



**BERMUDA MONETARY AUTHORITY**

**CORPORATE SERVICE PROVIDER BUSINESS ACT 2012**

**CODE OF PRACTICE**

**SEPTEMBER 2019**

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## **I. INTRODUCTION**

1. 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 a manner as it thinks fit a Code providing 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 and Statement of Principles & Guidance on The Exercise of Enforcement Powers (the Enforcement Guide) issued under section 6 of the Act.

## **II. OBJECTIVES**

2. The objectives of this Code are to provide guidance to licenced corporate service providers on the standards required under the Act and other financial services legislation, as well as to the best practice in the industry.
3. 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.
4. 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, its willingness to make appropriate changes to conduct or practice.

## **III. DEFINITIONS**

5. For the purposes of this Code, the definitions appearing in section 2(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.

#### **IV. PROPORTIONALITY PRINCIPLE**

6. 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.
7. 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
  - c) Complexity includes organisational structures and ease of information transmission
8. In assessing the existence of sound and prudent business conduct, the Authority will have

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

regard for the appropriateness of provisions of the Code in relation to their application to a particular corporate service provider taking into account the corporate service provider's nature, scale and complexity, and the Authority's prudential objectives.

9. Holders of a limited corporate service provider licence in particular should be mindful of the proportionality principle in establishing a sound 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.
10. The proportionality principle, discussed above, is applicable to all sections of the Code regardless of whether the principle is explicitly mentioned.

## **V. APPLICATION**

11. 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 licenced. 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.
12. Every corporate service provider licenced under the Act in Bermuda is expected to have regard to the Code as may be amended from time to time. The Code is not a statement of the law and in particular does not affect a licenced corporate service provider's obligations under company or common law. Failure on the part of a licenced 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 licenced corporate service provider to abide by the provisions of the Code is likely to result in the Authority taking formal action.

## **VI. CLIENT DUE DILIGENCE**

13. Licenced corporate service providers must have procedures in place to ensure that proper, risk-based due diligence is carried out before a decision is made to act for any new client. At a minimum, licenced corporate service providers need to be able to comply with The Proceeds of Crime Act 1997, 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.
14. To ensure compliance with these requirements, licenced corporate service providers must 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. If the corporate service provider is holding client money, they must also verify the source of any monies they are holding on behalf of client entities, to satisfy themselves that they are not of illicit origin.

15. In addition to their client due diligence obligations, corporate service providers are expected to have a documented policy on new client engagements or acceptances, having regard to their assessment of the quality, nature and scale of the services involved, and the ability of the corporate service provider to provide the services in question. Corporate service providers need to ensure that they document and fully understand the rationale for particular structures, and to be comfortable that the business is suitable on an ongoing basis.

## **VII. INTEGRITY AND ETHICS**

16. A licenced 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 licenced corporate service provider should always act with due care, skill and diligence.

## **VIII. CONFLICTS OF INTEREST**

17. A licenced corporate service provider must have clearly documented and established policies and procedures to manage or 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 keep adequate records of such conflicts and act at all times to ensure it does not unfairly place its own interests above those of its clients. All reasonable steps to manage conflicts to prevent damage to clients' interests must be taken.

## **IX. DISCLOSURE OF INFORMATION**

18. Licenced corporate service providers should observe any obligation of confidentiality that may apply in respect of information communicated by persons concerned with clients (e.g. shareholders, directors, officers, senior executive, controller, partner, associate, and accountants) unless the licenced 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 licenced corporate service provider should take particular care not to mislead entitled third parties about the beneficial ownership of its client entities.

19. Employees, partners, officers, directors and other persons who have access to confidential information of the licenced corporate service provider and the client structures it administers should be advised in writing upon their engagement, and reminded periodically thereafter by the licenced corporate service provider of confidentiality issues.

## **X. INTERNAL MANAGEMENT CONTROLS**

### **Prompt and Timely Execution**

20. A licenced 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 and should arrange its records in such a way as to allow a timely response.

### **Board Practices**

21. A licenced corporate service provider which is a company must ensure that the board of directors should be solely comprised of individuals; corporate directors are not considered appropriate.
22. All directors should understand the board's collective duty to ensure that robust arrangements for regulatory compliance are maintained. The board is ultimately responsible for the compliance function and should ensure that they are provided with sufficient regular information regarding all legal and regulatory compliance activities to allow them to rectify any shortcomings in the corporate service provider's compliance framework.
23. For the purpose of satisfying the physical presence requirement pursuant to section 4A of the Act, directors should have due regard to the location:
  - a) Where strategic and operational decision-making occurs
  - b) Where the corporate service provider business is carried on
  - c) Where meetings of the board, partners or management occur
  - d) Where directors, controllers or employees reside
24. In order to determine if a corporate service provider (CSP) has sufficient nexus to Bermuda, the Authority will take into consideration the location of the aforementioned activities vis-a-vis the nature, scale and complexity of the business. Ultimately, the objective of this requirement is to ensure that the Authority is capable of exercising the appropriate regulatory influence over the CSP. As such, it is expected that minutes will be kept of all meetings of the

board, partners and management that will evidence who was present, all the relevant strategic and operational decisions taken at the meeting and where the meeting was held.

25. It is understood that a licenced CSP 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 all persons located outside Bermuda remain available to the Authority when required, access is facilitated where necessary by the licenced corporate service provider and the record-keeping provisions of this Code are followed.
26. The board of directors has a key role in assessing the risks to the undertaking's business and should at all times remember the duty they owe to the company. This is especially key in companies where directors may also be shareholders, as this will limit the level of external scrutiny of any actions of the board. While the Authority has not taken the step of requiring independent directors, the company must appropriately manage any risk of undue influence on the board's actions.

### **Delegation**

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

### **Competent and Effective Management**

29. A licenced 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 licenced business, including ensuring compliance with legal obligations and standards under the Code.

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

30. Licenced 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. All records required to be maintained by a licenced corporate service provider, must be accurate and kept current.

31. Records of account must be maintained in line with the laws applicable to each client's structure as well as for the licenced corporate service provider itself in accordance with the laws applicable to it. In cases where such law is silent, records should be maintained for a minimum period of five years from the end of the transaction or cessation of the business relationship. The client accounting records should disclose with accuracy the transactions and commitments of the structures under administration. The corporate service provider's own accounting records should be accurate, current and up to date to reflect its affairs, and should be available in a timely fashion, upon request by the Authority.
32. In order to protect all records from the risk of loss, theft, unauthorised access, alteration or destruction, a licenced corporate service provider must establish and maintain documented policies and procedures to ensure:
  - a) Adequate security and safe-keeping of hard copy records
  - b) Suitable storage and back up for electronic records
  - c) Privacy of all records
  - d) Timely accessibility in Bermuda of any records it maintains in hard copy or electronic format
33. A licenced corporate service provider must maintain a log of all cybersecurity incidents, together with details of actions taken to resolve them. The Authority expects all licenced corporate service providers to report any material cybersecurity incident to the Authority in a timely fashion. Material cybersecurity incidents are generally those that:
  - a) Lead to a significant loss of data or the availability or control of IT systems
  - b) Affect a large number of customers or clients
  - c) Result in unauthorised access to, or installation of malicious software on, the licensee's information and communications systems

#### **Adequate Personnel**

34. A licenced 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. An undertaking shall establish procedures to ensure the adequate supervision of staff in their dealings with clients and the management of client structures.
35. A licenced corporate service provider must also formulate and keep up to date logs for staff

training and development and ensure that staff receive the necessary training appropriate for their roles. Staff must be provided with on-the-job training on the undertaking's internal policies, procedures and internal controls. The undertaking should ensure that adequate training is provided specific to the roles and responsibilities that staff members perform. Such training should be provided on an ongoing basis, including training on its AML/ATF responsibilities.

36. A licenced corporate service provider should maintain a high standard of recruitment practices to ensure the probity and competence of all directors, partners and employees. As such, a licenced corporate service provider should have documented policies and procedures to consider any publicly available information pertaining to regulatory censure, professional reprimands and other formal censure, discipline or public criticisms, and the criminal record of a prospective employee. Once an employee has been hired, the licenced corporate service provider should have regard to continually monitor employee fitness and probity.

### **Adequate Systems and Controls**

37. A licenced 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 policies and procedures, including those dealing with new business acceptance, financial transactions, confidentiality, conflicts of interest 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. The Authority would also expect a corporate service provider to occupy premises suitable for the purpose of conducting its business.

### **Segregation of Funds and Treatment of Client Money**

38. On the occasion where a licenced corporate service provider is holding client monies, at a minimum it must ensure that those funds are kept, at all times, separately from those of the licenced corporate service provider.
39. Client money includes all monies held, received on behalf of or owed to clients or client structures by the licenced corporate service provider. At all times, the licensee must maintain up to date and accurate records to show the monies it received, held or paid on account of its clients, and must clearly distinguish monies of each client from one another and from the licensee's own monies.
40. Where client monies are held in a pooled client money account, documentation must be provided to the client, as appropriate, setting out the terms on which that money is held, and full records must be available at all times which confirm the beneficial ownership of the pooled monies. These records should be reconciled at least monthly, or more frequently according to

the corporate service provider's own internal controls.

41. A licenced corporate service provider must have documented and established policies, systems and controls over the use of client money and the operation of client money accounts. Particularly, the corporate service provider must have internal controls to ensure that remittances of client monies adhere to a suitable procedure. Where client money is being used to pay the corporate service provider's own fees, such transfers should only be made in accordance with the client agreement in place. The client money policies, systems and controls must be reviewed at least annually.
42. A licenced corporate service provider which also holds a trust business licence issued by the Authority pursuant to section 12 of the Trusts (Regulation of Trust Business) Act 2001 (the TBA), may utilise the same client account for all of its clients, provided that the Client Money requirements of the Code of Practice issued pursuant to section 7 of the TBA are also followed. The Authority expects that each licenced undertaking that is a separate legal entity will operate its own client money accounts.

### **Fees and Remuneration**

43. A licenced 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. Licenced corporate service providers should also ensure that adequate notice is given before any material change in the fee structure is introduced.

### **Client Agreements**

44. 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 basis for those fees 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 the process for the termination of the agreement, including provisions for a reasonable notice period, and the consequences of termination, including any termination fees which may be charged
  - d) A statement that the corporate service provider is licenced by the Authority including the type of licence issued

## **Complaint Procedures**

45. A licenced corporate service provider should ensure its complaints handling process is transparent. When complaints are made, the corporate service provider should ensure that complaints are properly handled and addressed on a timely basis. A licenced corporate service provider should ensure that a record of the details of the complaint includes the licenced corporate service provider's response and any action taken as a result is maintained in writing.

## **Nominee Shareholder Agreements**

46. Where a licenced 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 licenced corporate service provider shall retain a copy of such in its records.

## **Risk Management Framework**

47. A licenced 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.
48. Risk identification and management forms a part of any business and as such the Authority expects the licenced corporate service provider to have an appropriate risk control framework in place for the benefit of its stakeholders. This includes ensuring that the board (or similar) exercises appropriate oversight of the risk management process to ensure it continues to align with the risk appetite and risk tolerance set by the board.

## **Advertising**

49. The Authority expects licenced corporate service providers to demonstrate a high level of responsibility in the advertisement of all of their services. In particular, a licensee must have due regard to Bermuda's reputation and ensure that the manner in which it advertises its services does not violate any local or international laws.
50. The form and content of advertisements must:
- a) Be clear and ethical
  - b) Not violate any standards of prudence and fairness
  - c) Not promote any breach of the Act or other local or international laws

## **XI. DISCLOSURE OF LICENSING BODY**

51. A licenced corporate service provider should ensure that its status as a licenced undertaking is published on its website, if it maintains one, and is disclosed in all advertisements and correspondence. The following wording is suggested:

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

## **XII. COOPERATION WITH REGULATORY AUTHORITIES**

52. A licenced corporate service provider is expected to deal openly and in a spirit of cooperation with the Authority, and any other relevant regulatory authorities. Licenced 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 licenced entity. Licenced corporate service providers should also be proactive in alerting the Authority to any significant developments relevant to its business such as:

- a) Its staffing
- b) Its systems and controls environment
- c) Any material insurance claims for damages arising from acts, omissions or breaches of professional duty
- d) Its involvement in criminal proceedings either in Bermuda or abroad
- e) The amalgamation with or acquisition of another firm
- f) The sale of the CSP business
- g) Any material cybersecurity incidents
- h) Issues affecting its ability to meet or continue meeting the minimum licensing criteria or other breaches of expected standards of behaviour.

(In this regard the Authority would draw the attention of licenced corporate service providers to sections 12, 22, 45, and 46 of the Act.)