



# **BERMUDA MONETARY AUTHORITY**

## **CODE OF PRACTICE**

### **CORPORATE SERVICE PROVIDER BUSINESS ACT 2012**

**SEPTEMBER 2014**

## TABLE OF CONTENTS

<b>INTRODUCTION</b>	<b>3</b>
<b>I. OBJECTIVES</b>	<b>3</b>
<b>II. DEFINITIONS</b>	<b>3</b>
<b>III. PROPORTIONALITY PRINCIPLE</b>	<b>4</b>
<b>IV. APPLICATION</b>	<b>5</b>
<b>V. CLIENT DUE DILIGENCE</b>	<b>5</b>
<b>VI. INTEGRITY AND ETHICS</b>	<b>6</b>
<b>VII. DISCLOSURE OF INFORMATION</b>	<b>6</b>
<b>VIII. INTERNAL MANAGEMENT CONTROLS</b>	
<b>Prompt and Timely Execution</b>	<b>6</b>
<b>Competent and Effective Management</b>	<b>7</b>
<b>Delegation</b>	<b>7</b>
<b>Accounting and Other Record Keeping</b>	<b>7</b>
<b>Adequate Personnel</b>	<b>7</b>
<b>Adequate Systems and Controls</b>	<b>7</b>
<b>Fees and Remuneration</b>	<b>8</b>
<b>Client Agreements</b>	<b>8</b>
<b>Client Complaints Procedure</b>	<b>8</b>
<b>Nominee Shareholder Agreements</b>	<b>8</b>
<b>Risk Management Framework</b>	<b>9</b>
<b>IX. DISCLOSURE OF LICENSING BODY</b>	<b>9</b>
<b>X. COOPERATION WITH REGULATORY AUTHORITIES</b>	<b>9</b>

## **INTRODUCTION**

This Code of Practice (the “Code”) is made pursuant to section 7 of the Corporate Service Provider Business Act 2012 (the “Act”). Section 7 requires the Bermuda Monetary Authority (the “Authority”) to publish in such manner as it thinks fit a code that provides guidance on the duties, requirements, procedures, standards and sound principles to be observed by persons carrying on corporate service provider business. The Code should be read in conjunction with the Statement of Principles issued under section 6 of the Act.

### **I. OBJECTIVES**

1. The objectives of this Code are to provide guidance to licensed undertakings on the standards required under the Act and other financial services legislation, as well as to the best practice in the industry.
2. This Code shall be interpreted in the light of the above objectives so as best to give effect thereto. The Act provides that every corporate service provider shall in the conduct of its business have regard to any Code of Practice issued by the Authority.
3. The Authority expects corporate service providers to comply with the letter and the spirit of this Code. Where the Authority has concerns about compliance with the Code, it will bring its concerns to the attention of the corporate service provider and take account of the comments and representations of the corporate service provider as well as, where relevant, his willingness to make appropriate changes to conduct or practice.

### **II. DEFINITIONS**

4. For the purposes of this Code, the definitions appearing in section 2 of the Act shall apply to the interpretation of this Code.

“corporate service provider business” means the provision of any of the following corporate services for profit—

acting as a company formation agent, or agent for the establishment of a partnership;

providing nominee services, including (without limitation) acting as or providing nominee shareholders;

providing administrative and secretarial services to companies or partnerships including one or more of the following services—

providing a registered office;

providing an accommodation, correspondence or administrative address;

maintaining the books<sup>1</sup> and records of a company or partnership;

filing statutory forms, resolutions, returns and notices;

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;

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;

keeping or making any necessary alteration in the register of members of a company in accordance with section 65 of the Companies Act 1981;

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

providing any additional corporate or administrative services as may be specified in regulations.

### **III. PROPORTIONALITY PRINCIPLE**

5. The Authority appreciates that corporate service providers have varying risk profiles arising from the nature, scale, and complexity of their business, and that those corporate service providers with higher risk profiles would require more comprehensive governance and risk management frameworks to conduct business in a sound and prudent manner.
6. Accordingly, the Authority will assess the corporate service provider's compliance with the Code in a proportionate manner relative to its nature, scale, and complexity. These elements will be considered collectively, rather than individually (e.g. a corporate service provider could be relatively small in scale, but carry out extremely complex business and therefore would still be required to maintain a sophisticated risk management framework).
  - (a) Nature includes the relationship between the client entity and the corporate service provider or characteristics of the service provided (e.g. non-executive director versus fully managed office including the provision of directors and officers, etc.);
  - (b) Scale includes size aspects such as volume of business conducted or size of the balance sheet in conjunction with materiality considerations; and
  - (c) Complexity includes organisational structures and ease of information transmission.
7. In assessing the existence of sound and prudent business conduct, the Authority will have regard for the appropriateness of provisions of the Code in relation to their application to a

---

<sup>1</sup> "Books" means statutory books of the company or partnership.

particular corporate service provider taking into account the corporate service provider's nature, scale, and complexity and the Authority's prudential objectives.

8. Holders of a limited corporate service provider licence in particular, should be mindful of the proportionality principle in establishing a sound corporate governance, risk management, and internal controls framework and complying with provisions of the Code, and should be guided by this section in documenting their compliance with the Code.
9. The proportionality principle, discussed above, is applicable to all sections of the Code regardless of whether the principle is explicitly mentioned.

#### **IV. APPLICATION**

10. This Code applies to all holders of corporate service provider licences granted under section 11 of the Act. The Code is of general application, and seeks to take account of the wide diversity of corporate service providers that may be licensed. The Code may be revised from time to time. However, before the Authority makes a material change to the Code, section 7(3) of the Act requires it to first publish a draft of the proposed changes and to consider any representations made to it regarding the contents of the draft.
11. Every corporate service provider licensed under the Act in Bermuda is expected to have regard to the Code. The Code is not a statement of the law and in particular does not affect a licensed corporate service provider's obligations under company or common law. Failure on the part of a licensed corporate service provider to comply with the provisions of this Code is not an offence but is taken into account by the Authority in determining whether or not the business is being conducted in a prudent manner as required by paragraph 3 of Schedule 1 of the Act. Persistent failure by a licensed corporate service provider to abide by the provisions of the Code is likely to result in the Authority taking formal action.

#### **V. CLIENT DUE DILIGENCE**

12. Licensed corporate service providers must have procedures in place to ensure that proper due diligence is carried out before a decision is made to act for any new client. At a minimum, licensed corporate service providers need to be able to comply with The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 and the Anti-Terrorism (Financial and Other Measures) Act 2004, together with any other relevant legislation that may come into force from time to time. To ensure compliance with these requirements, licensed corporate service providers should have adequate policies and procedures in place to confirm that they know on an ongoing basis the current identity of each director, partner or officer and to the fullest extent possible the current identity of the beneficial owners of the entities under administration.

## **VI. INTEGRITY AND ETHICS**

13. A licensed corporate service provider must conduct its business with integrity at all times and should not attempt to avoid or contract out its responsibilities under this Code. It must exercise its corporate service duties prudently and competently and it should administer each client's affairs in accordance with the law. It must deal fairly with all clients and seek to ensure that they are not misled as to the service being provided and the duties and obligations of the service provider. A licensed corporate service provider should always act with due care, skill and diligence.
14. Generally the licensed corporate service provider should avoid situations in which a conflict of interest arises between its business and that of its clients. Similarly and unless authorised to do so, it should not enter into transactions in which it has a material interest without first disclosing it to the relevant parties. Where conflicts of interest arise the corporate service provider must ensure that the circumstances are properly disclosed to those affected and must act at all times to ensure it does not unfairly place its own interests above those of its clients.

## **VII. DISCLOSURE OF INFORMATION**

15. Licensed corporate service providers should observe any obligation of confidentiality that may apply to information communicated by persons concerned with clients (e.g. shareholders, directors, officers, senior executive, controller, partner, associate, and accountants) unless the licensed corporate service provider is given relevant consent to disclose information, is required by applicable law to disclose information or gives information in accordance with the terms of the client constitutional documents or in the ordinary course of the administration of the client's structure. In maintaining the confidentiality of those persons to whom the corporate service provider has responsibility, the licensed corporate service provider should take particular care not to mislead entitled third parties about the beneficial ownership of its client entities.
16. Employees, partners, officers, directors and other persons who have access to confidential information of the licensed corporate service provider and the client structures it administers should be advised in writing upon their engagement and reminded periodically thereafter by the licensed corporate service provider of confidentiality issues.

## **VIII. INTERNAL MANAGEMENT CONTROLS**

### **Prompt and Timely Execution**

17. A licensed corporate service provider should deal effectively and in a timely manner with all requests from those persons to whom the corporate service provider is responsible or accountable, having previously sought and obtained such consents or approvals as may be necessary.

### **Competent and Effective Management**

18. A licensed corporate service provider should have effective management and systems that are commensurate with the nature, scale and complexity of the business it undertakes. It must also have appropriate management resources to control the affairs of the licensed business, including ensuring compliance with legal obligations and standards under the Code.

### **Delegation**

19. The partners or board of directors of a licensed corporate service provider are responsible for the proper exercise of their powers and ensuring that the licensed corporate service provider has proper policies, procedures and other arrangements in place. They may delegate the administration of the licensed corporate service provider's duties to directors, officers, partners, employees or committees as they deem appropriate. When doing so, decisions should align with authorisation and signing powers outlined in policies and procedures.
20. When delegating its duties and/or granting power of attorney, a licensed corporate service provider should have regard to the client constitutional documents, the services agreement, applicable laws and any internal procedures as appropriate.

### **Accounting and other Record Keeping**

21. Licensed corporate service providers must 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 and that will enable the provision of information to persons interested in the structures being administered and entitled to the information on a timely basis. This should include the identity of shareholders, directors, officers or partners. In addition, records of account must be maintained in line with the laws applicable to each client's structure as well as for the licensed corporate service provider itself in accordance with the laws applicable to it.

### **Adequate Personnel**

22. A licensed corporate service provider must have available suitable numbers of staff who are appropriately trained and competent to discharge its corporate service duties effectively. It should ensure that the responsibilities and authority of each staff member are clear and appropriate to his or her qualifications and experience, and that staff receive the necessary training appropriate for their roles.

### **Adequate Systems and Controls**

23. A licensed corporate service provider should ensure that it has in place systems, controls, policies and procedures, to ensure that staff members perform their duties in a diligent and proper manner. It is important that staff understand and comply with the established systems, policies and procedures including those dealing with new business acceptance,

financial transactions, and staff training. The Authority also expects the corporate service provider to have in place a documented business interruption recovery plan, dealing with all of its critical functions.

### **Fees and Remuneration**

24. A licensed corporate service provider must agree a clear fee structure with each relevant person on behalf of the client in advance of taking on an appointment and ensure that the fees charged are transparent at all times. Licensed corporate service providers should also ensure that adequate notice is given before any material change in the fee structure is introduced.

### **Client Agreements**

25. To ensure clients are dealt with fairly and are informed, corporate service providers 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, fees to be charged and the manner in which fees are expected to be deducted or paid;
  - (b) a general description of how and by whom requests for action are to be given;
  - (c) a general description of any provisions for the termination of the agreement and the consequences of termination; and
  - (d) a statement that the corporate service provider is licensed by the Authority including the type of licence issued.

### **Client Complaint Procedures**

26. A licensed corporate service provider should ensure that client complaints are properly handled and dealt with on a timely basis. A record of the details of the complaint, the licensed corporate service provider's response and any action taken as a result should also be made in writing and maintained.

### **Nominee Shareholder Agreements**

27. Where a licensed corporate service provider 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 structure, the corporate service provider shall ensure that there is a written nominee agreement (or other such document that forms a nominee agreement) that will identify the beneficial owner. The licensed corporate service provider shall retain a copy of such in its records.



## **Risk Management Framework**

28. Risk identification and management forms a part of any business and as such the Authority expects the licensed corporate service provider to have an appropriate risk control framework in place for the benefit of its stakeholders.
29. A licensed corporate service provider must implement an appropriate risk management framework commensurate with the scale and risk profile of its business, its objectives, structure, operations, processes, services and assets.

## **IX. DISCLOSURE OF LICENSING BODY**

30. A licensed corporate service provider should ensure that its status as a licensed undertaking is disclosed in all advertisements and correspondence. The following wording is suggested:

“Licensed to conduct Corporate Service Provider Business by the Bermuda Monetary Authority.”

## **X. COOPERATION WITH REGULATORY AUTHORITIES**

31. A licensed corporate service provider is expected to deal openly and in a spirit of cooperation with the Authority and any other relevant regulatory authorities. Licensed corporate service providers should alert the Authority to any proposal to extend their business materially and in particular if it is proposed to undertake non-corporate service business within the licensed entity. Licensed corporate service providers should also be proactive in alerting the Authority to any significant developments relevant to its staffing or to its systems and controls environment. (In this regard the Authority would draw the attention of licensed corporate service providers to sections 12, 22, 45, and 46 of the Act.)