



# **BERMUDA MONETARY AUTHORITY**

**CONSULTATION PAPER**

**MONEY SERVICE BUSINESS FRAMEWORK**

**DECEMBER 2015**

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The financial services industry and other interested parties are invited to submit their views on the proposals set out in this Paper. Comments should be addressed to the Bermuda Monetary Authority and sent to [policy@bma.bm](mailto:policy@bma.bm) no later than 18<sup>th</sup> January 2016.

## I. Background

1. The role of Money Service Business (MSB) providers usually involves the provision of a variety of services to the public. In the United States (US), MSBs are termed as non-bank financial institutions and the Department of Treasury's<sup>1</sup> definition includes: money transmitters; payment instrument sellers; stored-value providers<sup>2</sup>; cheque cashers; issuers or sellers of traveler's cheques or money orders; and currency dealers or exchangers. MSBs in the US are not permitted to accept deposits or make loans. In the United Kingdom (UK), Her Majesty's Revenue and Customs<sup>3</sup> (HMRC) defines a MSB as any business that exchanges currency, transmits money or cashes cheques for their customers.

2. In Bermuda, Section 20AA of the Bermuda Monetary Authority Act 1969 (the BMA Act) defines a MSB as the business of providing certain specific services to the public. The scope of services under the BMA Act is wider than in the UK and the US definitions as it includes payment services (in both the US and UK, payment services are covered under separate legislation) and includes a prudential supervisory approach for all MSBs.

3. In 2014, the Bermuda Monetary Authority (the BMA or Authority) issued a Discussion Paper entitled "[Money Service Business, Payment Services and Foreign Exchange Services](#)" in which the Authority sought input from stakeholders on the existing legislation covering MSB and the growing field of payment services business. It was noted in the Discussion Paper, the legislation covering MSB activity and the power to create regulations for this sector is under the BMA Act.

4. At the time when the BMA Act was amended, it was generally recognised that the existing approach to MSB regulation was intended as an interim measure. Recent interest shown by entrepreneurs has prompted a review of the regulatory framework for the oversight of existing MSB licensees and the scope of regulated activities to ensure that they are both appropriate for our market and in line with a constantly changing global regulatory

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<sup>1</sup> From the US Department of Treasury's website at: [www.treasury.gov/resource-center](http://www.treasury.gov/resource-center)

<sup>2</sup> 'Stored-value providers' are similar to debit cards but include a fixed amount of money that can be withdrawn from the corresponding account. Gift cards or pre-loaded debit cards are common examples of stored value providers.

<sup>3</sup> From the HMRC website: [www.gov.uk/money-laundering-regulations-mc](http://www.gov.uk/money-laundering-regulations-mc).

environment. The Authority concluded that the current legislative framework is no longer appropriate and that MSB activity should be regulated under standalone legislation which includes all of the regulatory and supervisory powers vested in the Authority (similar to those under other supervisory Acts.)

5. In the Discussion Paper, the Authority highlighted some of the options that it had under consideration and based in part on feedback received, the Authority's proposed approach to regulatory improvements for this financial sector includes:

- (i.) Enacting a new standalone Act for MSBs; and
- (ii.) Clarifying the scope of activities and enhancing the regulation of payment services.

The Authority's view is that these changes will help to ensure that this financial sector is appropriately regulated in line with global best practice, while still facilitating its growth and development.

## **II. Money Service Business Framework**

6. Although the scope of MSB activity is wide ranging, the sector in Bermuda is relatively small. Accordingly, the Authority recognises that there must be a balanced approach to regulation, to support innovation and development, while also protecting consumers. As part of the consultation process for the Discussion Paper, the Authority had discussions with both the Ministry of Finance and the Ministry of Economic Development. Consequently, it was agreed that interim changes would be adopted to facilitate the licensing and oversight of payment service activities, while the Authority continued with enhancements to the MSB regulatory framework.

7. Accordingly, the Authority put forward specific legislative changes to the BMA Act, and the Money Service Business Regulations 2007 (MSB Regulations) which were passed in 2014, to include the following:

- (i.) Amending the Minimum Criteria to be commensurate to the nature and scale of the business conducted;
- (ii.) Acquiring the right to obtain information and documents;
- (iii.) Adding a power to impose conditions on the licence;
- (iv.) Requiring audited statements to be prepared by licensees;
- (v.) Introducing supervisory powers to request information; and
- (vi.) Providing the Authority the power to appoint a person to investigate.

8. Notwithstanding the legislative changes made in 2014, the Authority continued to review the MSB regulatory framework to ensure that it fosters growth and development of the sector, while remaining appropriate for the Bermuda market. The Authority proposes in this Consultation Paper that the MSB framework would have its own standalone legislation which would incorporate the provisions of Section 20AA of the BMA Act, the MSB Regulations 2007, the legislative changes made in 2014, as well as certain other legislative powers which are common to other Regulatory Acts. This would ultimately lead to the repeal of Section 20AA of the BMA Act and the MSB Regulations.

9. More specifically, the proposed MSB Act will contain new provisions for regulation and oversight of MSB's related to more detailed licensing requirements, shareholder controllers' issues, a new appeal procedure and wider powers to require the production of documents. Other new areas include disciplinary actions, investigations and confidentiality provisions.

10. The MSB Act will also include the power to make regulations that may be specific to any particular activity carried out by a MSB. Additionally, the Authority recognises the growth potential of this sector and proposes that this legislation include the power for the Minister to amend the list of activities that MSBs are allowed to engage in by adding any other service that the Minister of Finance may deem appropriate as and when the need arises.

11. The Authority proposes to refine and define the scope of MSB activities, currently listed in Section 20AA of the BMA Act. This section defines "money service business" as the business of providing certain services to the public as follows: money transmission services; cashing cheques which are made payable to customers and guaranteeing cheques; issuing,

selling or redeeming money orders or traveler's cheques for cash; issuing credit or debit cards, or otherwise providing means of electronic payment; intermediating means of payment over the internet; and operating a bureau de change whereby cash in one currency is exchanged for cash in another currency.

12. The proposed definitions have been modified to focus on the actual services that MSBs will be allowed to perform and not on the method or medium used to deliver those services. The Authority is also proposing to remove the issuing of credit and debit cards from the list of activities that MSBs are allowed to perform, and redefining certain activities as "payment service business".

13. In that regard, the Authority proposes the following :

- (i) **Money transmission services** – means a service that involves transmitting money by any means;
- (ii) **Cashing cheques** – means exchanging a signed written negotiable instrument which is drawn on a specific bank account for cash;
- (iii) **Issuing, selling or redeeming money orders or traveller's cheques** – means selling or otherwise exchanging bank drafts, money orders, and traveller's cheques as negotiable instruments for cash;
- (iv.) **Payment service business** – means a business that is authorised to provide and execute payment services to and for third parties by whatever means;
- (v.) **A bureau de change** – means a business that exchanges cash in one currency for cash in another currency.
- (vi.) **Cheque Guaranteeing** – means providing a guarantee for the payment of a cheque in accordance with prescribed procedures.

14. Payment services are businesses which provide payments to third parties. The service must be the company's core activity and not ancillary to its primary business regardless of whether the business is regulated or unregulated. Payment services also includes mobile payments and the execution of payment transactions where the consent of the payer to execute the payment transaction is given by means of any telecommunication, digital or IT device and

the payment is made to the telecommunication, IT system or network operator acting only as an intermediary between the payment service user and the supplier of the goods or services. Regardless of the mode of transmitting money for the purposes of making payments, once this is the company's core business, it would require a MSB license. While the definition of Money Service Business under the BMA Act appears to include the growing and changing use of technology in the payments industry, in that it specifically mentions "*providing means of electronic payment*" and "*intermediating means of payment over the internet,*" the MSB Regulations do not adequately reflect these activities nor does the legislation provide for the adoption of regulatory requirements which are necessary to provide consumer protection to clients of the companies that provide either domestic or cross border payment services.

15. The proposed MSB Act will make clear the prohibition on carrying out money service business without a licence and will also include the power for the Authority to determine the form that such licence would be in. The proposed MSB Act would require MSBs to prepare and submit financial statements and the Authority would reserve the power to require that those financial statements be audited and submitted to the Authority.

16. The new Act would not be applicable to the following entities:

- (i) any licensed bank, licensed deposit taking company or credit union,
- (ii) a barrister, solicitor or accountant who provides money transmission services only in an incidental manner and is subject to regulation by a professional body,
- (iii) trustees of a trust, other than a trust which is established to provide money transmission services, and
- (iv) any other business that the Minister acting on the advice of the Authority may by order deem to be exempt.

### **III. Conclusion**

17. As previously stated, it is the Authority's intention to ensure that this financial sector is appropriately regulated in line with global best practice, while still facilitating its growth and development. Accordingly, existing MSB license holders will be grandfathered in and

deemed to be licensed under the new Act. Additionally, they will be given a one year transitional period to comply with all of the provisions of the new Act.

18. The Authority believes that the updating and the introduction of the new legislation proposed in this Consultation Paper will help to create an environment that fosters innovation in the Bermuda market. The Authority seeks input from our industry stakeholders and the public at large on the issues which have been raised regarding the planned enhanced regulation of MSBs, the proposed enhanced regulation of payment services.

19. The Authority recognises that there are some MSB activities which were not addressed in the Discussion Paper including the growing and changing use of technology (e.g., cellular phones) in the payments industry. These issues represent new issues not intended to be covered in this Consultation Paper, however, the Authority would welcome comments and suggestions from stakeholders on these topics.

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