



BERMUDA MONETARY AUTHORITY

TRUSTS (REGULATION OF TRUST BUSINESS) ACT 2001

CODE OF PRACTICE

DECEMBER 2019

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I. INTRODUCTION

1. This Code of Practice (the Code) is made pursuant to section 7 of the Trusts (Regulation of Trust Business) Act 2001 (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 as to the duties, requirements, procedures, standards and sound principles to be observed by persons carrying on trust business. This 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 undertakings as to 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 light of the above objectives so as best to give effect thereto. The Act provides that every licenced undertaking shall in the conduct of its business have regard to any Code of Practice issued by the Authority.
4. The Authority expects licenced undertakings 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 licenced undertaking, and take account of the comments and representations of the undertaking as well as, where relevant, its willingness to make appropriate changes to conduct or practice.

III. PROPORTIONALITY PRINCIPLE

5. The Authority appreciates that trust businesses have varying risk profiles arising from the nature, scale and complexity of their business, and that those trust businesses with higher risk profiles would require more comprehensive governance and risk management frameworks to conduct business in a sound and prudent manner.
6. Accordingly, the Authority will assess the undertaking'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. an undertaking 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 undertaking or characteristics of the service provided (e.g. managed trust company relationships).
 - 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.
7. In assessing the existence of sound and prudent business conduct, the Authority will have regard for the appropriateness of provisions of the Code in relation to their application to a particular undertaking, taking into account the undertaking's nature, scale and complexity, and the Authority's prudential objectives.
8. Holders of a limited trust business 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.
9. The proportionality principle, discussed above, is applicable to all sections of the Code regardless of whether the principle is explicitly mentioned.

IV. APPLICATION

10. The Code applies to all holders of trust business licences issued pursuant to section 11 of Act. The Code is of general application and seeks to take account of the wide diversity of undertakings 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.
11. Every undertaking 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 undertaking's obligations under trust or common law. Failure on the part of a licenced undertaking to comply with the provisions of this Code is not in and of itself 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 5 of the First Schedule to the Act. Persistent failure by licenced undertakings to abide by the provisions of the Code is likely to result in formal action.

V. CLIENT DUE DILIGENCE

12. Licenced undertakings 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 undertakings 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.
13. To ensure compliance with these requirements, licenced undertakings must have adequate policies and procedures in place to confirm that they know the identity of each settlor, protector and custodian on an ongoing basis, and to the fullest extent possible the identity of the beneficiaries. They must also verify the source of all assets introduced, to satisfy themselves that they are not of illicit origin.

VI. INTEGRITY & ETHICS

14. A licenced undertaking must conduct its business with integrity at all times and should not attempt to avoid or contract out of its responsibilities under this Code. It must exercise its fiduciary duties prudently and competently and, subject to the terms of the trust, consider the rights of all classes of beneficiaries when making decisions affecting the administration of the trust. It should invest, distribute or otherwise manage each trust's assets in accordance with the law and the trust deed. It must deal fairly with all clients (as defined in section 2 of the Act) 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 undertaking should treat the interests of beneficiaries as paramount (subject to any legal obligations to other persons or bodies) and should always act with due care, skill and diligence. Subject to the terms of the trust, it should also act impartially between beneficiaries, while having regard to its legal and contractual obligations.

VII. CONFLICTS OF INTEREST

15. A licenced undertaking must have regard at all times to its legal obligations with regard to conflicts of interest. A licenced undertaking must have clearly documented and established policies and procedures to manage or avoid situations in which conflict of interest arises between trusts administered by the undertaking or between the licenced undertaking's business, and that of the beneficiaries of a trust. Similarly and unless authorised to do so, the licenced undertaking should not enter into transactions in which it has a material interest, without first disclosing it to the relevant parties. Where conflicts of interest do arise, the licenced undertaking must keep

adequate records of such conflict. Further, conflicts must be addressed by ensuring all reasonable steps to manage conflicts to prevent damage to clients' interests are taken. Licenced undertakings need to exercise particular care and attention when taking on discretionary trust business to ensure that they are able to exercise appropriate independent discretion.

VIII. TRUST CREATION

16. When establishing a trust, a licenced undertaking should familiarise itself with the objects of the trust and satisfy itself that the trust is being established for a lawful purpose. It should also ensure that the settlor has access to all appropriate information, including relevant independent professional advice where necessary. In order to adequately perform its fiduciary and other duties, a licenced undertaking must ensure that it has a complete understanding of the trust deed in each case and must seek legal or other advice where necessary. The licenced undertaking also has a responsibility to ensure that trust property is brought properly under its control.
17. In addition to their client due diligence obligations, undertakings 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 undertaking to provide the services in question. Undertakings need to ensure that they document and understand fully the rationale for particular structures, and to be comfortable that the business is suitable on an ongoing basis. These standards also apply *mutatis mutandis* in relation to any trust business delegated to the licenced undertaking by another trustee. In such cases, the licenced undertaking must have full knowledge of the trust arrangements and must retain in its files copies of all the records pertaining to trust business introduced directly to the trust company. A licenced undertaking should not act as agent for others in the management of trust assets unless it is satisfied that the trustee is subject to professional standards equivalent to its own.

IX. DISCLOSURE OF INFORMATION

18. Licenced undertakings should observe any obligation of confidentiality that may apply in respect of information communicated by persons concerned with trusts (e.g. settlors, protectors, enforcers and beneficiaries and their professional advisers) unless the licenced undertaking 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 trust instrument or in the ordinary course of the administration of the trust. In maintaining the confidentiality owed to those persons to whom the undertaking has responsibility, the licenced undertaking should take particular care not to mislead third parties as to the beneficial ownership or origin of trust assets.

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

X. INTERNAL MANAGEMENT CONTROLS

Powers of Investment

20. The responsibility of the licenced undertaking is to invest and manage or arrange for the investment and management of the funds of the trust in light of the purposes, terms, distribution requirements and other circumstances of the trust and, where appropriate, in accordance with applicable law.
21. Subject to any enlargement or restriction of a trustee's powers of investment set out in the trust instrument or by law:
- a) A trustee may invest or otherwise apply trust property in the purchase or acquisition of property of any kind whether or not income-producing, and whether for the purpose of receiving an appropriate total return from income and capital appreciation, controlling or limiting risk or benefiting persons interested in any way whatsoever in the income produced by trust property or for a mixture of such purposes.
 - b) In so investing or otherwise applying trust property, a trustee shall act as a prudent investor would by considering the purposes, terms, distribution requirements and other circumstances of the trust, and by exercising reasonable care, skill and caution.
 - c) In determining whether a trustee has acted in accordance with the above, any decision to invest or otherwise apply trust property shall be evaluated in the context of trust property as a whole, and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

Segregation of Funds and Treatment of Client Money

22. A licenced undertaking must ensure that trust funds are kept, at all times, separately from those of the licenced undertaking. Further, they must ensure that trust funds are not co-mingled with funds from another trust unless the necessary consents have been obtained, or a contrary intention is shown in the trust instrument, documentation provided as appropriate setting out the terms on which that money is held, and full records are available at all times which confirm the beneficial ownership of the pooled monies.
23. Client money includes all monies held, received on behalf of, or owed to clients (as defined in

section 2 of the Act) by the licenced undertaking. At all times, a licenced undertaking 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 comprising each trust fund from one another and from the licensee's own monies. These records should be reconciled at least monthly or more frequently according to the licenced undertaking's own internal controls.

24. A licenced undertaking must have documented and established policies, systems and controls over the use of client money and the operation of client money accounts. Particularly, the undertaking must have internal controls to ensure that remittances of client monies adhere to a suitable procedure to prevent misuse of client funds. Where client money is being used to pay the undertaking's own fees, such transfers should only be made in accordance with the fee agreement in place or with the trust deed. The client money policies, systems and controls must be reviewed at least annually.
25. A licenced undertaking which also holds a corporate service provider business licence issued by the Authority pursuant to section 11 of the Corporate Service Provider Business Act 2012 (the CSP Act), 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 CSP Act are also followed. The Authority expects that each licenced undertaking that is a separate legal entity will operate its own client money accounts.

Prompt and Timely Execution

26. A licenced undertaking should deal effectively and in a timely manner with all requests from those persons to whom the undertaking 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

27. A licenced undertaking that is a company must ensure that the board of directors should be solely comprised of individuals; corporate directors are not considered appropriate.
28. 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 deficiencies in the undertaking's compliance framework.
29. For the purpose of satisfying the physical presence requirement pursuant to section 4B of the

Act, directors should have due regard to the location:

- a) Where strategic and operational decision-making occurs;
- b) Where the trust business is carried on;
- c) Where meetings of the board, partners or management occur; and
- d) Where directors, controllers or employees reside.

30. In order to determine if a licenced undertaking 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. 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. Where the licenced undertaking is part of a group structure, and particularly if the parent company is not a Bermuda licenced entity, the board of the licenced undertaking must demonstrate it has evaluated the group level decisions or practices to ensure that they do not put the licenced undertaking in breach of Bermuda laws or regulations.
31. It is understood that 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 all persons located outside Bermuda remain available to the Authority when required; access is facilitated, where necessary, by the licenced undertaking; and the record-keeping provisions of this Code are followed.
32. 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

33. The board of directors or partners of a licenced undertaking are responsible for the proper exercise of its fiduciary powers, and ensuring that the licenced undertaking has documented policies, procedures and other arrangements in place. In discharging this responsibility, the board of directors or partners may delegate the exercise of such of the licenced undertaking's fiduciary powers as it may consider proper to such directors, partners, officers, employees or committees as deemed necessary for the running of the business. 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 undertaking's policies and procedures.

34. A licenced undertaking should have regard to the trust instrument, the law and any internal procedures as appropriate with regard to the delegation of its duties and/or the granting of powers of attorney, and delegate only in accordance therewith.
35. In certain instances undertakings holding a limited trust licence will be required to make arrangements for a company holding an unlimited trust licence to manage either all or a portion of the assets of the trusts for which they act as trustee. These arrangements must be documented in a suitable management agreement between the parties. This should provide, to the fullest extent possible, for the administrative functions of the individual trustee to be delegated to the licenced trust company. The licenced trust company must have responsibility for administering the assets and maintaining records of the trust pertaining to the administration of the assets; for preserving and maintaining the trust assets; and for managing the investments and providing for the custody of the assets.

Competent and Effective Management

36. A licenced undertaking should have effective management, and systems that are commensurate with the scale and complexity of the trust business to be undertaken. 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

37. Licenced undertakings 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 as will enable the provision of information to persons interested in trusts and entitled to the information on a timely basis. This should include the identity of co-trustees, custodians, the settlor, protector, enforcer and, where appropriate, the principal beneficiaries, their personal circumstances, residence and a copy of the trust instrument, minutes of all decisions taken by trustees, other trust documents and trust accounts or records which would enable trust accounts to be drawn up. The licenced undertaking should hold title to the trust assets in its own name or through appropriate custodians or nominees. Where custodians or nominees are appointed to hold assets, the licenced undertaking should ensure that the requirements under paragraphs 33 34 and 35 are complied with. Financial records must be maintained so as to permit a thorough and satisfactory supervisory activity, and to permit the performance of trust audits as pre-arranged.

38. All records required to be maintained by a licenced undertaking must be accurate and kept current. In addition, where the licenced undertaking is responsible for maintaining records of account for the trusts administered, the accounting records should disclose with accuracy the transactions and commitments of the trusts. All such records must be maintained in line with the laws applicable to each structure or for a minimum period of five years from the end of the transaction or cessation of the business relationship in cases where such law is silent.
39. In order to protect all records from the risk of loss, theft, unauthorised access, alteration or destruction, a licenced undertaking 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; and
 - d) Timely accessibility in Bermuda of any records it maintains in hard copy or electronic format.
40. A licenced undertaking must maintain a log of all cybersecurity incidents, together with details of actions taken to resolve them. The Authority expects all licenced undertakings 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; or
 - c) Result in unauthorised access to, or installation of malicious software on, the licenced undertaking's information and communications systems.

Adequate Personnel

41. A licenced undertaking must have available suitable numbers of staff who are appropriately trained and competent to discharge its fiduciary duties effectively. It should ensure that the responsibilities and authority of each member of staff are clear and appropriate to his or her qualifications and experience, and that staff receive the necessary training appropriate for their roles. An undertaking shall establish procedures to ensure the adequate supervision of staff in their dealings with clients and the management of client structures.
42. A licenced undertaking must formulate and keep up to date logs for staff training and development. Staff must be provided with on-the-job training on the undertaking's internal policies, procedures and 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.

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

Adequate Systems and Controls

44. A licenced undertaking should ensure that it has in place systems, controls, policies and procedures, to ensure that staff 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, distributions of trust assets, investment reviews, confidentiality, conflict of interest and staff training. The Authority also expects the undertaking to have in place a documented business interruption recovery plan dealing with all of its critical functions. The Authority would also expect an undertaking to occupy premises suitable for the purpose of conducting its business.

Fees and Remuneration

45. A licenced undertaking must agree a clear fee structure with each relevant person in advance of taking on an appointment and ensure that the fees charged are transparent at all times. Licenced undertakings should also ensure that adequate notice is given before any material change in the fee structure is introduced.

Complaint Procedures

46. A licenced undertaking should ensure their complaints handling process is transparent. When complaints are made, the licenced undertaking should ensure that complaints are properly handled and addressed on a timely basis. A licenced undertaking should ensure that a record of the details of the complaint including the licenced undertaking's response and any action taken as a result is maintained in writing.

Risk Management Framework

47. A licenced undertaking 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 undertaking 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 a licenced undertaking to demonstrate a high level of responsibility in the advertisement of all of its 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; and
- c) Not promote any breach of the Act or other local or international laws.

XI. DISCLOSURE OF LICENSING BODY

51. A licenced undertaking should ensure that its licenced status 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 Trust Business by the Bermuda Monetary Authority.”

XII. COOPERATION WITH REGULATORY AUTHORITIES

52. A licenced undertaking is expected to deal openly and in a spirit of co-operation with the Authority, and any other relevant regulatory authorities.

53. Licenced undertakings should alert the Authority to any proposal to extend their business materially and, in particular, if it is proposed to undertake non-trust business within the licenced entity. Undertakings 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 trust business;
- g) Any material cybersecurity incidents; or
- 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 undertakings to sections 13, 24, 34, and 35 of the Act.)