



BERMUDA MONETARY AUTHORITY

GUIDANCE NOTES

BANKS AND DEPOSIT COMPANIES ACT 1999

**INFORMATION FOR PROSPECTIVE APPLICANTS
AND
GUIDANCE NOTES**

2 JULY 2020

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I. INTRODUCTION

1. These Guidance Notes have been issued by the Bermuda Monetary Authority (the Authority or BMA) to provide information for prospective applicants regarding the provisions of Sections 13 and 14 of the Banks and Deposit Companies Act 1999 (BDCA or the Act) and the supervisory processes applied by the Authority. Any entity conducting deposit-taking business in or from within Bermuda must be licensed under the provisions of the Act. Any references to particular documents can be found on the Authority's website (www.bma.bm).

II. LEGISLATIVE FRAMEWORK AND SUPERVISORY APPROACH

2. The Act defines “deposit” and “deposit-taking business” as the following:

A **deposit**, subject to the provisions of Section 3 of the Act, is a sum of money paid on terms:

- (a) under which it will be repaid, with or without interest or a premium, and either on demand or at a time, or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
- (b) which are not referable to the provision of property or services or the giving of security.

Subject to the provisions of Section 4 of the Act, a person or entity carries on **deposit-taking business** if:

- (a) during the course of business, it lends money received by way of deposit to others; or
- (b) it finances any other activity of the business, wholly or to any material extent, out of the capital of or the interest on money received by way of deposit.

There are currently only three types of licensing options in Bermuda:

Section 14 (5) and (6) of the Act identifies the types of deposit-taking business licences and the required minimum services to be provided to the public or to specified persons. Pursuant to these sections, the Authority may grant the following classes of licences:

a. Banking Licence

Requires the institution to provide the following minimum services to the public in Bermuda:

- a. current accounts in Bermuda dollars on terms which require repayment on demand;
- b. the payment and collection of cheques, drafts and orders;
- c. savings, deposit or other similar accounts in Bermuda dollars;
- d. overdraft and other loan facilities in Bermuda dollars;

- e. either directly or indirectly, loans in Bermuda dollars secured on the mortgage of real property in Bermuda;
- f. foreign exchange services; and
- g. either directly or indirectly, credit card or debit card facilities.

b. Deposit Company Licence

Does not authorise the institution to accept deposits of money on current account or otherwise on terms which require repayment on demand and which requires the institution to provide the following minimum services to the public in Bermuda:

- a. savings, deposit or other similar accounts in Bermuda dollars on terms which require repayment on notice; and
- b. loans in Bermuda dollars secured on the mortgage of real property in Bermuda whereby not less than the prescribed minimum percentage of total assets of the institution shall at all times be invested in loans secured to the full amount of the outstanding balance owed to the institution under such mortgages.

c. Restricted Banking Licence

Authorises the institution to provide to persons specified in the Third Schedule such services set out in paragraph (a)(i) to (vii) as the Authority may approve.

d. Minimum Criteria for Licensing

The Second Schedule of the Act establishes the minimum licensing criteria that the Authority applies to all licensees and prospective applicants based on the topics listed, as follows:

- Directors etc. to be fit and proper persons;
- Corporate governance;
- Business to be conducted in a prudent manner;
- Consolidated supervision;
- Integrity and skill; and
- Minimum net assets.

See Appendix 5 for full details regarding Minimum Licensing Criteria

e. Statement of Principles

The Authority's Statement of Principles (SoP) was drafted pursuant to Section 9 of the Act and provides detailed information on the requirements necessary to meet these minimum licensing criteria.

The BMA employs a risk-based supervisory approach to the regulation of banks and deposit companies in Bermuda. Under this risk-based approach, the Authority conducts supervision in accordance with the standards established by the Basel Committee on Banking Supervision (BCBS), in particular the BCBS *Core Principles for Effective Banking Supervision* and the range of BCBS documents regarding supervision of cross-border banking.

The Authority liaises closely with other supervisory bodies, both domestically and internationally, in order to ensure effective consolidated supervision, both in relation to entities for which the Authority acts as the “home supervisor” and “host supervisor”. The Authority’s supervision involves regular on-site inspections and off-site surveillance of licensed financial institutions, which includes reviews of monthly, quarterly and annual regulatory submissions, and regular prudential meetings with senior management.

III. REGULATIONS AND GUIDANCE

3. The Act provides for a licensing regime for banks and deposit companies as defined by the Act, conducting business either in or from Bermuda. Prospective applicants should refer to the applicable provisions of the Act to familiarise themselves with the requirements. If there is any uncertainty in this regard, prospective applicants are encouraged to contact the Authority to seek clarification.
4. The regulatory framework used by the Authority for banks and deposit companies includes, amongst others: Basel III for Bermuda banks; annual updates on stress testing; Corporate Governance Policy; Statement of Principles; and additional guidance notes and regulation outlined in Appendix 2, which is posted on the BMA website.

IV. APPLICATION PROCESS

5. The banking application process is composed of three stages:
 - Stage 1: Pre-application and Early Analysis
 - Stage 2: Application Submission
 - Stage 3: Licensing and Supervision
6. The formation of a deposit-taking business can be a rigorous, complex and time-consuming process. Hence, the purpose of the application process is to provide prospective applicants with some guidance as they pursue a deposit-taking business licence. While the Authority will make itself available to answer general queries, we encourage prospective applicants to engage the services of a subject matter expert and seek local legal advice during the process of completing an application package.
7. The Act imposes no time limit within which the Authority must reach a decision in respect of an application. In practice, the Authority seeks to deal as promptly as possible with applications. The time required to complete its initial enquiries may

vary, however, depending on the nature of the issues which may arise and the difficulty or otherwise in obtaining any additional information which may be necessary.

8. Before granting a licence, the Authority needs to satisfy itself that the minimum criteria have been met or are capable of being met by the applicant. However, even when so satisfied, the Authority retains discretion not to grant a licence (notably, if it sees reason to doubt that the criteria will be met on a continuing basis or if it considers that for any reason there might be significant threats to the interests of clients or potential clients).

Please refer to Appendix 1 for details of each application stage.

V. CONTROLLERS AND OFFICERS TO BE FIT AND PROPER PERSONS

9. The Authority reviews the intended roles of each controller, director and senior executive as defined in Section 7 of the Act. It generally defines a controller as a person who, either alone or with any associate or associates, holds 10 percent or more of the shares or voting rights in the institution or another company of which it is a subsidiary company.
10. In assessing whether a person has the relevant competence, probity, soundness of judgment and diligence, the Authority considers whether the person has held similar responsibilities previously, their record in fulfilling them and, where appropriate, whether the person has suitable qualifications and training.
11. The Authority also takes into account the person's reputation and character, and considers, inter alia, whether the person has a criminal record involving convictions for fraud or other dishonesty. Particular weight is given to whether the person has contravened any provision of investment, banking, insurance, trust or other legislation designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice.
12. Further, the Authority considers whether the person has been involved in any business practices appearing to the Authority to be deceitful, oppressive, improper or which otherwise reflect discredit on his or her method of conducting business. Similarly, failure to conduct past business with integrity and professional skills or having been associated with adverse business practices will reflect negatively on the competence and soundness of judgment of those individuals. For additional guidance, refer to the document *Information Bulletin on Fit and Proper Persons* located on the Authority's website.

See Appendix 5 (Minimum Licensing Criteria) for full details.

VI. BUSINESS TO BE CONDUCTED IN A PRUDENT MANNER

13. Paragraph 4 of the Second Schedule provides that a licensed company must conduct its business in a prudent manner. Any failure by a licensed company to comply with the provisions of the Act or other provisions of law will be taken into account in determining whether the company is conducting its business in a prudent manner.
14. Pursuant to the Act, the Authority may issue 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 the business of deposit-taking. Failure on the part of a licensee to comply with the provisions of such codes would also be taken into account by the Authority in determining whether the business is being conducted in a prudent manner as required by the Act.
15. An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain capital, which is, together with other financial resources available to the institution, of such nature and amount as considered appropriate by the Authority, and is commensurate with the nature and scale of the institution's operations.
16. As a regulated institution, a deposit-taking institution is also required to comply with the Proceeds of Crime Act 1997 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) (AML/ATF) Regulations 2008 (the AML/ATF Regulations). As such, it must be constantly vigilant in deterring criminals from making use of its services for the purpose of money laundering and terrorist financing.

See Appendix 5 (Minimum Licensing Criteria) for full details.

VII. SUPERVISORY PROCESS

17. Supervision is intended to assist the Authority in assessing the ongoing financial viability of a licensee, the fitness and propriety of its management, the prudence of its business conduct and its compliance with the Act.
18. The Authority's supervisory framework involves regular meetings with the senior management of licensees, together with scrutiny of quarterly financial and statistical submissions in connection with the institution's business activities, as well as periodic compliance visits to the institution's premises. Audited financial statements are required annually and must be submitted to the Authority within four months of each financial year-end. The full list of banking-related regulatory policies, guidelines and reporting forms can be viewed on the BMA website (click these links: [Policy and Guidance](#) and [Reporting Forms and Guidelines](#)). A review of compliance with "know your customer" and record-keeping requirements, in relation to the AML/ATF Regulations 2008, forms part of all of the Authority's routine regulatory visits.

19. These visits are normally conducted at a mutually agreed time. However, in exceptional cases where the Authority has material concerns for the interests of depositors or about the financial position of the entity, the Authority may conduct a visit at short notice or even without notice. The Authority expects institutions to be proactive in alerting it to compliance or other material issues. The Authority also expects licensed institutions to cooperate fully in providing all relevant information and documents without application of routine recourse to legal powers, as provided under Sections 39 and 40 of the Act.

20. The Authority expects licensees at all times to liaise openly and in the spirit of co-operation with the Authority. This includes notifying the Authority of any proposal to extend its business lines or make significant changes to key aspects of its operations or systems of controls, as well as any breaches in the requirements and expected standards of behaviour.

Appendix 1: Application Process

Stage 1: Pre-application and Early Analysis

The pre-application process will consist of three separate steps:

- 1.1 Information gathering stage
- 1.2 Pre-application business plan presentation
- 1.3 Feedback

The initial stage of the process provides applicants with an avenue to meet the Authority and present a comprehensive business plan. At this point, applicants must be able to advise the Authority on which of the three licensing options they wish to pursue and how they intend to meet the minimum criteria for licensing under the Second Schedule of the Act.

Applicants should also take into consideration the potential implication of the Authority's regulations and additional ancillary legislation, such as Bermuda's AML/ATF laws. A list of the Authority's regulations and additional applicable laws can be found in Appendix 2. Please note that all information needs to be clearly articulated in order to confirm that applicants are fully aware of all requirements under the applicable laws and regulations.

During this stage, the Authority will seek to provide feedback to assist with clarification on compliance requirements to meet applicable regulations and legislation. The objective is to support applicants' progress to submission of a complete application.

1.1 Information gathering stage

The information-gathering stage consists of reviewing the information on the Authority's website (www.bma.bm). Through consultation with local counsel and subject matter specialists, an applicant should consider the key areas applicable to their business model. Appendix 2 lists the laws, regulations and policies that, at a minimum, an applicant should review as a means to ensure a broad idea of the supervisory and regulatory environment for deposit-taking business. These are also the key areas that should be covered in the completed application.

Information-gathering would also typically entail an applicant's contact with the Authority (via in-person meetings, telephone discussions or email) to both inform the Authority of intentions and to help foster a better understanding of the legislation, policies and guidelines. At the end of this stage, applicants should have a final business plan including an outline of the business model covering funding, initial products or services to be offered, prospective target market and an overview of the intended organisational structure.

Appendix 3 provides a sample business plan with the areas that need to be addressed. However, the Authority recognises all of these sections may not be relevant to every business model, nor does it cover all possible areas that may need to be covered in every plan. Therefore, all draft documents at this stage should be on a "best efforts" basis.

1.2 Initial pre-application business presentation meeting

At this point, applicants should be prepared to present their draft business plan to the Authority and discuss preliminary views and expectations. Applicants should provide the

Authority with a copy of the draft plan no later than five business days prior to the presentation date.

The purpose of this presentation is to allow applicants to explain why they are seeking a licence and to give the Authority an opportunity to obtain a thorough understanding of their intentions and operating expectations. The Authority will also be prepared to articulate any additional information that should be considered, and answer any questions applicants may have regarding the ongoing regulatory requirements and supervisory environment in Bermuda.

Note: this stage may involve several additional touchpoints and subsequent meetings with the Authority as applicants continue to develop a more robust business plan.

1.3 Application readiness assessment

Once applicants have had an opportunity to obtain clarification on the legislative framework and supervisory environment, they can submit a more robust and detailed business plan to the Authority for formal feedback. The Authority will look to provide the applicants with details on any missing information and to provide details on the additional documents required to support the full application. Applicants should seek to address all of the feedback points in order to improve their submission pack. The Authority encourages applicants to seek further clarification on any of the feedback provided to enable them to be in a position to make a formal application to the Authority.

Stage 2: Application

Please refer to Appendix 4. This will provide a basic checklist of items that should be included in a complete application to the Authority. As noted previously, during the pre-application stage, the Authority will advise applicants of any additional information or documents that may need to be provided based on the specific business plan.

Upon receipt of a completed application, an assessment team will conduct a thorough analysis of the submission and present the information to an internal Authorisation and Licensing Committee. In considering an application for a licence, the Committee will look for an applicant's ability to satisfactorily meet the minimum licensing criteria at the time the licence is granted and on a continuous basis.

The Act imposes no time limit within which the Authority must reach a decision in respect of an application. In practice, the Authority will seek to process an application as promptly as possible. The time required to complete an assessment may vary depending on the nature of the review points that may need to be clarified with additional information. Generally, the Authority would not expect an application to remain outstanding for a period in excess of three months.

Stage 3: Licensing and supervision

Once a licence has been granted, the entity will be subject to ongoing supervision by the Authority and will be required to adhere to all regulatory requirements. The Authority will consider applying a "sandbox" approach to new licensees that request such consideration during the application process. This would provide a six to 12-month start-up period to become fully compliant with all regulatory requirements. However, during that period, the

entity may be under enhanced supervision and may have high-risk aspects of their business plan restricted until full compliance is met.

Once full compliance is met, a licence will be issued and the entity will be allowed to engage in its full business plan.

Please note this allowance is not automatic and would be at the discretion of the Authorisations and Licensing Committee on the recommendation of the application assessment team.

3.1 Supervisory process

The Authority's supervisory regime involves regular meetings with senior management, scrutiny of prudential reports and periodic on-site compliance visits to the firm's premises. While the Act provides certain supervisory powers for the Authority to require information from institutions, the Authority expects firms to provide voluntarily and routinely the information necessary for its supervision. Where the required information is not forthcoming or when concerns arise about the completeness or timeliness of information provided, the Authority may decide to utilise formal powers to request information.

The Authority utilises an extensive collection of detailed prudential reports designed to provide the necessary information needed to assess the integrity of the financial system in Bermuda. Regular prudential meetings provide an opportunity for the Authority to discuss with senior management the development of the business, including past performance and future strategies. Meetings are normally scheduled quarterly but may be more frequent when the Authority deems it necessary. Ad hoc meetings will also take place to discuss important interim developments or concerns.

In addition to the regular meetings and submissions, the Authority expects to be notified immediately of any significant developments that have a potential impact on the risk profile of the licensee. The Authority emphasises its expectation that undertakings must be open and proactive in ensuring that the Authority is kept informed of material developments when, or before, they occur.

The purpose of on-site supervision is to enable the Authority to review compliance with policies and procedures, as well as the processes that management has put into place to monitor and control key risks in the business. On-site supervision involves structured visits to a bank's offices in which, typically, the Authority interviews a range of management and staff, and reviews a selection of documentation and files. On-site visits are usually scheduled on a two-year rolling basis. However, the frequency of on-site visits also reflects the Authority's assessment of the degree of risk in the business and the effectiveness of the bank's personnel and systems/controls for monitoring risk. Banks can normally expect to be pre-notified at the beginning of the respective calendar year in which a visit will take place. In exceptional cases, (i.e. where the Authority has material concerns for the interests of clients or about the financial position of the bank) the Authority may conduct a visit at short or even no notice.

Prior to each on-site visit the Authority will expect the bank to submit a Capital Assessment and Risk Profile (CARP) as articulated in the Basel III Capital Guidance. The information presented in CARP will help frame some aspects of the on-site visit, while the on-site itself will also be used to assess the quality of the CARP process. This Supervisory Review and

Evaluation Process will conclude with the issuance of the Authority's assessment of the bank's minimum capital requirement.

Appendix 2: Banking Laws, Regulations and Policies

The following Acts, Regulatory Policies, Reporting Forms and Guidance should be reviewed (at a minimum) as a means to ensure that all areas are covered sufficiently prior to submitting a bank application:

Banking Acts

(<http://www.bermulalaws.bm> and <http://www.bma.bm/legislation>)

- [Banks and Deposit Companies Act 1999](#)
- [Banking Appeal Tribunal Regulations 2001](#)
- [Banks and Deposit Companies \(Reporting Accountants\) \(Facts and Matters of Material Significance\) Regulations 2006](#)
- [Credit Unions Act 2010](#)

Other Related Acts

(<http://www.bma.bm/banking/SitePages/Legislation.aspx>)

- [Bermuda Monetary Authority Act 1969](#)
- [Bermuda Monetary Authority \(Financial Institutions\) \(Control\) Regulations 1994](#)
- [Companies Act 1981](#)
- [Exchange Control Regulations 1973](#)
- [Exchange Control Act 1972](#)
- [Segregated Accounts Companies Act 2000](#)
- [Financial Services Tax Act 2017](#)

Anti-Money Laundering/Anti-Terrorist Financing (AML/ATF)

(<http://www.bma.bm/banking/SitePages/Legislation.aspx>)

- [Proceeds of Crime \(Designated Countries and Territories\) Order 1998](#)
- [Anti-Terrorism \(Financial and Other Measures\) Act 2004](#)
- [Proceeds of Crime \(Anti-Money Laundering and Anti-Terrorist Financing\) Regulations 2008](#)
- [Proceeds of Crime \(Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement\) Act 2008](#)
- [Financial Intelligence Agency Act 2007](#)
- [Proceeds of Crime Act 1997](#)
- [Proceeds of Crime \(Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement\) Designation Order 2012](#)
- [Anti-Terrorism \(Financial and Other Measures\) \(Businesses in Regulated Sector\) Order 2008](#)

International Sanctions Measures

(<https://www.gov.bm/international-sanctions-measures>)

- [International Sanctions Regulations 2013](#)
- [Bermuda List of Sanctions Regimes](#)

Regulatory Policies, Reporting Forms and Guidance

The full list of banking related regulatory policies can be viewed at the below BMA website locations:

- [Policy and Guidance - Banking](#)
- [Reporting Forms and Guidelines - Banking](#)

Appendix 3: Pre-Application Requirements

The following can be provided during the pre-application phase, however, they must form part of the complete application.

Corporate Governance and Enterprise Risk Management (ERM)

- Organisational chart (detailing the executive management roles secured or targeted) of the Bank and, if applicable, any subsidiaries
- Copy of the most recent Business Plan and Strategy
- Proposed structure and staffing in the Risk Management, Compliance and Internal Audit areas
- Projections of the Bank's ERM framework and risk management oversight
- Intentions for the Bank's insurance coverage
- Details and information regarding the implementation of IT systems or other significant IT related projects
- Project milestones and SWOT analysis for setting up the bank

Corporate and Ownership Structure

- Identification of corporate vehicle to be used (normally covered by Private Act)
- Advise status of key incorporation documents (e.g., Memorandum of Association, By-laws)
- Individual(s) and/or entity(s) expected to become a Controller (10 percent or more) or have a significant influence over the institution
- Person(s) intending to become a Director or Senior Executive of an entity
- Sources of funding including any debt financing

Key Policies and Procedures

- Corporate governance
- Operational risk
- Financial risks (credit, market, etc.)
- Regulatory compliance
- AML/ATF
- Outsourcing management and monitoring
- Cybersecurity

Appendix 4: Application Requirements

Business Strategy

- Set out the nature and scale of operations, including future development and particulars for the management of the business. Provide details as to type of business by separating into subcategories
- Within the business plan, please explain how your company intends to fulfil the requirements of Section 14 subsection (5) of the Banks and Deposit Companies Act 1999
- Describe in detail the products and services to be offered
- Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis and critical success factors
- Target markets and opportunities, and plans to address them
- Key assumptions used in strategy

Competitor Analysis

- Market analysis: Identify major competitors, market size and outlook, market structure
- Challenges and opportunities, and plans to address them

Corporate and Ownership Structure

- Identification of corporate vehicle to be used (normally covered by Private Act)
- Provide copies of key incorporation documents (e.g., Memorandum of Association, By-laws)
- Ownership identification
 - Entity becoming a shareholder Controller: complete IB Form 2
 - Person intending to become Controller or Officer of an entity: complete IB Form 3
 - Any other persons who may have influence over the institution
- Capital generation and financing arrangements
 - Confirmation of required minimum start-up capital of \$10 million
 - Indicate how the business will be funded and whether any investors or funding is in place
- Description of the corporate structure including corporate organisation chart
- Description of any special shareholder agreements

Management Structure and Corporate Governance

- Details about the governance, committee and management structure (including an organisation chart)
- Key responsibilities for committees and by position including reporting lines
- Full details of experience, expertise, qualifications and track record of the proposed Senior Management team
- Full details of experience, expertise, qualifications and track record of the proposed Board

- Details regarding the projected staff complement included in the organisational chart; Bermudian vs Non-Bermudian staff, experience and expertise of staff, professional/legal expertise, staff training plans etc.

Financial Plan

- Pro forma financial statements for five years (balance sheet, income statement, details of key assumptions and major asset, liability, income and expense categories)
- Capital and liquidity strategy
- Key financial information and ratios including breakeven date, profitability, margins, capital and liquidity
- Risk-based capital and leverage ratios including breakdown of key components
- Sensitivity analysis showing the impact to changes in key assumptions, worst-case scenario, contingency plans
- Overview of accounting standards and information about auditors

Project Plan

- Overview of accounting standards and information about auditors
- Overview of the implementation plan, responsibilities and timelines for setting up the bank

Legal, Compliance and Insurance

- Legal and regulatory considerations
- Insurance coverage by risk type (e.g., Blanket Bond, Directors & Officers, Public Liability, Property & Casualty)

Outsourcing

- Details of potential material outsourcing arrangements including copies of agreements
- Information on the potential capacity to perform all functions within Bermuda

Information Technology (IT), Premises and Equipment

- Details regarding IT systems, premises and equipment to be used
- Demonstration that the IT systems and controls are appropriate and fit for purpose
- Timescales for implementation and testing of systems
- Premises from which the bank is to operate (note that a physical presence is a requirement)

Correspondent Banking Relationships

- Correspondent banking relationships or alternative method/affiliates to be used for cross-border transactions
- Method for clearing/settlement of local payments

Policies and Procedures (including Risk Management)

- Compliance procedures manual
- Product governance policies and procedures
- Risk management and control framework including three lines of defence model
 - Risk appetite statement, risk and control assessments, risk reporting and analytics
- Recovery plans and business continuity plans

AML/ATF Policies and Procedures

- AML/ATF Manual (adhering to the Proceeds of Crime (AML/ATF Financing) Regulations 2008)
- Sanctions Policies and Procedures
- Business Money Laundering/Terrorist Financing risk assessment
- Client Money Laundering/Terrorist Financing risk assessment
- Additional AML/ATF Action Items
 - Provide the Authority with comprehensive information on the qualifications and experience of Senior Management, the Compliance Officer and Money Laundering Reporting Officer, to show that they are adequately trained to carry out the role.
- For AML/ATF and Sanctions functions which are outsourced, as required by the Proceeds of Crime (AML/ATF) Regulations 2008, the Company must provide the Authority with comprehensive information to demonstrate how they ensure the outsourced party has in place AML/ATF systems, controls and procedures compliant with the Bermuda AML/ATF requirements. The Company is also required to have policies and procedures to monitor and manage the outsourced service provider. The Company will retain ultimate responsibility for the AML/ATF compliance function. The Company should also provide the Authority with Service Level Agreements describing the outsourced functions.

Other Requirements and Information

- Application form and fee
- Incorporate all comments and updates
- Pro forma Capital Adequacy and Risk Profile (CARP) document
- Internal audit overview
- Structure and resources
- Internal audit methodology
- Internal audit plan
- Additional operational policies and procedures not included in Business Plan sections
- Details regarding HR plans and Immigration implications
- Supporting document checklist

Appendix 5: List of Supporting Information and Documentation

- [Information Bulletin - Fit and Proper Persons](#)
- [DT3 Questionnaire for Individual Controllers](#)
- [DT2 Questionnaire for Institutional Controllers](#)
- [Corporate Governance Policy](#)
- [Statement of Principles](#)
- [Outsourcing Guidance Note](#)
- [The Approach to Consolidated Supervision](#)
- [Bermuda Banking Code of Conduct](#)

Appendix 6: Minimum Licensing Criteria

DIRECTORS, CONTROLLERS, EXECUTIVE TO BE FIT AND PROPER PERSONS

- 1) Every person who is, or is to be, a Director, Controller or Senior Executive of the institution is a fit and proper person to perform functions in relation to any activity carried on by the institution.
- 2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to their probity, to their competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which they are fulfilling or likely to fulfil those responsibilities and to whether the interests of depositors or potential depositors of the institution are, or are likely to be, in any way threatened by their holding that position.
- 3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that they have—
 - a) committed an offence involving fraud or other dishonesty or violence;
 - b) contravened any provision made by or under any enactment appearing to the Authority to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies, or against financial loss due to the conduct of discharged or undischarged bankrupts;
 - c) engaged in any business practices appearing to the Authority to be deceitful, oppressive or otherwise improper (whether lawful or not) or which otherwise reflect discredit on their method of conducting business; or
 - d) engaged in or has been associated with any other business practices or otherwise conducted themselves in such a way as to cast doubt on their competence and soundness of judgement.

CORPORATE GOVERNANCE

- 1) The institution shall implement corporate governance policies and processes as the Authority considers appropriate given the nature, size, complexity and risk profile of the institution.
- 2) Without prejudice to subparagraph (1) the business of an institution shall be—
 - a) effectively directed by at least two individuals; and
 - b) under the oversight of such number of Non-Executive Directors appointed as the Authority considers appropriate given the nature, size, complexity and risk profile of the institution.

BUSINESS TO BE CONDUCTED IN A PRUDENT MANNER

- 1) The institution conducts or, in the case of an institution which is not yet carrying on a deposit-taking business, will conduct its business in a prudent manner.
- 2) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain capital which, together with other financial resources available to the institution of such nature and amount as considered appropriate by the Authority, are—
 - a) of an amount which is commensurate with the nature and scale of the institution's operations; and
 - b) of an amount and nature sufficient to safeguard the interests of its depositors and potential depositors, having regard to the particular factors mentioned in subparagraph (3) and any other factors appearing to the Authority to be relevant.
- 3) The particular factors referred to above are—
 - a) the nature and scale of the institution's operations; and
 - b) the risks inherent in those operations and in the operations of any other undertaking in the same group so far as capable of affecting the institution.
- 4) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate liquidity, having regard to the relationship between its liquid assets and its actual and contingent liabilities, to the times at which those liabilities will or may fall due and its assets mature, to the factors mentioned in subparagraph (3) and to any other factors appearing to the Authority to be relevant.
- 5) For the purposes of subparagraph (4) the Authority may, to such extent as it thinks appropriate, take into account as liquid assets, assets of the institution and facilities available to it which are capable of providing liquidity within a reasonable period.
- 6) An institution shall not be regarded as conducting its business in a prudent manner unless it makes or, as the case may be, will make adequate provision for depreciation or diminution in the value of its assets (including provision for bad or doubtful debts), for liabilities which will or may fail to be discharged by it and for losses which it will or may incur.
- 7) An institution shall not be regarded as conducting its business in a prudent manner unless it makes or, as the case may be, will maintain adequate accounting and other records of its business, and adequate systems of control of its business and records.
- 8) Those records and systems shall not be regarded as adequate unless they are such as to enable the business of the institution to be prudently managed and the institution to comply with the duties imposed on it by or under this Act. In determining whether those systems are adequate, the Authority shall have regard to the functions and

responsibilities in respect of them or any such factors of the institution as are mentioned in paragraph 3.

- 9) Subparagraphs (2) to (8) are without prejudice to the generality of subparagraph (1).
- 10) In determining whether an institution is conducting its business in a prudent manner, the Authority shall take into account any failure by the institution to comply with the provisions of:
 - a) this Act;
 - b) any other law, including provisions of the law pertaining to AML/ATF as provided in the Proceeds of Crime Act 1997, the Anti-Terrorism (Financial and Other Measures) Act 2004 and the Proceeds of Crime (AML and ATF) Regulations 2008; and
 - c) international sanctions in force in Bermuda.

CONSOLIDATED SUPERVISION

The position of the institution within the structure of any group to which it may belong, or its links with any related companies, shall be such that it will not obstruct the conduct of effective consolidated supervision.

INTEGRITY AND SKILL

The business of the institution is or, in the case of an institution which is not yet carrying on a deposit-taking business, will be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.

MINIMUM NET ASSETS

The institution will at the time that the licence is granted to it have initial net assets amounting to not less than \$10 million in the case of a bank and \$1 million in the case of a deposit company (or an amount of equal value denominated wholly or partly in another unit of account).