **III. INTERPRETATION**

7. Where provisions of the Act are directly described in the text of the Guidance these provisions **must** be complied with as they are mandatory.
8. In other cases where the Guidance uses the term “**should**”, this indicates ways in which the requirements can be satisfied but allows for alternative methods to meet the requirements.
9. A client, company or partnership of a CSP is a person with whom a CSP has entered an agreement to provide services constituting corporate service provider business as described in Section 2.
10. Advertisement in this Guidance refers to every form of advertising whether in a publication or by the display of notices, client agreements, or by means of circulars, brochures or other documents, or by an exhibition of photographs, or cinematograph films, or by way of sound broadcasting, television, telephone, internet, or other information distribution systems.

### **IV. APPLICATION**

11. This Guidance applies to all holders of a corporate services business licence issued under section 11 of the CSP Act 2012.

### **V. CORPORATE SERVICE PROVIDER BUSINESS**

12. Company services can be provided by a number of different entities (e.g. banks, financial institutions, lawyers, accountants, etc.). In some cases the entity will already be subject to regulatory oversight by the Authority. It should be clearly understood that the supervision in respect of CSP activities will be based on the minimum criteria established by the CSP Act 2012.
13. A CSP business, as defined by section 2(2) of the CSP Act 2012, is a business

that provides corporate services for profit as follows:

- a. acting as a company formation agent, or agent for the establishment of a partnership;
  - b. acting as a nominee shareholder of a company;
  - c. providing administrative and secretarial services to companies or partnerships including one or more of the following services:
    - i. providing a registered office;
    - ii. providing an accommodation, correspondence or administrative address;
    - iii. maintaining the books and records of a company or partnership;
    - iv. filing statutory forms, resolutions, returns and notices;
    - v. acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of a person authorised to accept service of process on behalf of a company or partnership or to accept any notices required to be served on it;
    - vi. acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of a director, officer, secretary, alternate, assistant or deputy secretary of a company or an officer of a partnership;
    - vii. keeping or making any necessary alteration in the register of members of a company in accordance with section 65 of the Companies Act 1981;
  - d. the performance of functions in the capacity of resident representative under the Companies Act 1981, Exempted Partnerships Act 1992 and the Overseas Partnerships Act 1995; and
  - e. providing any additional corporate or administrative services as may be specified in regulations.
14. The reference in the Act in subsection (2) to a company or partnership is a reference to a client company or partnership wherever incorporated or otherwise established and to any similar or equivalent structure or arrangement, howsoever named.
15. For the purposes of this Act, a person acts as a company or partnership formation agent if he arranges for the registration or formation, or in the case of a company, the sale, transfer or disposal of a company or he provides for the subscribers to the memorandum of association.
16. An individual shall not be deemed to be in the business of corporate service provider merely by virtue of being a director of one or more companies.
17. It should be recognised that the CSP Act 2012 applies to those companies or persons who carry out the above activities as a commercial activity, i.e. services provided to independent third parties for profit. Thus, for example, a CSP which manages companies within a group of which it is a member is not required to be

licensed. Section 9 of the CSP Act 2012 permits the exemption of various activities or individuals.

18. Where a person is a controller by virtue of 'directing' or 'instructing' the board of a CSP, the standards required are high. The controller has to have the probity, relevant knowledge, experience and skills to run the CSP. The qualities required are those that are also appropriate for the board of directors of a CSP.

## **VI. CORPORATE GOVERNANCE**

19. Corporate Governance is the system by which a CSP is directed and controlled. A corporate governance framework specifies the distribution of rights and responsibilities among different participants in the licensee and sets out the rules and procedures for making decisions. Risk management is an integral part of the corporate governance framework.
20. The CSP must establish policies and procedures surrounding the management of authorisations, approvals as well as the authority of key positions. These policies and procedures should be clearly communicated to all staff and must include continual communications with a CSP's internal and external stakeholders as part of the corporate governance process.

### **BOARD STRUCTURE**

21. The board of directors sets the tone of the CSP and has a significant influence on internal operations of the CSP. The board of directors must, at all times, be kept informed of the status of the CSP's operations and financial position, including its risks and regulatory requirements in relation to its operations and objectives.

## **VII. PRUDENT BUSINESS CONDUCT**

22. There is a general requirement for CSPs to conduct their business in a prudent manner. It is the overall responsibility of the board of directors and senior management of a CSP to ensure that there is effective control over the entire business and that it is conducted prudently.
23. The board of directors and senior management must understand the underlying risks in the business and be committed to a robust control environment. The records and systems must be such that the CSP is able to fulfil the various other elements of the prudent business conduct criterion, and to identify threats to the public interest. The control environment should also be sufficient to enable the CSP to comply with the notification and reporting requirements under the Act.

## **NOMINEE SHAREHOLDER ARRANGEMENTS**

24. Where a CSP acts as, provides or arranges for others to provide, a nominee shareholder (whether as a registered shareholder or otherwise to hold shares on behalf of another) for the beneficial owner of a client company, the CSP shall ensure that in all such cases there is a written nominee agreement or any other such document that forms a nominee agreement which will identify the beneficial owner. The CSP shall retain a copy of such document in its records.

## **CONFLICTS OF INTEREST**

25. The CSP must either avoid any conflict of interest arising or, where conflicts arise, must address such conflicts through proper disclosure arrangements; applying policies and procedures in relation to conflict management, through the identification, recording, and management of the conflict; internal controls on confidentiality or declining to act; or other such action as appropriate.
26. A CSP shall not advise a client to use the services of another person who is an associate of the CSP provider without disclosing that relationship.
27. Where applicable, a CSP must establish policies and procedures that require directors to disclose interests in any contract to which the CSP is a party, whether the interest is direct or indirect, as soon as he is aware of the fact. Policies and procedures must be adopted to prevent directors and senior officers from taking personal advantage of opportunities that arise as a result of their position as a director or officer of the licensee.

## **POLICIES AND PROCEDURES**

28. A CSP must be able to demonstrate effective implementation of written corporate governance policies, procedures and systems and controls that must also encompass its AML/ATF regime. The Authority will take the nature and the scale of the business into consideration; however policies, procedures, systems and controls must be approved by the board or delegated as appropriate, documented and must be kept up-to-date.
29. A CSP must ensure there are procedures relating to, though not limited to, the following:
  - a. staff training and understanding of client companies, the CSP's duties to client companies, and the extent to which the CSP must exercise independent judgment in performing its functions;
  - b. the form of client agreements or written terms of business in use;
  - c. AML/ATF policies, procedures and controls including staff training and compliance;

- d. dealing with assets held and managed on behalf of client companies;
- e. documenting the risk assessment both of the CSP's business as a whole and of each of the CSP's business relationships; and
- f. systems relevant to the licensee's obligations under the Act and other obligations under applicable laws.

## **COMPLAINTS**

30. A CSP must ensure that policies and procedures are in place to deal with client complaints efficiently through a simple and impartial process. These procedures must be clearly disclosed and easily accessible to clients. Client complaints must be properly handled and any remedial action required should be promptly taken. A record of the details of the complaint, the CSP's response and any action taken as a result, must be documented.

## **INTEGRITY AND SKILL**

31. The CSP's business must be carried out with integrity and the professional skills appropriate to the nature and scale of its activities. This is distinct from the question of whether its controllers and officers are fit and proper persons. The CSP must have sufficient personnel with professional skills appropriate to the nature and scale of the business concerned and with adequate knowledge, skill and experience as necessary for the prudent management and conduct of the business.
32. CSPs must ensure they have adequate financial, human and technical resources to meet the scale and complexity of their business whilst maintaining financial stability. This involves an assessment of risks which exist as a result of the nature of the CSP business and the extent to which those risks can be avoided or reduced.
33. Changes over the years in the role of company secretaries have resulted in them being consulted by boards on procedural and regulatory requirements, the induction of new directors, assisting the chairman of the board in determining the annual board plan and the administration of other strategic issues. In light of the increasing complexity of corporate service businesses and the regulatory environment, the CSP must look to relevant professional bodies such as the Institute of Chartered Secretaries and Administrators (ICSA) and take measures to maintain the skills and professional standards of its staff.

## **TRAINING AND SUPERVISION**

34. A CSP must have appropriate resources in place commensurate with the nature and scale of its activities. The requirement for staff to be suitably qualified and experienced for their responsibilities extends to key roles and those staff who act as officers of client companies. Such individuals must understand their duties under the laws of the jurisdiction in which their client companies are incorporated and carry out their duties in a diligent and proper manner in accordance with internal systems, policies and procedures.
35. Staff must be provided with on-the-job training on the CSP's internal policies, procedures and internal controls. The CSP should ensure that adequate training is provided specific to the roles and responsibilities that staff perform. Such training should be provided initially and on an on going basis, including training in relation to AML/ATF responsibilities.
36. A CSP shall establish procedures to ensure the adequate supervision of staff in their dealings with clients and the management of client companies. Appropriate records relating to the training, experience and qualifications, and supervision of staff shall be maintained, showing the assessment of the person as competent in the discharge of their duties on an on going basis.

### **DISCIPLINARY ACTION**

37. A record shall be maintained of the names of any employees disciplined by a CSP in connection with any breach of this Guidance or for any other act or omission which may reasonably be expected to affect the conduct of the CSP business and the particulars of:
  - a. the offence for which the employee was disciplined; and
  - b. the steps taken to discipline the employee.

### **ADVERTISING**

38. The Authority expects a CSP to project at all times a positive international image of Bermuda, and to be aware of and avoid any negative impact on the reputation of Bermuda as an international financial services centre that operates in compliance with international regulatory and governance standards.
39. A CSP must demonstrate a high level of responsibility when advertising their corporate services. Policies and procedures must be put in place that address advertising standards including the manner in which a CSP advertises its services.
40. The CSP must keep a record of all advertisements issued by it including the date of issue, the publications in which it has been included, along with the internal vetting and approvals that were made in relation to the advertisement.
41. Any advertisement must:

- a. identify the CSP who issued it or caused it to be issued;
- b. when in printed form, contain the address of the CSP that issued it or caused it to be issued;
- c. not include a statement relating to taxation, secrecy benefits, and speed to market promises, unless it contains appropriate qualifications to show what it means in practice and to whom such benefits apply; and
- d. ensure that the identity of the corporate service provider's licensing body is disclosed. *Guidance - The following wording is suggested: "Licensed to conduct Corporate Service Business by the Bermuda Monetary Authority."*

## **RECORD KEEPING**

42. A CSP must maintain systems to ensure that accurate records are kept and maintained up-to-date in relation to compliance with the AML/ATF obligations, the Companies Act 1981, accounting records, business records, transactions records and records of its internal risk management systems.
43. The Authority expects a CSP to maintain such books and records so as to be able to readily retrieve them in Bermuda in legible form.
44. Documented policies, procedures and controls intended to safeguard the assets of the CSP must be in place. Controls must be in place to ensure that only authorised and proper transactions are undertaken.

## **SYSTEMS AND CONTROLS**

45. The records and systems must be such that the CSP is able to fulfil the various other elements of the prudent conduct criterion, and to identify threats to the public interest. They should also be sufficient to enable the CSP to comply with the notification and reporting requirements under the Act.

## **VIII. RISK MANAGEMENT FRAMEWORK**

46. Risk identification and management forms a part of any business and as such the Authority expects the CSP to have an appropriate risk control framework in place for the benefit of all stakeholders. Having a formal risk management framework in place helps the organisation measure performance, make decisions, evaluate processes and decreases the risk of unexpected losses or damage to its reputation.
47. A CSP must implement an appropriate risk management framework which is commensurate with the size and risk profile of its business, its objectives, structure, operations, processes, services and assets. In the application form, the

- size of the business is determined by the number of client companies the CSP provides services to and the breadth of services provided.
48. The risk management framework must be considered as part of the CSP's culture and should be embedded in the strategic and operational policies of the CSP. It should be reviewed periodically as changes in the business dictate.
  49. A risk management framework requires commitment from the board of directors and senior management. Risk management policies and procedures must be approved through the appropriate governance process. Senior management needs to ensure the organisation's objectives, policies, procedures and culture are aligned with the framework.
  50. Adequate and skilled resources should be allocated to the implementation and on going assessment of the risk management framework. Should the CSP decide to outsource, the ultimate responsibility for the effectiveness of controls and oversight of such outsourcing remains with management of the CSP.
  51. Sufficient risk management reports on the CSP's risk profile must be made to senior management at regular intervals and must address the current risk profile of the business.
  52. A CSP must ensure they have adequate segregation of duties and, where necessary, dual control in place to minimise the risk of fraud and errors.
  53. A CSP must consider, where applicable, the following items when implementing a risk management framework:
    - a. Risk management policies and procedures – these must clearly articulate the CSP's commitment to and objectives of its risk management and must be reviewed on a regular basis commensurate with the CSP's business, and at a minimum annually.
    - b. Risk management and monitoring plan – this must be reviewed annually and must be aligned with the CSP's overall strategic objectives. The plan should specify the approach taken, as well as the management structure and resources needed to manage the risk to which the CSP is exposed.
    - c. Risk assessments – these assessments must be reviewed at a minimum annually and must include the identification, analysis and evaluation of risk. The risk assessment must include internal and external risks that could have an adverse impact on the CSP's reputation, performance or its objectives. Risks identified must have adequate controls in place to minimise, or in some cases mitigate risks identified. In some cases, a CSP may decide to accept or transfer the risk. A CSP may decide to transfer the risk through the purchase of insurance and if so, the CSP must ensure that adequate insurance is purchased to cover the financial impact of the risk.

## **RISK APPETITE**

54. Risk appetite and tolerance; the risk appetite statement must be measurable and must be owned by the board of directors. It must be reviewed on an annual basis in conjunction with the CSP's strategic objectives and should cover an array of different risks that are unique to the CSP.

**55. The following risks should be considered when designing and implementing a risk assessment framework:**

### **OPERATIONS RISK**

56. In considering operations risk the CSP must be aware of its processes and where risks may arise. Documents including but not limited to, certificates of incorporation, bye-laws, memorandum of association, share registers and minute books, must be kept in a safe and secure location at all times. A retention period and destruction schedule must be implemented for important documents. Client documents must be segregated from other clients and also from the CSP's specific documents.

### **ACCOUNTING RISK**

57. A CSP may be involved in the preparation of financial statements on behalf of a client. A CSP must ensure that there are adequate controls in place to ensure the accuracy and timely production of clients' financial statements.

### **COMPLIANCE RISK**

58. A CSP must ensure that a compliance function is established. The management of compliance risk ensures that the organisation is adhering to the laws, regulations and policies and procedures that govern it.

### **BUSINESS CONTINUITY RISK**

59. The Authority expects the CSP to have an adequate business continuity and disaster recovery plan in place in the event that it experiences interruptions to its business. Testing and review of the business continuity plan must be carried out periodically but at a minimum on an annual basis.

## **INFORMATION RISK**

60. Both electronic and hard copy CSP specific information and its client information must be managed in a secure environment. The CSP must ensure that information risk is managed appropriately to the size and scale of its business.

## **REPUTATIONAL RISK**

61. The Authority expects a CSP to have adequate controls in place to safeguard its reputation and to reduce the risk of an event that may result in operational and financial failure.

## **IX. REPUTATION OF BERMUDA**

62. A CSP should not carry on activities in relation to company formations, partnership establishment or the transfer or issuance of shares or partnership interests in a manner that are inclined to bring the reputation of Bermuda as an international financial services centre into disrepute. Therefore, a CSP that is providing such services must develop systems, policies and procedures which address this obligation, including the obligation to have documented policies and procedures specific to AML/ATF in place. Such controls and strategies should reduce the likelihood of the CSP becoming a vehicle for, or a victim of, financial crime and suffering consequential damage to the reputation and integrity of Bermuda.
63. It is not possible to provide an exhaustive list of all the factors a CSP needs to take into account in deciding whether to act as a corporate service provider. However, consideration should be given to the following areas before forming Bermuda companies, Bermuda partnerships or before instructing a local agent to incorporate a company or partnership in another jurisdiction:
  - a. the due diligence arrangements that have been undertaken to identify and verify the ultimate beneficial ownership of the proposed company or partnership in accordance with the requirements of the CSP Act 2012 and the Regulations. This means that, where the proposed company or partnership is held within a complex corporate structure, a CSP understands and has verified the true/economic beneficial owner(s) in line with these requirements.
  - b. The proposed name of the company. CSPs should be aware of any legal restrictions (for example, the provisions of section 8 of the Companies Act 1981 and those in section 54 of the Trust (Regulation of Trust Business) Act 2001).
  - c. The proposed name of the partnership. CSPs should be aware of the legal restrictions and requirements (for example, the provisions of section 6 of

the Limited Partnership Act 1883 and those in section 10 of the Exempted Partnership Act 1992).

- d. The proposed activities of the company or partnership. CSPs should identify whether the activities would be legal in the country within which they will be carried out and whether these activities require any licensing or other authorisation (including, but not limited to an approval to conduct financial services activities).
  - e. High risk relationships. CSPs should be alert to situations where the parties or the activities would be deemed to be high risk. Examples include where the beneficial owner would be considered to be politically exposed, where the company is part of a complex structure or where the proposed activities would be regarded as sensitive. While a CSP is required to carry out enhanced levels of due diligence and on going monitoring in cases assessed as high risk for AML purposes, the obligations under the minimum criteria, while similar in nature are not identical and impose an additional obligation beyond AML concerns.
64. The level of risk presented to the reputation of Bermuda should be considered during the formation of the company or partnership and the decision to provide corporate services. It is this unique placement of the CSP that enables it to observe the behaviour and activities of their clients, collect due diligence and evaluate the rationale for prospective and on going business. CSPs should use available information to identify cases that may damage Bermuda's reputation, and should handle such cases responsibly. The Authority may take appropriate legal or regulatory action if a CSP fails to do so.
65. Examples of cases that may present reputational risk are those involving companies or clients:
- a. providing military security services;
  - b. engaging in business activities which are not restricted or prohibited yet are regarded as sensitive, such as trade in precious stones, pornography and body parts ; and
  - c. carrying on financial services business in another jurisdiction, particularly one whose regulatory regime is not equivalent to that of Bermuda, or acting as a holding company of such a business.

## **GATEKEEPER ROLE**

66. The Authority recognises that the CSP serves in the role of gatekeeper and is in the business of serving the interests of their clients. It is also understood and accepted that gatekeepers serve the broader interests of the public and are instrumental to the promotion of the jurisdiction. In so doing, CSPs in the role of gatekeepers, are expected to develop and promote a culture of good governance. Failure to do so can result in the gatekeeper's role becoming compromised particularly where the gatekeeper and the client have developed a close business

relationship. Conflict of interest issues may arise and, if not managed correctly represent a risk to the CSP's business. These risks are heightened where the financial impact to the business of the gatekeeper is heavily reliant upon the client. The gatekeeper's ability to act independently and with objectivity is paramount to effectively carrying on the business of a CSP. The Authority expects gatekeepers in the discharge of their roles and responsibilities, to demonstrate high standards of professionalism that extend beyond simply fulfilling the requirements of the Act. A culture must exist which promotes transparency, integrity, ethics, and personal accountability.

67. The Authority accepts that the board of directors does not function in isolation. There will be reliance placed upon management and other key staff such as internal auditors, corporate secretaries, the MLRO and risk and compliance officers. External parties may also be engaged to assist in the approval of financial statements; assessment of internal controls and compliance measures; and in the provision of legal advice on the interpretation and applicability of laws. Nonetheless the board of directors must consider the appointment of staff and external advisors carefully ensuring that persons engaged also act with integrity, professionalism and independence. The board of directors should not become complacent and unduly dependent upon these advisors. It is the board of directors that is ultimately responsible for promoting an environment that removes any impediments to gatekeepers acting professionally, with self-discipline and in full compliance with internal and external regulatory codes of conduct/guidance.

## **X. CLIENT RELATIONSHIPS**

68. A CSP must have the highest regard for the interests of its clients and the ongoing management of those relationships. The CSP must carry out its responsibilities and activities with due skill, care and diligence. In matters where the CSP is responsible for exercising discretion for or on behalf of its clients, the CSP must ensure that all reasonable steps have been taken to obtain sufficient information in order to properly exercise that discretion. In so doing the exercise of discretion must only be made where the CSP is satisfied that it has been done for a proper purpose and must be able to evidence, in writing, any decision made.
69. Where the client elects to delegate duties or powers to the CSP, whether by power of attorney, nominee arrangement or otherwise, the CSP should only enter into such arrangements where the arrangement is intended for a proper and legal purpose. The CSP must limit these delegations as much as necessary and monitor the exercise as appropriate.
70. The Authority expects CSPs to act in a timely and efficient manner to client requests and in transacting business on behalf of clients. In connection with the formation, transfer or termination of business relationships, the Authority expects the CSP to act in an expeditious manner as appropriate. A CSP should

periodically undertake suitability reviews in respect of the corporate service provider business activities which it provides to its clients.

## **CUSTOMER DUE DILIGENCE**

71. A key aspect of conducting business in a prudent manner is Customer Due Diligence (CDD) standards. The role of CSPs in money laundering and terrorist financing detection and investigation is twofold. First, they must implement effective due diligence measures to capture accurate information on clients and beneficial owners, and to enable competent authorities to expeditiously obtain key information during an investigation or enquiry. Second, CSP's proper fulfilment of their duty to file Suspicious Activity Reports ("SARs") is equally important as they have the earliest opportunity to identify suspect schemes and arrangements. It has been suggested that not only do these obligations assist in the detection of money laundering and other crimes but can also operate to mitigate the risk of a CSP being misused in this way. Where detailed information is obtained on the individuals who are to own and control a company and a CSP has a full understanding of the services they are to provide, this should serve to mitigate the risk that any company formed will be used for illicit purposes and damage the reputation of Bermuda.
72. A CSP must ensure that they can clearly identify and know their clients, which includes beneficial owners and shareholders (refer to Chapters 5 and 6 of the Guidance Notes on Anti-Money Laundering and Anti-Terrorist Financing issued by the Authority in March 2009 (AML General Guidance)). In order to do so the appropriate identity documents must be requested from the client and copied by the CSP to meet record keeping obligations (refer to Chapter 8 of the AML General Guidance). Where the CSP does not have direct sight of originals, notarised copies may be accepted. Copies may also be certified by a professional intermediary, where the latter has himself been subject to complete due diligence by the CSP.
73. In the case of company formation, the applicant is the client upon whose instructions the company is formed. This may or may not be a proposed shareholder. In addition to obtaining identification evidence for the client, it will normally be necessary to obtain:
- a. an explanation of the nature of the proposed company's business, and the source of funds; and
  - b. satisfactory evidence of the identity of each of the proposed ultimate beneficial owners.
74. Where a CSP provides corporate services to a company, the client may or not be the company itself. However one must look behind the company for due diligence purposes and, depending upon the circumstances, investigate and obtain

- proof of identity of any or all of the following:
- a. the shareholders (or beneficial owners if different from the registered shareholders);
  - b. the directors and officers;
  - c. anyone who is giving instructions to the CSP on behalf of the company; and
  - d. anyone who introduces any of the above persons to the CSP.
75. It is recognised that obtaining due diligence on all of the above in every case could be onerous and could lead to a duplication of procedures, unnecessary complication and eventual loss of legitimate business. The AML/ATF Regulations and the AML General Guidance therefore allow for reliance, in certain circumstances, on third party intermediaries (refer to the AML General Guidance at [www.bma.bm](http://www.bma.bm)).
76. Where the proposed company is held in a complex corporate structure, a CSP must understand and verify the ultimate beneficial owner(s) in line with their AML obligations.
77. CSPs must understand the purposes and activities of the structures in relation to which they are appointed or to which they provide services. If the CSP is unable to do so, the CSP must consider whether a suspicion is raised that assets are, or represent, the proceeds of crime.
78. Although identification is described in detail within the AML General Guidance, knowing your client is important in managing Bermuda's reputation. Identification should be regarded as a minimum and further customer due diligence measures may be needed depending on the relationship with the client and the CSP's involvement with the client's financial affairs. Policies and procedures must duly reflect the CSP's duty to CDD standards.
79. A CSP must ensure their records are accurate and up-to-date in compliance with the requirements of both the Act and AML/ATF Regulations. Such records must contain copies of, or references to, the evidence obtained of a client's identity, for five years after the end of the client relationship; and details of the customer transactions for five years from the date of the transaction. CSPs should also retain details of actions considered and taken in respect of internal and external suspicious activity reports (refer to Chapter 8 of the AML General Guidance).

## **CLIENT AGREEMENTS**

80. A CSP must deal with clients fairly and communicate information to them in a way which is not misleading. This will include notification that the CSP is acting as agent or instructing an agent in relation to particular services where that is the case. It will also include keeping directors of client companies sufficiently informed. As such, a

CSP should know and have regular contact with the directors (including any alternate directors as defined by section 3 of the CSP Act 2012) to meet their on going obligations and be aware of the business activities and controlling persons of the company for which it is providing services post-incorporation.

81. To ensure clients are dealt with fairly and are informed, CSPs should discuss terms of business with each prospective client and keep a written record of the terms of the agreement with each client, including evidence of the client's agreement to those terms. That agreement should include, but not be limited to, the following provisions:
- a. a clear description of the services to be provided and fees to be charged;
  - b. a record of how and by whom requests for action are to be given;
  - c. a record of any provisions for the termination of the agreement and the consequences of the termination;
  - d. a description of the CSP's procedure for dealing with any complaints; and
  - e. a statement that the CSP is licensed by the Authority.

## **CLIENT RISK PROFILES**

82. It is important that a client's risk profile is established based on the client's circumstances. Where the risk profile or activities warrant a higher risk classification this should be monitored and updated regularly to ensure that unusual transactions can be identified.

## **RISK BASED APPROACH**

83. In order to implement a reasonable risk-based approach, CSPs must identify the criteria to assess potential money laundering and terrorist financing risks on a service-by-service basis. These risks will vary according to the activities undertaken by the CSP.
84. The Financial Action Task Force and the Wolfsberg Group's Guidance on a Risk-Based Approach for Managing Money Laundering Risks points out that there are no universally accepted methodologies that prescribe the nature and extent of a risk-based approach. It is generally acknowledged, however, that the identification and categorisation of money laundering risks and the establishment of reasonable controls based on the risks identified are core constituents of an effective risk-based approach, which will allow the CSP to exercise reasonable business judgement with respect to their client base.
85. The risk-based approach is not designed to prohibit CSPs from engaging in transactions with customer designated as higher risk or establishing relationships with potential clients who may be designated as higher risk, but rather to support the effective management of potential money laundering risks.

86. Money laundering and terrorist financing risks may be measured using various categories. Application of risk categories provides a strategy for managing potential risks by enabling CSPs to subject clients to proportionate controls and oversight. The most commonly used risk criteria that are considered when assessing are: country/geographic risk, client risk, product/service risk and delivery channel risk.

### **Country/Geographic Risk**

87. Client companies based in or conducting business in or through countries where corruption is known, or perceived, to be a common source of wealth may represent a greater risk;

- a. CSPs should have regard to the Transparency International's Corruption Perceptions Index ([www.transparency.org/](http://www.transparency.org/)) as well as other appropriate publications/databases, when considering the relevant political and economic environment.
- b. Client companies based in or conducting business in or through countries known to have deficiencies in the AML/ATF supervisory regimes will increase the risk. (See <http://www.fatf-gafi.org> for a list of higher risk countries).
- c. Client companies based in or conducting business in or through countries subject to sanctions, embargoes or similar measures issued by, for example by the United Nations (UN) will also present a greater risk. In addition, in some circumstances, countries subject to sanctions or measures similar to those issued by bodies such as the UN, but which may not be universally recognised, may be given credence because of the standing of the issuer and the nature of the measures.

### **Client Risk**

- a. the client's business relationship is conducted in unusual circumstances (for example, significant unexplained geographic distance between the CSP and the client);
- b. legal persons or arrangements that are personal asset-holding vehicles;
- c. client companies that have nominee shareholders or shares in bearer form;
- d. businesses that are cash-intensive;
- e. the ownership structure of the client appears unusual or excessively complex given the nature of the client's business.

### **Product/Service/Transaction/Delivery Channel Risk**

- a. private banking;
- b. anonymous transactions (which may include cash);
- c. non-face-to-face business relationships or transactions;
- d. payments received from unrelated third parties.

88. Section 5.14 of the "Guidance Notes for AML/ATF Regulated Financial Institutions", the Financial Action Task Force (FATF), the Basel Committee, International

Association of Insurance Supervisors and International Organization of Securities Commissions have issued recommendations on the steps that should be taken to identify high-risk customers. FATF has also published guidance on high level principles and procedures on the risk-based approach.

## **ONGOING MONITORING**

89. **Section 5.9 of the Guidance Notes for AML/ATF Regulated Financial Institutions on Anti-Money Laundering & Anti-Terrorist Financing** – *Institutions must conduct on going monitoring of the business relationship with their customers. This is a separate, but related, obligation from the requirement to apply customer due diligence measures. On going monitoring of a business relationship means the scrutiny of transactions undertaken throughout the course of the relationship (including, where necessary, the source of funds) to ensure that the transactions are consistent with the relevant person’s knowledge of the customer, his business and risk profile and so far as practicable keeping the documents, data or information obtained for the purpose of applying customer due diligence measures up-to-date.*
90. On going monitoring and adopting a risk-based approach allows the CSP to determine the level and frequency of monitoring and the review work that must be undertaken having regard to materiality and risk in relation to its clients.

## **FEES**

91. A CSP shall take all reasonable steps to ensure that a client is given sufficient information, is transparent about its fees and must inform its clients in writing regarding the manner in which fees are expected to be deducted or paid.

## **XI. SUPERVISION**

92. The Authority employs a risk-based approach in the regulation and supervision of CSPs.
93. Off-site supervision includes the receipt and analysis of a variety of regular and ad hoc financial information in addition to corporate governance policies and procedures to aid in the regular review of prudential and AML/ATF requirements.
94. Prudential meetings are a part of off-site supervision and are scheduled adopting an internal risk based approach. CSP’s should be prepared to discuss at the prudential meetings the following likely topics:
- a. number of clients;
  - b. geographical distribution of those clients (e.g. 5 Clients in Country X);
  - c. types of business and the client distribution across those types;

- d. any planned changes to business strategies;
  - e. management letters issued by external auditors (where applicable) and responses thereto;
  - f. material operational changes such as changes in key staff members, internal controls issues; and
  - g. adequacy of policies and procedures discussed in Part 4.3 above.
95. On-site supervision involves structured visits to the offices of a CSP. The purpose of the on-site visit is to enable the Authority to assess the processes that management has put into place to monitor and control key risks in the business. Typically, the Authority:
- a. interviews a range of management and staff;
  - b. reviews a selection of information and documents regarding the operation of the CSP and other key controls including the nature and extent of the oversight of the CSP's operations by the board of directors and/or senior management, arrangements for the delegation of executive responsibility and for the proper segregation of duties.
  - c. reviews information and documents relating to the means by which senior management ensures effective monitoring and control of the day-to-day operations, key risks (including operational and reputational) of the business. This information should include references to management information processes as well as to the role of risk management, compliance and AML/ATF functions.
96. Documents sufficient to illustrate effective compliance with internal policies and procedures should also be provided.
97. Where the Authority in the course of its supervision identifies breaches of the Act or the AML Regulations, the Authority will consider legal or regulatory action. The Authority would normally seek remedial action by the CSP before resorting to the use of its enforcement powers. In circumstances where such actions fail to remedy identified deficiencies or where the alleged breaches are so serious as to warrant the immediate exercise of enforcement powers, then the Authority would not hesitate to do so (Refer to the CSP Statement of Principles; the Statement of Principles on the Use of Enforcement Powers; and the AML/ATF Statement of Principles).

## **RELATIONS WITH THE BERMUDA MONETARY AUTHORITY**

98. A CSP is expected to deal openly and in a spirit of co-operation with the Authority and any other relevant regulatory authorities. The CSP should alert the Authority to any material changes in their business strategy, in particular if it is proposed to undertake non-CSP business within the licensed entity. CSPs should also be proactive

in alerting the Authority to any significant developments relevant to its staffing or to its systems and controls environment.

## **STATUTORY AND SUPERVISORY FILINGS**

99. A CSP must annually provide the Authority with a certificate of compliance (certified by an officer of the CSP) certifying that the CSP has complied with the provisions of the minimum criteria provided for in the CSP Act 2012.

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