



October 2020

Dear stakeholders,

Re: Consultation Paper: Fund Administration Provider Business Act 2019, Code of Practice and Statement of Principles

The Bermuda Monetary Authority (Authority or BMA) is committed to ensuring Bermuda's regulatory regime remains effective and aligned with evolving international standards. Regarding the continued enhancement of the BMA's regulatory framework for fund administration provider businesses, the Authority would like to thank stakeholders for their continued engagement, and all feedback received to date.

The Fund Administration Provider Business Act 2019 came into effect on 1 January 2020. In support of this change, on 31 March 2020, the Authority sought responses about proposed enhancements to the regulatory and supervisory regime for fund administration provider businesses. Feedback was sought via a consultation paper about a revised Code of Practice (Code) and a new proposed Statement of Principles for fund administration providers.

RESPONSE TO INDUSTRY FEEDBACK

The Authority received limited formal feedback to the Code and did not receive any comments on the proposed Statement of Principles. This is likely because extensive feedback had already been received on a discussion paper issued in 2018, which addressed, among other things, proposed enhancements to the fund administration regime. In addition, a consultation paper entitled *New Legislative Framework for Fund Administrators* (and an accompanying Draft Bill) was issued for stakeholder consultation in 2019.

The Authority's response to the **key substantive comments** received on the Code are outlined below:

Code of Practice, Section VIII: Transfers of Administration Provider

It was suggested that the Authority remove the stated 30-day maximum period for transfer of records to the new fund administration provider, upon the termination of a fund administration provider's services, and instead to allow for records to be transferred 'as soon as practicable'.

Response: The Authority wishes to underscore that the rationale for introducing this timeframe is to encourage the swift transfer of records or other relevant information, to ensure that the clients of a fund are not unduly impacted by a change in fund administration providers. Accordingly, the provision for a maximum 30-day transfer window will be retained.

Code of Practice, Section IX: Client Due Diligence and Monitoring

Clarification was sought regarding which party is accountable for monitoring compliance with internal arrangements when a fund administration provider assumes certain investor verification responsibilities for a fund (i.e. client) and whether the Authority expects compliance to be demonstrated by an annual audit.

Response: The party ultimately responsible for the operations of the fund administration provider (for example, a board, in the case of a company) would be accountable for ensuring compliance with internal arrangements designed to meet legal and regulatory obligations.

Code of Practice, Section XI: Disclosure of Information

Clarification was sought regarding: the Authority's meaning in the use of the term 'material business change' and whether the Authority expects all clients, or only impacted clients, to be notified of such a change.

Response: It is important to note that the determination of a 'material business change' may vary with circumstances. Notwithstanding, a change would be considered a 'material business change' if it would, if known, reasonably affect the mind of a prudent client in deciding whether to engage or continue to engage the services of that fund administration provider to provide services to an investment fund. It is the responsibility of the governing body of each fund administration provider business to determine what it is confident would be viewed as reasonable disclosure, given both the nature of the change and its client base. That being said, if a business change is considered material, it may be prudent to notify all clients of the change.

The Authority remains committed to working with industry and other interested parties to ensure that all proposed enhancements to Bermuda's regulatory regime are in the best interests of the Bermuda market.

Any stakeholder who wishes further clarification, or additional information, on these matters should contact the Authority directly at policy@bma.bm.