



# **BERMUDA MONETARY AUTHORITY**

**FUND ADMINISTRATION PROVIDER BUSINESS ACT 2019**

**CODE OF PRACTICE FOR FUND ADMINISTRATION PROVIDERS**

**OCTOBER 2020**

**TABLE OF CONTENTS**

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>3</b>
<b>II.</b>	<b>OBJECTIVE .....</b>	<b>3</b>
<b>III.</b>	<b>DEFINITIONS.....</b>	<b>3</b>
<b>IV.</b>	<b>PROPORTIONALITY PRINCIPLE.....</b>	<b>3</b>
<b>V.</b>	<b>APPLICATION .....</b>	<b>4</b>
<b>VI.</b>	<b>COMMUNICATION WITH FUND INVESTORS/SHAREHOLDERS .....</b>	<b>4</b>
<b>VII.</b>	<b>DEALING WITH NON-COMPLIANT FUNDS.....</b>	<b>5</b>
<b>VIII.</b>	<b>TRANSFERS OF ADMINISTRATION PROVIDER.....</b>	<b>5</b>
<b>IX.</b>	<b>CLIENT DUE DILIGENCE AND MONITORING.....</b>	<b>5</b>
<b>X.</b>	<b>INTEGRITY AND ETHICS.....</b>	<b>6</b>
<b>XI.</b>	<b>DISCLOSURE OF INFORMATION .....</b>	<b>6</b>
<b>XII.</b>	<b>INTERNAL MANAGEMENT CONTROLS .....</b>	<b>6</b>
<b>XIII.</b>	<b>OUTSOURCING .....</b>	<b>11</b>
<b>XIV.</b>	<b>RISK MANAGEMENT FRAMEWORK.....</b>	<b>11</b>
<b>XV.</b>	<b>ADVERTISING .....</b>	<b>12</b>
<b>XVI.</b>	<b>COOPERATION WITH REGULATORY AUTHORITIES .....</b>	<b>12</b>

## **I. INTRODUCTION**

1. The Code of Practice (the Code) is issued pursuant to section 7 of the Fund Administration Provider Business Act 2019 (the Act). Section 7 provides that the Bermuda Monetary Authority (the Authority) may issue codes of practice that offer guidance as to the duties, requirements and standards to be complied with, and the procedures and sound principles to be observed by persons carrying on fund administration provider business. Failure to comply with provisions set out in the Code will be taken into account by the Authority in determining whether a licensed undertaking (fund administration provider) is meeting its obligation to conduct its business in a prudent manner.
2. The Code should be read in conjunction with the Statement of Principles published under section 6 of the Act and the Enforcement Guide (Statement of Principles and Guidance on the Exercise of Enforcement Powers).

## **II. OBJECTIVE**

3. The objective of the Code is to provide guidance to fund administration providers as to -
  - (a) The standards required under the Act and other financial services legislation
  - (b) Best practice in the industry
4. The Code shall be interpreted in light of the above objective so as to best give effect thereto. The Act provides that every fund administration provider shall in the conduct of its business have regard to any code of practice issued by the Authority.
5. The Authority expects fund administration providers to comply with the letter and the spirit of the Code. Where the Authority has concerns about a fund administration provider's compliance with the Code, it will bring its concerns to the attention of the relevant fund administration provider and take account of the comments and representations of the fund administration provider as well as, where relevant, its willingness to make appropriate changes to its conduct or practice.

## **III. DEFINITIONS**

6. The relevant definitions appearing in section 2 of the Act shall apply to the interpretation of the Code.

## **IV. PROPORTIONALITY PRINCIPLE**

7. Fund administration providers have varying risk profiles arising from the nature, scale and complexity of their business. Fund administration providers with higher risk profiles require more comprehensive governance and risk management frameworks to conduct business in a sound and prudent manner.

8. The Authority will monitor each fund administration 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. For example, a fund administration provider could be relatively small in scale, but carry on extremely complex business and would, therefore, still be required to maintain a sophisticated risk management framework. In defining these elements:
  - (a) "Nature" includes the relationship between clients and the fund administration provider or characteristics of the service provided (e.g., a fund administration provider that holds a client's other assets versus one that does not, etc.)
  - (b) "Scale" includes size aspects such as volume of the business conducted or the size of the balance sheet in conjunction with materiality considerations (e.g., an assessment of the impact of a fund administration provider's failure)
  - (c) "Complexity" includes items such as organisational structure and product design
9. In assessing whether a fund administration provider's business conduct is prudent and sound, the Authority will have regard for both its prudential objectives and the appropriateness of each Code provision for the fund administration provider, taking into account that fund administration provider's nature, scale and complexity.
10. The proportionality principle discussed above is applicable to all sections of the Code.

## **V. APPLICATION**

11. The Code applies to all holders of fund administration provider business licences issued pursuant to section 10 of the Act. The Code is of general application, and seeks to take account of the wide diversity of undertakings that may be licensed. Every undertaking licensed under the Act in Bermuda is expected to have regard to the Code as amended from time to time. The Code is not a statement of the law and in particular does not affect a licensed undertaking's obligations under the Act or common law. Failure on the part of a licensed undertaking to comply with the provisions of the Code is not of itself an offence but will be taken into account by the Authority in determining whether or not the business is being conducted in a prudent manner as required by paragraph 2 of Schedule 1 to the Act. Persistent failure by licensed undertakings to abide by the provisions of the Code is likely to result in formal action being taken by the Authority.

## **VI. COMMUNICATION WITH FUND INVESTORS/SHAREHOLDERS**

12. Where communication with fund investors/shareholders forms part of the contracted services, a fund administration provider must have arrangements in place to ensure that such communication is timely and accurate, and carried out in a professional manner. A fund administration provider 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 their handling.

## **VII. DEALING WITH NON-COMPLIANT FUNDS**

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

## **VIII. TRANSFERS OF ADMINISTRATION PROVIDER**

14. A fund administration provider must cooperate in ensuring a smooth and timely transfer of records or other relevant information when its role is transferred to a new fund administration provider. Such records, or other information, must be transferred to the new fund administration provider as soon as practicable, but no later than 30 days from the date of the termination of the previous fund administration provider's services, unless agreed otherwise.

## **IX. CLIENT DUE DILIGENCE AND MONITORING**

15. Licensed undertakings must have procedures in place to ensure that proper due diligence is carried out before a decision is made to act for any new customer. At a minimum, licensed undertakings need to be able to comply with The Proceeds of Crime Act 1997, the Proceeds of Crime (Anti-Money Laundering) Regulations 1998, the Anti-Terrorism (Financial and Other Measures) Act 2004, The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 and the Guidance Notes on the Prevention of Money Laundering, together with any other relevant legislation that may come into operation from time to time. To ensure compliance with these requirements, licensed undertakings should have adequate policies and procedures in place to ensure that they know the identity of each client. They must also verify the source of all assets introduced, to satisfy themselves that they are not of illicit origin.
16. Fund administration providers 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.
17. Where fund administration providers, as part of their functions, take on specific functions with regard to verifying underlying investors in respect of Anti-Money Laundering/Anti-Terrorist Financing, they need to ensure that they have a full understanding of the relevant legal or contractual 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, fund administration providers 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.

18. A fund administration provider 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.

## **X. INTEGRITY AND ETHICS**

19. The fund administration providers must conduct its business with integrity at all times, acting with due care, skill and diligence and should not attempt to avoid or contract out its responsibilities under the Code. It must deal fairly with all clients and seek to ensure that clients are not misled as to the service being provided and the duties and obligations of the fund administration provider.

## **XI. DISCLOSURE OF INFORMATION**

20. Fund administration providers must maintain in place arrangements designed to protect the proper confidentiality of fund clients and of underlying investors. Any obligation to maintain the confidentiality of information communicated by clients must be adhered to by the fund administration provider (including its shareholders, directors, officers, senior executives, employees, outsourced partners, etc.). Notwithstanding the immediately preceding sentence, the fund administration provider may disclose confidential information where the fund administration provider is given relevant consent to disclose information, is required by applicable law to disclose information or provides information in accordance with the terms of the client's constitutional documents. Accordingly, persons who are engaged to provide services to the fund administration provider and have access to the confidential information of the fund administration provider's clients should, prior to commencement of the engagement, be advised in writing of their obligation to keep the information confidential. Further, the fund administration provider should provide periodic reminders thereafter of confidentiality issues.
21. To comply with its duty to uphold integrity and ethics, the fund administration provider's communication with clients and prospective clients must be clear and a fair representation. This includes communications relating to marketing and promotional material. The fund administration provider's public platform, or materials provided to prospective clients prior to entering into an arrangement, must include details of the board of directors or an equivalent governing body (the board), the chief executive and senior executive team, head office (and registered office, if different), a description of the complaints procedure and arrangements in case of business failure. The fund administration provider must disclose to clients any material business changes that affect clients.

## **XII. INTERNAL MANAGEMENT CONTROLS**

22. The board of the fund administration provider must review and assess the effectiveness of its internal control framework and review its appropriateness at least annually. Any material deficiencies must be documented and resolution measures should be implemented in a timely manner.

23. The fund administration provider 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 administration provider must put in place adequate arrangements for staff recruitment, training and supervision.
24. Systems and controls must be ‘fit for purpose’. Fund administration providers 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 administration provider 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 administration provider typically also needs a full understanding of the rationale for particular fund structures and of particularly complex investment strategies and/or instruments.
25. The board should ensure that policies and procedures are implemented which require the direct reporting of internal control weaknesses to the board, chief executive and senior executives in a timely manner.
26. The board should ensure that robust arrangements for regulatory compliance are maintained by the fund administration provider.
27. The board is ultimately responsible for the compliance function and should ensure that the directors are provided with sufficient regular information regarding all legal and regulatory compliance activities to allow them to rectify any shortcomings in the fund administration provider’s compliance framework.

### **Prompt and Timely Execution**

28. A fund administration provider should deal effectively and in a timely manner with all requests from those persons to whom the fund administration provider is responsible or accountable, having previously sought and obtained such consents or approvals as may be necessary.

### **Competent and Effective Management**

29. The fund administration provider should have effective management, commensurate with the nature, scale and complexity of its business. The fund administration provider must also have appropriate management resources to control the affairs of the licensed undertaking, including ensuring compliance with legal obligations and standards under the Code.

### **Adequate Personnel**

30. The fund administration provider must have available suitable numbers of staff who are appropriately trained and competent to discharge their duties effectively. The fund

administration provider should ensure that the responsibilities and authority of each staff member are clear and appropriate given his/her qualifications and experience, and that staff receive the necessary training appropriate for their roles.

31. The fund administration 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 systems, policies and procedures including those dealing with –
  - (a) Applying the subscription monies received by a fund in accordance with its constitution and its prospectus
  - (b) Processing the issue, conversion and redemption of units of a fund
  - (c) Applying the income of a fund in accordance with its constitution and its prospectus
  - (d) Calculating the net asset value of the units, and their issue, conversion and redemption price
  - (e) Maintaining the accounts of a fund
  - (f) Distributing to the participants of a fund all dividends or other distributions, which may from time to time be declared and paid by it on units in a fund
  - (g) Any other services or activities the Minister, acting in the advice of the Authority, may specify by notice published in the Official Gazette

The fund administration provider should ensure that adequate training is provided on an ongoing basis, including training on its Anti-Money Laundering and Anti-Terrorist Financing (AML/ATF) responsibilities.

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

32. Licensed 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 entitled to the information, on a timely basis. In cases where the law is silent, records must 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 financial commitments of the funds under administration. The fund administration provider's own accounting records should accurately and currently reflect its affairs and should be available for review in a timely fashion, upon request by the Authority. Systems must be in place to ensure that decision-makers, regulators, clients and other relevant stakeholders can receive requisite information in a timely manner. This should include the identity of shareholders, directors, officers or business partners. In addition, records of account and client transactions must be maintained in Bermuda in accordance with the applicable laws.
33. Where the fund administration provider 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. The fund administration provider must also ensure that satisfactory

arrangements are in place, designed to achieve appropriate independence in pricing decisions, as well as effective reconciliations of investment, cash and derivatives positions.

34. The fund administration provider's accounting and record keeping systems must support its compliance with regulatory reporting, such as the annual statutory and other returns, or other reporting that the Authority may require on an ad hoc basis in fulfilment of the Authority's regulatory oversight responsibilities.
35. The Authority does not regard a fund administration provider's records and systems as adequate unless they can enable its business to be prudently managed and the fund administration provider is able to comply with the duties imposed on it by or under the Act. In other words, the records and systems must be such that the fund administration provider is able to fulfil the various other elements of the prudent conduct criterion and to identify threats to the public interest. They should also be sufficient to enable the fund administration provider to comply with the notification and reporting requirements under the Act. Delays in providing information or inaccuracies in the information provided will call into question the fulfilment of the requirements of sub-paragraphs 2 (4) and (5) of Schedule 1 to the Act. The systems for client records should be sufficient to enable the fund administration provider to maintain the books and records of clients in the manner required under the Act.
36. The nature and scope of the particular records and systems, which a fund administration provider should maintain, must be commensurate with its needs and particular circumstances, so that its business can be conducted without endangering its clients and potential clients. In determining whether a fund administration provider's records and systems are adequate, the Authority considers the nature, scale and complexity of its business.

### **Cybersecurity Risks**

37. As with any material risk, all licensed undertakings are required to have robust policies, procedures and controls in place to identify, assess and manage cybersecurity risks on an ongoing basis consistent with the prudent business minimum licensing criterion.
38. The Authority expects fund administration providers to report any material cybersecurity incident to the Authority in a timely fashion. Material cybersecurity incidents generally are those that:
  - (a) Lead to a significant loss of data, or the reduced 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 fund administration provider's information and communications systems

Fund administration providers are expected to maintain logs of all cybersecurity incidents together with details of actions taken to resolve them.

### **Clarity as to Nature and Scope of Functions**

39. To ensure clients are dealt with fairly and are informed, the fund administration provider must disclose terms of business with each prospective client, and keep a 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 manner in which fees are expected to be 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 fund administration provider is licensed by the Authority, including any limitations in this respect
40. A fund administration provider 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 administration provider, and any subsequent changes promptly recorded.

### **Responsibility to Clients and Client Complaint Procedures**

41. The fund administration provider must ensure that its business is conducted in such a way as to treat its clients fairly at all times. The fund administration provider should ensure its complaints handling process is transparent. When complaints are made, the fund administration provider should ensure that complaints are properly handled and addressed on a timely basis. The fund administration provider should ensure that a written record of the details of the complaint includes the fund administration provider's response, and any action taken as a result is maintained in writing. The fund administration provider must establish and implement policies and procedures in this respect. The process for handling complaints should be easily disclosed and easily accessible to clients.

### **Conflicts of Interest**

42. Fund administration providers need to be alert at all times to the risk of conflicts of interest arising, whether directly in the course of their own role as fund administration provider or, as relevant, between the fund and its service providers or as between different investors or classes of investors. Fund administration providers need to implement policies, procedures and internal controls for dealing with conflicts of interest. Where conflicts cannot be avoided, fund administration providers need to seek to ensure that the interests of investors are not damaged through undisclosed conflicts of interest.

### **XIII. OUTSOURCING**

43. While the fund administration provider may outsource certain important business roles to third parties or affiliates, such action does not remove the responsibility from the fund administration provider to ensure that all requirements of the Act and related legislation, and the Code, are complied with to the same level as if these roles were performed in-house. In addition, the fund administration provider should have regard to the outsourcing guidance for regulated service providers issued by the Authority and the existing AML/ATF outsourcing guidance.
44. Where the fund administration provider outsources roles to third parties or to affiliated entities, the board must ensure that there is oversight and clear accountability for all such roles as if these functions were performed internally and subject to the fund administration provider's own standards on governance and internal controls. The board should also ensure that the service agreement includes terms on compliance with jurisdictional laws and regulations.

Agreements should not prohibit cooperation with the Authority, and the Authority's access to data and records in a timely manner.

45. Where the board has outsourced a role and/or is considering outsourcing a role, the board must assess the impact or potential impact on the fund administration provider. The board must not outsource a role that is reasonably expected to adversely affect the fund administration provider's ability to operate in a prudent manner. These considerations include where outsourcing could be reasonably expected to:
- (a) Adversely affect the fund administration provider's governance and risk management structures
  - (b) Unduly increase operational risk
  - (c) Adversely affect the Authority's ability to effectively supervise and regulate the fund administration provider
  - (d) Adversely affect client protection

### **XIV. RISK MANAGEMENT FRAMEWORK**

46. Risk identification and management forms a part of any business and, as such, the Authority expects the fund administration provider to have an appropriate risk control framework in place for the benefit of its stakeholders.
47. A fund administration provider must implement an appropriate risk management framework commensurate with the nature, scale and risk profile of its business, its objectives, structure, operations, processes, services and assets.

## **XV. ADVERTISING**

48. The Authority expects a fund administration provider to demonstrate a high level of responsibility in the advertisement of all of its services. In particular, a licensed undertaking 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.

49. 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

50. For transparency purposes, the fund administration provider must also ensure that its status as a licensed undertaking is disclosed in all advertisements and correspondence. The following wording is suggested: "X is licensed to conduct fund administration provider business by the Bermuda Monetary Authority."

## **XVI. COOPERATION WITH REGULATORY AUTHORITIES**

51. The fund administration provider is expected to deal openly and in a spirit of cooperation with the Authority and any other relevant regulatory authorities. This includes ensuring that any outsourced service providers are aware of their role in assisting the fund administration provider in meeting its obligations under the Act and related legislation, and the Code.

52. The fund administration provider should also ensure that any contracts or agreements that it enters into do not intentionally, or otherwise, frustrate the Authority's ability to carry out its supervisory or regulatory obligations in relation to the fund administration provider. The fund administration provider should 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) Its involvement in criminal proceedings either in Bermuda or abroad
- (d) Issues affecting its ability to meet or continue to meet the minimum criteria for licensing

(In this regard, the Authority would draw the attention of the fund administration provider to sections 12, 24, 29 and 30 of the Act.)

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