



# **BERMUDA MONETARY AUTHORITY**

## **GUIDANCE NOTES**

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

**SEPTEMBER 2014**

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## I. INTRODUCTION

1. These Guidance Notes have been issued by the Bermuda Monetary Authority (the “Authority”) to provide information for prospective applicants regarding the statutory provisions of the Corporate Service Provider Business Act 2012 (the “Act”) and the supervisory process which the Authority will apply.
2. The Authority’s Guidance is of general application and seeks to take account of the wide diversity of undertakings that may be licensed under the Act. The Guidance will be kept up-to-date and revised versions published from time to time. The Authority cannot provide definitive interpretation of the provisions of the Act, since that is the prerogative of the Courts. However, the Authority, in administering the Act is prepared to offer its own views on the meaning of provisions.
3. It should be noted that the Authority has also published a Statement of Principles, as provided for under the Act. The Statement of Principles provides guidance on the Authority’s approach in interpreting the minimum criteria and in exercising its power to grant, revoke or restrict a licence and in exercising its power to obtain information, reports and to require production of documents.

## II. REGULATORY SCOPE

4. The Act’s requirements are the statutory basis for regulating corporate service provider business in Bermuda. The Act provides for a licensing regime for any person or entity (unless otherwise exempted) engaging in corporate service provider business as defined by the Act, either in or from within Bermuda.
5. A corporate service provider business, as defined by section 2(2) of the Act, 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. providing nominee services, including (without limitation) acting as or providing nominee services;
  - 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 fulfill 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 fulfill 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 (the “Companies Act”);
  - 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.
6. The reference above to a company or partnership is a reference to a company or partnership wherever incorporated or otherwise established and to any similar or equivalent structure or arrangement, howsoever named.
  7. For the purposes of the 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.
  8. An individual shall not be deemed to be in the business of providing corporate services merely by virtue of being a director of one or more companies.
  9. It should be recognised that the Act applies to those persons, partnerships or companies which carry out the above activities as a commercial activity, i.e. services provided to independent third parties for profit. Thus, for example, a corporate service provider which only manages companies within a group of which it is a member is not required to be licensed. Section 9 of the Act permits the exemption of various activities or individuals. An exemption order was issued on 2<sup>nd</sup> July 2015.

### **III. APPLICATIONS**

10. It should be noted that compliance with the provisions of the Companies Act is not part of the regulatory oversight of the Authority. Compliance with those obligations is a matter for the Registrar of Companies. It may become relevant to the Authority if issues arise under the Companies Act that are so significant or frequent that they call into question the general competence of the licensed corporate service provider or its officers to operate within the terms of the licence..
11. An application for a licence under the Act may be made by local or exempted companies incorporated under the Companies Act and by Overseas (Permit) Companies authorised by the Minister of Finance under the Companies Act to conduct business in Bermuda. Applications for a licence may be made by Partnerships formed under the Partnership Act 1902 or the Exempted Partnerships Act 1992; and by Overseas Partnerships permitted by the Minister of Finance to conduct business in Bermuda; and by other unincorporated entities or by individuals conducting corporate service provider business, as defined, in or from within Bermuda.

12. In assessing applications, the Authority considers the interaction of a number of factors including: the nature and scale of the corporate service business being carried on; the number of individual relationships involved; the variety and complexity of the responsibilities which are to be undertaken and the resources that the corporate service provider has at its disposal.
13. All applications for a corporate service provider business licence, whether limited or unlimited, must be made using Form CSP 1 and accompanied by such fees as prescribed under the Bermuda Monetary Authority Act 1969 (refer to the “Fees & Penalties” section of the Authority’s website: [www.bma.bm](http://www.bma.bm)). A copy of the application form is in Appendix I of these Guidance Notes and is also available in electronic form on the Authority’s website.
14. Along with Form CSP 1, pursuant to section 10(2) of the Act, an applicant must submit a detailed business plan setting out the nature and scale of the corporate service business that is to be carried on. The details to be included in this plan are set out in Appendix IV. The minimum licensing criteria require controllers/officers to be fit and proper persons; for business to be conducted in a prudent manner; for corporate service provider to observe proper corporate governance policies and processes with the necessary integrity and skill; and for consideration to be given to the international reputation of Bermuda. These minimum licensing criteria are subject to certain minor differences between companies, partnerships and individuals. The Statement of Principles, published under the Act, should be consulted for more details on these differences.
15. The Authority also requires that an applicant submit as appropriate a completed Questionnaire for Shareholder Controller and Questionnaire for Senior Executives (Appendix II and III). Questionnaires are required from each shareholder/controller, director and officer (as defined in sections 2 and 3 of the Act).
16. Anti-Money Laundering and Anti-Terrorist Financing policies and procedures should form part of all applications to ensure compliance with the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (the “AML Regulations”).
17. The name, contact details and relevant qualifications of the appointed Reporting Officer should be provided in accordance with AML Regulations 16 and 17.
18. In considering an application for a corporate service provider business licence, the Authority may:
  - a. carry out any enquiries that it considers appropriate (e.g.: approaching other regulators);
  - b. ask the applicant, or any specified representative of the applicant, to attend a meeting with the Authority to answer questions and explain any matter the Authority considers relevant to the application;
  - c. seek additional information from the applicant;
  - d. visit the applicant to review proposed premises and files regarding business that it proposes to transfer into the licensed entity;
  - e. request any information furnished by the applicant to be verified in such manner as

- the Authority may specify; and
- f. take into account any other information which it considers relevant in relation to the application.
19. The Authority will not grant a licence unless satisfied that the minimum criteria are met or are capable of being met by the applicant. It must be stressed that even when satisfied the Authority retains discretion to refuse an application.
  20. The Act imposes no time limit within which the Authority must reach a decision on an application. In practice the Authority always seeks to deal as promptly as possible with applications. The time required to complete its initial enquiries may vary depending on the nature of the issues which may arise and the difficulty or otherwise in obtaining any additional information which may be necessary. Generally, the Authority would not expect an application to remain outstanding in excess of three months.

#### **IV. SUPERVISORY PROCESS**

21. Supervision enables and requires judgments to be made about the nature of a corporate service provider's business, the quality of its management, the effectiveness of its controls and compliance, the fairness of its treatment of clients and about its financial viability. In order for the Authority to make these judgments, it needs to keep under review information from a range of sources.
22. The Authority's supervision of corporate service provider businesses involves regular discussions with the senior management of licensed firms, together with receipt and review of statutory certifications and regular compliance visits to the corporate service provider's premises. While the Act provides certain supervisory powers for the Authority to require information from licensed corporate service providers, the Authority expects undertakings to provide voluntarily and routinely the information necessary for its supervision.
23. When concerns arise about the completeness or timeliness of such information, the Authority may decide to utilise its formal powers to require information.
24. The Act also enables the Authority to commission reports on an undertaking's business from an accountant or other person with relevant professional skills. Use of this provision can offer an alternative means of conducting part of the on-site element of supervision which is required. However, this route will normally be used only exceptionally, when the nature of the specific business may call for particular skills in order to conduct a more comprehensive review of the risks involved in the business or where particular concerns or difficulties may have arisen in the Authority's normal on-site work.

#### ***Reporting Requirements***

25. The Act requires that an undertaking holding a corporate service provider business licence annually provide a certificate to the Authority confirming that it has complied with all the statutory requirements, (i.e.: minimum licensing criteria). The form that such certificates should take can be found in Appendix V of these Guidance Notes and is also available in electronic form on the Authority's website.

26. In addition to this reporting, the Authority should be notified immediately of any significant developments relating to an undertaking. Matters that should be reported include, but are not limited to, the following:
- a. any change in key personnel;
  - b. instances of legal action against the undertaking involving the risk of material financial cost or reputational damage;
  - c. requests for information or assistance in relation to ongoing inquiries by a foreign regulatory body; and
  - d. material changes in the business undertaken, including any proposal to undertake non-corporate service provider business.
27. The Authority expects undertakings to be open and proactive in ensuring that the Authority is kept informed of material developments when, or before, they occur. Where the Authority finds reason to doubt the completeness or accuracy of information provided to it in its routine supervision, the Authority will consider the use of the statutory powers in the Act enabling it to require additional documents or information. Depending on the seriousness of the Authority's concerns, it may also have recourse to other information and intervention powers provided in the Act – for example, the appointment of persons to investigate under section 50.
28. Where the Authority in the course of its supervision identifies breaches of the Act or the Regulations, the Authority will consider legal or regulatory action. The Authority would normally seek remedial action by the licensed corporate service provider 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.

### ***Off-Site Supervision***

29. Regular prudential meetings provide an opportunity for the Authority to discuss with senior management the development of the corporate service provider's business, including past performance and future strategies for the business. Prudential meetings are scheduled adopting an internal risk-based approach. Ad hoc meetings will also take place to discuss important interim developments or concerns.
30. Topics raised in the discussion are likely to include:
- a. planned changes to business strategies;
  - b. material operational changes, changes in advisors, key staff members, etc.;
  - c. internal control issues;
  - d. disaster recovery planning;
  - e. staff training;
  - f. adequacy of policies and procedures manuals;
  - g. number of clients;
  - h. geographical distribution of those clients (e.g. 5 Clients in Country X); and
  - i. types of business and the client distribution across those types.

31. Prudential discussions can take place at the Authority's offices or at the undertaking's own premises. Alternatively, telephone interviews may be used in some instances.

### ***On-Site Supervision***

32. The purpose of on-site supervision is to enable the Authority to review compliance with policies and procedures (e.g. record keeping), as well as the processes that management have put into place to monitor and control key risks in the business. On-site supervision involves structured visits to an undertaking's offices where, typically, the Authority interviews a range of management and staff and reviews a selection of individual client files. A review of compliance with "know your client" and record keeping requirements relating to the Proceeds of Crime Act forms part of all of the Authority's visits. On-site visits will usually be scheduled on a rolling basis. However, the frequency of on-site visits will also reflect the Authority's assessment of the degree of risk in the business and the effectiveness of the undertaking's personnel, systems and controls for monitoring risk. In exceptional cases (i.e. where the Authority has material concerns) the Authority may conduct a visit at short or even without notice. There will not usually be a need for a separate off-site supervisory discussion in a year when an undertaking is scheduled for an on-site visit.

33. The Authority will normally write to a licensed undertaking approximately four to six weeks ahead of a visit, requesting pre-visit information and providing more details regarding how the Authority intends to structure the visit. The pre-visit information requested would generally include:

- a. current organisation charts or similar information detailing senior management positions and staff in the main business areas, together with any new or amended job descriptions and reporting lines for key personnel;
- b. documented policies and procedures relating to high level control of the corporate service business, including copies of any forms referred to therein;
- c. the risk register and any risk management document or risk statement pertaining to business risk;
- d. the disaster recovery plan and the results of any testing thereof;
- e. a list of the authorised signatories and the corporate resolution or other document which lays out the signing authority for transacting corporate service business;
- f. the most recent business plan;
- g. the staff training log;
- h. a client listing which includes the risk rating, date of incorporation and value of assets under administration for each client.
- i. the Directors and Officers register and the shareholder register of the licence-holder;
- j. A completed response to the Authority's questionnaire on Developments in Business, Staffing & Controls; and
- k. A copy of any client acceptance and/or account opening documentation

34. While the Act provides powers for the Authority to formally require the production and submission of such information as it may reasonably require, on-site visits are normally conducted without recourse to formal powers.



### ***Consolidated Supervision***

35. Although the Authority licenses specific individuals or entities, it also needs to consider relationships with any wider group to which an entity may belong or with other persons closely linked to the corporate service provider, which may have implications for the licensed undertaking. The Authority reviews these aspects in the course of its routine supervision. Where relevant, the Authority may also agree to take on a wider role of consolidated supervisor of a corporate service provider and related institutions.

### ***Reputation of Bermuda (Gatekeeper Role)***

36. The Authority recognises that the corporate service provider holding an unlimited licence serves in the role of Gatekeeper as well as being 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 in promoting the jurisdiction. In so doing, corporate service providers 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 corporate service provider's business and ultimately to the jurisdiction. These risks are heightened where the financial well-being of the Gatekeeper's business is heavily reliant upon the client. The Gatekeeper's ability to act independently and objectively is paramount in ensuring that it will carry on its corporate service provider activities in a manner that will not bring the reputation of Bermuda as a first-class international financial centre into disrepute. 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. An organisational culture must exist which promotes transparency, integrity, ethics, and personal accountability.