



24 July 2019

Dear Stakeholders,

Re: Consultation Paper: The Trusts (Regulation of Trust Business) Amendment Act 2019

The Bermuda Monetary Authority (the Authority) would like to thank industry participants for their continued engagement as the Authority develops its regulatory framework for trust businesses. The Authority appreciates the feedback received and is committed to ensuring Bermuda's regulatory regime is effective and aligned with evolving international standards.

RESPONSE TO INDUSTRY FEEDBACK

The Consultation Paper addressed proposed amendments to the Trusts (Regulation of Trust Business) Act 2001 (the Act), as well as proposed changes to the trust business Code of Practice (the Code) issued pursuant to section 7 of the Act and the Statement of Principles (the SoP) issued pursuant to section 6 of the Act.

The Authority's responses to the **key substantive comments** that were received are outlined below.

Physical presence

Summary of comments: Concerns were raised by industry regarding the proposed amendments to the Act to facilitate the physical presence requirement and how the Authority would determine when a licenced undertaking, demonstrated adequate physical presence. It was also noted the proposed amendments to section 4A of the Act would potentially allow Bermuda companies or partnerships to engage in unregulated trust business outside Bermuda.

Resolution: The Authority amended its proposed approach by placing the physical presence requirement into a separate section of the Act (section 4B). The Authority will use a combination of desk-based reviews, prudential meetings and on-site visits to make a determination of the suitability of the trust business' ongoing physical presence. Each trust business should be prepared to discuss its arrangements with the Authority's team during the supervisory process and explain why it is suitable for their business.

It is understood a licenced undertaking might reasonably require the holding of some meetings or operations outside of Bermuda, or the inclusion of directors, controllers or employees not resident in Bermuda. This is acceptable, provided persons located outside Bermuda remain available to the Authority when required and the record-keeping provisions of the Code are followed. Ultimately, the objective of this requirement is to ensure the Authority is capable of exercising the appropriate regulatory influence over the undertaking. No other amendments were made to section 4A.

Registration of licences

Summary of comments: A respondent asked if the intention was simply to remove the fee prescribed for the inspection of the register or to remove the requirement to keep one altogether.

Resolution: Section 13 of the Act was amended to clarify that the Authority will still maintain publicly available information about which trust businesses are licenced by the Authority.

Determination of ‘adequate liquidity’ to be made by the Authority

Summary of comments: Clarity was requested on how the Authority would determine whether a trust business demonstrates adequate liquidity and the timeframe to be allowed for implementation.

Resolution: The Authority will use a combination of desk-based reviews, prudential meetings and on-site visits to make a determination of the suitability of the trust business’ liquidity management.

Segregation of funds and treatment of client money

Summary of comments: A respondent questioned why this was necessary, as there was a similar provision in the Code. Clarity was also requested for dual licence holders given a similar provision was being added for corporate service providers.

Resolution: The Authority felt it was important to clearly enshrine this requirement in legislation to protect those who entrust funds to a licenced trust undertaking. The Authority’s expectation for dual licence holders is that each separate legal entity would have its own client money account. If one entity holds multiple licences, then one client account may be used with appropriate recordkeeping in place to identify clients’ funds.

Power of the Authority to require returns

Summary of comments: Questions were raised as to what types of information the Authority would require in returns and when they would be requested. Concerns were also raised that the Authority would implement additional reporting requirements without due consideration of the economic consequence of doing so for industry.

Resolution: Currently, the Act did not have the same provisions found in the Authority’s other regulatory acts to give the Authority the power to require statutory returns. In implementing this change, the Authority will work with industry to ensure there is consistency in the timing and content of returns so licencees can plan annually for obtaining and managing data. The Authority intends to streamline its data collection processes so as to make informed regulatory decisions, whilst minimising the impact on licencees, particularly multiple licence holders who have multiple reporting obligations.

Exemptions

Summary of comments: Concerns were raised that the proposed introduction of the annual declaration for Private Trust Companies (PTCs) would make Bermuda less attractive than

competitor jurisdictions, and the process for obtaining the exemption would become longer and more expensive.

Resolution: The Authority believes by providing a clear process for obtaining the exemption, the time taken will be reduced, as it will cut down on the need for follow-up requests for information to determine the nature and scope of the PTC's activity. It is not intended to introduce a full licensing regime or annual fee for PTCs as is done in other jurisdictions. The annual declaration will be required to be signed by the directors of the PTC confirming that the nature and scope of the PTC's business has not changed since the granting of the exemption. The Authority believes the proposed regime changes are necessary to provide it with the information required to effectively monitor the activities of PTCs without introducing unduly, burdensome regulation and allowing Bermuda to remain competitive. The annual reporting will not apply to other exempt entities such as bare trustees, and those already regulated as pension plans and investment funds.

Supervisory matters to be addressed in the Code and SoP

The Authority acknowledges other matters raised by industry stakeholders which will be addressed by amendments to the Code and SoP. The Authority is committed to engaging with our industry as we consult on these proposals and we appreciate your cooperation as we seek to enhance the framework that will meet international standards.

The Authority would like to thank stakeholders for their feedback, and remains committed to working with industry and other interested parties to ensure results achieved are in the best interests of the Bermuda market. Any stakeholder who needs further clarification or additional information on any issue should contact the Authority directly at policy@bma.bm.