

BERMUDA MONETARY AUTHORITY

Code of Conduct for Fund Administrators

**THE FOLLOWING CODE IS ISSUED BY THE BERMUDA MONETARY
AUTHORITY IN EXERCISE OF THE POWERS CONFERRED ON IT BY
SECTION 49 OF THE INVESTMENT FUNDS ACT 2006.**

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INVESTMENT FUNDS ACT 2006 ('THE ACT')

FUND ADMINISTRATORS' CODE OF CONDUCT

ISSUED BY THE BERMUDA MONETARY AUTHORITY ('THE AUTHORITY') PURSUANT TO SECTION 49 OF THE ACT

1. Preliminary

(i) Section 49 of the Act provides for the Authority to issue codes of conduct as to the duties, requirements and standards to be complied with, and the procedures (whether as to client identification, record-keeping, internal reporting and training or otherwise) and sound principles to be observed by persons carrying on the business of fund administration.

(ii) The Act provides that every licensed fund administrator shall comply, in the conduct of its business, with any code of conduct issued by the Authority. Specifically, any failure to comply is taken into account by the Authority in determining whether the business is being conducted in a prudent manner as required by paragraph 2 of the minimum licensing criteria.¹

2. Objectives

The objectives of this Code are to seek to ensure that licensed fund administrators:

- a) act prudently in the conduct of fund administration business; and
- b) act with due skill, care and diligence in carrying on that business.

3. Definitions

Terms defined in section 2 of the Act have the same meaning for the purposes of this Code.

4. Application

This code applies to all fund administrators licensed under section 43 of the Act. However, it must be borne in mind that, in accordance with the definition of 'fund administrator' provided in section 2(2) of the Act, the administration services provided may vary as between different administrators and different fund clients. Depending on the nature and scope of services provided by a particular fund administrator, not all elements of this Code may be applicable to its business. Licensed fund administrators must ensure that they comply with all relevant parts of the Code.

¹ *Guidance Note: The Authority expects fund administrators to comply with the spirit of the Code, as well as with the letter. Given the wide diversity of administration services provided by licensed administrators, the Authority has opted to keep the Code quite high level and of general application. Where specific issues may arise at a more detailed level, the Authority also has regard, as appropriate, to the work of the Alternative Investment Management Association Limited, including its Guide to Sound Practices for Hedge Fund Administrators, issued in 2004.*

Where the Authority has concerns about compliance with the Code, whether resulting from on-site supervisory review work or otherwise, it first brings its concerns to the attention of the licensed person in order to enable the facts to be established and any necessary remedial action to be initiated. Where serious or persistent breaches are identified, the Authority considers the need for formal action pursuant to section 51 of the Act.

5. Clarity as to Nature and Scope of Functions

- (i) A fund administrator must ensure that it understands fully at all times the nature and scope of the administration functions that it has contracted to provide for each fund client, as well as the detailed arrangements whereby it interacts with other service providers in the course of the day to day operations of the fund. Such functions must be adequately documented within the records of the fund administrator, and any subsequent changes promptly recorded.
- (ii) A fund administrator must ensure that it has effective systems and internal controls in place, together with persons with the relevant professional skills available to it, that are such as to equip it to provide fund clients at all times with the level of services that it has duly contracted to provide. A fund administrator must put in place adequate arrangements for staff recruitment, training and supervision.
- (iii) Systems and controls must be 'fit for purpose'. Fund administrators need to put in place systems that are automated as far as possible, limiting the need for manual intervention. This applies, in particular, where the functions of the administrator include accounting, registration/transfer, pricing and/or reconciliations (other than in the case of the smallest/ least active funds). Depending on the nature and scope of services in each case, the fund administrator typically also needs a full understanding of the rationale for particular fund structures and of particularly complex investment strategies and/or instruments.
- (iv) Where the administrator is involved in the valuation of fund assets, it needs to have systems in place that provide for the timely and accurate generation of net asset valuations. As part of this, it needs to be fully familiar with relevant valuation principles and pricing policies; it must also ensure that satisfactory arrangements are in place, designed to achieve appropriate independence in pricing decisions, as well as effective reconciliations of investment and cash positions.
- (v) A fund administrator must ensure that each prospectus or other offering document provides adequate disclosure of the nature and scope of its functions to underlying investors and of its role in providing services to the different funds.

6. Communication with Fund Investors/Shareholders

Where communication with fund investors/ shareholders forms part of the contracted services, a fund administrator must have arrangements in place to ensure that such communication is timely and accurate, and carried out in a professional manner. A fund administrator must also maintain arrangements for the prompt investigation and remediation of any errors and complaints that arise, including the maintenance of a record of customer complaints and of their handling.

7. Conflicts of Interest

Fund administrators need to be alert at all times to the risk of conflicts of interest arising, whether directly in the course of its own role as administrator or, as relevant, between the fund and its service providers or as between different investors or classes of investors. Fund administrators

need to implement internal rules and procedures for dealing with conflicts of interest. Where conflicts cannot be avoided, fund administrators need to seek to ensure that the interests of investors are not damaged through undisclosed conflicts of interest.

8. Confidentiality

Fund administrators must maintain in place arrangements designed to protect the proper confidentiality of fund clients and of underlying investors.

9. Dealing with Non-Compliant Funds

A fund administrator must be alert for indications that a fund to which services are provided may no longer be operating in compliance with legal, prospectus or other stipulated requirements. In such circumstances, the fund administrator needs to consider whether it is content to continue to be involved. It must also determine whether it may have legal or contractual obligations to report any concerns.

10. Transfers of Administrator

A fund administrator must co-operate in ensuring a smooth and timely transfer of records or other relevant information when its role is transferred to a new administrator.

11. Know Your Customer

- (i) Fund administrators must ensure that they conduct adequate background checks before agreeing to provide services to a new fund client, in order to determine that they are properly familiar with the operator and any controllers, as well as with other service providers to the fund.
- (ii) Where fund administrators, as part of their functions, legally or contractually take on specific functions with regard to verifying underlying investors in respect of Anti-Money Laundering/Countering Financing of Terrorism, they need to ensure that they have a full understanding of the relevant legal obligations and other requirements. They should also develop and put in place appropriate internal written procedures, including with regard to training relevant staff and, at least annually, monitoring compliance with their internal arrangements. Particular attention should be paid to ensuring the effectiveness of the roles of the Compliance Officer and the Money Laundering Reporting Officer, under Bermuda's proceeds of crime legislation. As relevant, administrators may also need to have appropriate regard to legal requirements in the jurisdiction of a particular fund and any differences from those applying in Bermuda.

12. Relations with Bermuda Monetary Authority

- (i) A licensed fund administrator should disclose its licensed status in all advertisements as well as in correspondence with fund clients and underlying investors in the terms

“Licensed by the Bermuda Monetary Authority under the Investment Funds Act 2006.”

- (ii) The Authority expects licensed fund administrators to be open and cooperative in their dealings with it. Specifically, they should alert the Authority promptly to compliance issues arising under the Act or this Code, to material problems arising in their business - for example, involvement in litigation (whether in Bermuda or elsewhere), and to concerns raised by other regulators which may potentially impact their ability to conduct business in another jurisdiction.