

THE BERMUDA MONETARY AUTHORITY

**Trusts (Regulation of Trust Business) Act
2001**

Statement of Principles



June 2004

Statement of Principles

Trusts (Regulation of Trust Business) Act 2001

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Pursuant to Section 6

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Trusts (Regulation of Trust Business) Act 2001

Section 6: Statement of Principles

Introduction

This Statement of Principles (“the Principles”) is made pursuant to section 6 of the Trusts (Regulation of Trust Business) Act 2001 (“the Act”) which requires the Bermuda Monetary Authority (“the Authority”) to publish in such manner as it thinks fit a statement of principles in accordance with which it is acting or proposing to act:

- (a) in interpreting the minimum criteria specified in the First Schedule to the Act and the grounds for revocation specified in section 16;
- (b) in exercising its power to grant, revoke or restrict a licence; and
- (c) in exercising its power to obtain information, reports and to require production of documents.

The Principles are of general application, and seek to take account of the wide diversity of undertakings that may be licensed under the Act and of the prospect of institutional and market changes. Notwithstanding, there is likely to be a need for the Principles to be revised and developed over time. If the Authority makes a material change in the Principles, section 6(2) of the Act provides that the change is to be published or a revised version of the Principles issued. The Principles should be read in conjunction with the Code of Practice which is issued pursuant to section 7 of the Act and which prescribes certain standards for the effective control of business by licensed undertakings and for the fair treatment of their clients.

PART 1 Explanation for the Statement of Principles

1.1 The Principles are relevant to the Authority’s decisions on whether to licence an undertaking (company, partnership or individual) or to revoke or restrict a licence. The Authority’s interpretation of the minimum licensing criteria in the First Schedule and of the grounds for revocation in section 16 of the Act, together with the principles underlying the exercise of its powers, encapsulate the main standards and considerations to which the Authority has regard in conducting its supervision of trust service providers. The functions of licensed trust business supervision include monitoring the ongoing compliance of undertakings with these standards and identifying any threats to the interests of clients. If there are concerns, the Authority considers what steps should be taken to protect clients. Where appropriate, it seeks remedial action by persuasion and encouragement. However, if the Authority considers that its powers are exercisable and should be exercised in the interests of clients and potential clients, it may impose restrictions on a licence and, ultimately, revoke a licence.

- 1.2 Part 2 of the Principles considers the interpretation of each of the licensing criteria in the First Schedule to the Act. Part 3 sets out the considerations relevant to the Authority's exercise of its discretion to grant a licence. Part 4 considers the interpretation of the various grounds for the revocation of a licence in section 16 of the Act. Part 5 sets out the principles underlying the exercise of the Authority's discretion to revoke or impose restrictions on a licence and to intervene in emergency situations. Part 6 sets out the principles underlying the exercise of the Authority's power to obtain information and reports and to require the production of documents.

PART 2 First Schedule: Minimum Licensing Criteria

2.1 Introduction

Before an undertaking may be granted a licence the Authority has to be satisfied that all the criteria in the First Schedule to the Act are or are capable of being fulfilled by the applicant. Once licensed, all undertakings are subject to the Authority's continuing supervision and regulation. Undertakings are required to submit, at intervals determined by the Authority, financial and other information about their business.

While the Act sets out in broad terms the criteria which must be fulfilled by undertakings, these criteria are interpreted and applied in the context of the particular circumstances of individual undertakings, and developments in the sector generally. In addition to reviewing returns and other data received from undertakings, the Authority's supervision involves detailed discussions with undertakings' senior management on a regular basis. The Authority determines the frequency of those discussions. Meetings may take place either at the Authority's offices or at the undertaking's own premises. In addition, compliance visits are routinely made to the premises of undertakings to add to the Authority's understanding of the licensee's management structures, operations, policies and controls and to assist it in satisfying itself that each undertaking continues to conduct its business prudently and in accordance with all relevant criteria.

This part of the Principles sets out the Authority's interpretation of the statutory licensing criteria.

2.2 First Schedule Paragraph 1: “ Controllers and officers, to be fit and proper persons”

Controllers and officers

- 2.2.a. This paragraph provides that every person who is or is to be a controller or officer (as defined in the Interpretation Section of the Act) of an undertaking is to be a fit and proper person to hold that position. With regard to an individual who is, or is to be, a controller or officer the relevant considerations include whether the person has relevant experience, sufficient skills, knowledge, and soundness of judgment properly to undertake and fulfill their particular duties and responsibilities. The standards required of persons in these respects will vary considerably, depending on the precise position held by the person concerned. Thus, a person could be fit and proper for one position but not be fit and proper for a position involving different responsibilities and duties. The diligence with which the person is fulfilling or is likely to fulfill those duties and responsibilities is also considered, so that the Authority can assess whether the person does or will devote sufficient time and attention to them.
- 2.2.b. The Authority sees the standards as being particularly high in the case of those persons with primary responsibility for the conduct of an undertaking’s affairs, taking into account the nature and scale of the undertaking’s business.
- 2.2.c. In assessing whether a person has the relevant competence, soundness of judgment and diligence, the Authority considers whether the person has had experience of similar responsibilities previously, the record in fulfilling them and, where appropriate, whether the person has appropriate qualifications and training. As to soundness of judgment the Authority looks to the person's previous conduct and decision taking.
- 2.2.d. The probity of the person concerned is very important: it is essential that a person with responsibility for the conduct of trust business is of high integrity. In contrast to the fitness elements of this criterion which reflects an individual judgment relating to the particular position that the person holds or is to hold, the judgment of probity reflects much more of a common standard, applicable irrespective of the particular position held.
- 2.2.e. Specifically, the Authority takes into account the person’s reputation and character. It considers, inter alia, whether the person has a criminal record; convictions for fraud or other dishonesty would clearly be particularly relevant. The Authority also gives particular weight to whether the person has contravened any provision of trust, banking, insurance, investment or other legislation designed to protect members of the public against financial loss, due to dishonesty, incompetence or malpractice. In addition, it considers whether the person has been involved in any business practices appearing to the Authority to

- be deceitful or oppressive or improper or which otherwise reflect discredit on his or her method of conducting business. In addition to compliance with statutory provisions, the Authority also considers a person's record of compliance with various non-statutory codes in so far as they may be relevant to the licensing criteria and to the interests of clients and potential clients.
- 2.2.f. The Authority also takes into consideration whether the person has been censured or disqualified by professional or regulatory bodies, e.g. Society of Trust and Estate Practitioners, The Bermuda Bar Association, The Institute of Chartered Accountants of Bermuda, The Bermuda Stock Exchange, The Association for Investment Management and Research or corresponding bodies in other jurisdictions. Those who have are unlikely to be acceptable.
- 2.2.g. While any evidence of relevant past misconduct needs to be taken into consideration, the Authority recognises that lapse of time, and a person's subsequent conduct, are factors which may be relevant in assessing whether the person is now fit and proper for a particular position.
- 2.2.h. Once an undertaking is licensed, the Authority has continuing regard to the performance of the person in the exercising of his or her duties. Imprudence in the conduct of an undertaking's business, or actions which have threatened (without necessarily having damaged) the interests of clients or potential clients will reflect adversely on the competence and soundness of judgment of those responsible. Similarly, failure by an undertaking to conduct its business with integrity and professional skills will reflect adversely on the probity and/or competence and/or soundness of judgment of those responsible. This applies whether the matters of concern have arisen from the way the persons responsible have acted or from their failure to act in an appropriate manner. The Authority takes a cumulative approach in assessing the significance of such actions or omissions – that is, it may determine that a person does not fulfill the criterion on the basis of several instances of such conduct which, if taken individually, may not lead to that conclusion.

2.3 Shareholder Controllers

- 2.3.a. Shareholder controllers may hold a wide variety of positions in relation to an undertaking, and the application of the fit and proper criterion takes account of this. The key consideration is the likely or actual impact on the interests of clients and potential clients of a person holding the particular position as controller. This is viewed in the context of the circumstances of the individual case, and of the particular position held. The general presumption is that the greater the influence on the undertaking the higher the threshold will be for the controller to fulfill the criterion. Thus, for example, higher standards will generally be required of a majority shareholder controller (i.e. one owning 50 per cent or more of the shares of an undertaking) compared with a shareholder controller owning 10 per cent.

- 2.3.b. In considering the application of the criterion to shareholder controllers or persons proposing to become such controllers, the Authority has regard to two main considerations.
- 2.3.c. First, it considers what influence the person has or is likely to have on the conduct of the affairs of the undertaking. If the person does, or is likely to, exercise a close control over the business, the Authority would look for evidence that he has the probity and soundness of judgment and relevant knowledge and skills for running an undertaking. On the other hand, if the shareholder does not, or is not likely to, influence the directors and management of the undertaking in relation to the detailed conduct of the business, it would not be necessary to require such a level of relevant qualities and experience. The Authority also has regard in this context to whether there could be conflicts of interest arising from the influence of the shareholder on the undertaking—this could, for example, arise from the closeness of his links with another company.
- 2.3.d. The second consideration is whether the financial position, reputation or conduct of the shareholder controller or prospective shareholder controller has damaged or is likely to damage the undertaking through ‘contagion’ which undermines confidence in that undertaking. For example, if a holding company, or a major shareholder, were to suffer financial problems it could damage confidence of clients or potential clients in the stability or financial integrity of the licensed undertaking. Generally, the higher the shareholding the greater the risk of ‘contagion’ if the shareholder encounters financial difficulties. The risk of contagion is not, however, confined to financial weakness: publicity about illegal or unethical conduct by a holding company or another member of the group may also damage confidence in the undertaking.
- 2.3.e. In the case of a controller who ‘directs’ or ‘instructs’ a shareholder controller similar considerations apply to those relevant to assessing the fulfillment of the criterion in relation to shareholder controllers. In other words, the standards that an indirect controller needs to satisfy are likely to be at the minimum the standards also required of the person who is indirectly controlled.
- 2.3.f. Where a person is a controller by virtue of ‘directing’ or ‘instructing’ the board of an undertaking, the standards required are high. The controller has to have the probity and relevant knowledge, experience, skills and diligence for running an undertaking. The qualities required are those which are also appropriate for the board of directors of an undertaking.

2.4 First Schedule Paragraph 2: "business to be directed by at least two individuals"

- 2.4.a. This criterion – sometimes known as the ‘four eyes’ requirement – provides that, in the case of a company or partnership, at least two individuals must effectively direct the business of the undertaking. In the case of a company, the Authority normally expects that the individuals concerned will be either executive directors or persons granted executive powers by, and reporting immediately to, the board. In the case of a partnership, the Authority would expect at least two partners to exercise day-to-day control and oversight.
- 2.4.b. When this criterion applies, the Authority requires that at least two independent minds be applied to both the formulation and implementation of the policies of the undertaking. The Authority does not regard it as sufficient for one of the two persons to make some, albeit significant, decisions relating only to a few aspects of the business. Each must play a part in the decision-making process on all significant decisions. They are not expected to duplicate each other’s position but both must demonstrate the qualities and application to influence strategy, day-to-day policy and their implementation, and both must actually do so in practice. Where there are more than two individuals directing the business, it is not necessary for all of these individuals to be involved in all decisions relating to the determination of strategy and general direction. But at least two individuals must be involved in all such decisions. Both persons’ judgments must be engaged in order that major errors leading to difficulties for the undertaking are less likely to occur. Similarly, both persons must have sufficient experience and knowledge of the business and the necessary personal qualities to detect and resist any imprudence, dishonesty or other irregularities by the other person. Thus, where a single individual, whether a senior executive, or otherwise, is particularly dominant in an undertaking this will raise doubts about the fulfillment of the criterion.

2.5 First Schedule Paragraph 4: “composition of board of directors”

- 2.5.a. This paragraph provides that, in the case of a company, the directors include such number (if any) of non-executive directors, as the Authority considers appropriate. The number will depend on the circumstances of the undertaking and the nature and scale of its operations.
- 2.5.b. The Authority considers that non-executive directors can play a valuable role in bringing an outsider’s independent perspective to the running of the business and in ensuring proper challenge to the executive directors and other management. The Authority sees non-executive directors as having, in particular, an important role as members of an undertaking’s audit committee or in performing the role which such a committee would otherwise perform.

2.6 First Schedule Paragraph 5(1): "business to be conducted in a prudent manner"

- 2.6.a. Sub-paragraphs 1 and 6 make it clear that there is a general requirement for undertakings to conduct their business in a prudent manner.
- 2.6.b. Sub-paragraphs 2 to 6 set out a number of specific requirements in that regard, each of which must be fulfilled before an undertaking may be regarded as conducting its business in a prudent manner in terms of the paragraph.
- 2.6.c. However, the Act also makes it clear that the specific requirements outlined in sub-paragraphs 2 to 6 are not exhaustive. Accordingly the Authority takes into account a range of other considerations in assessing whether an undertaking is prudently run. These include for example, the undertaking's management and corporate governance arrangements (such as, in the case of a company, the composition of the Board of Directors and the arrangements for the Board's overall control and direction of the institution); the undertaking's general strategy and objectives; planning arrangements; policies on accounting, collections and bad debt; ability to maintain adequate liquidity to meet its obligations as they fall due; and recruitment arrangements and training to ensure that the undertaking has adequate numbers of experienced and skilled staff in order to carry out its various activities in a prudent manner. The Authority would also expect an undertaking to occupy premises suitable for the purpose of conducting its business. The Authority's Code of Practice gives additional guidance on what is expected in this area.

2.7 Capital Adequacy

First Schedule Paragraph 5(3): "minimum net assets"

A licensed undertaking, which is a company must maintain minimum net assets of at least \$250,000 or such larger amount as the Authority may require. In cases other than companies, the minimum required is \$25,000 or such larger amount as the Authority may require.

The Authority needs to have reasonable assurance that adequate net assets are available to support the licensed undertaking. In assessing the capital adequacy of a licensed undertaking, all claims on other members of the group will be deducted. However, this may not apply where claims are on connected entities for which the Authority is able to assess capital adequacy on a group-wide basis. Undertakings are expected to hold their capital and reserves as far as possible in readily realisable form i.e. short-term deposits or high quality marketable assets.

Normally, the Authority will accept \$250,000 as adequate to support a company's trust business, provided adequate insurance with a small level of deductible is in place. However, where a licensee faces material additional risks through carrying on other business within the licensed entity, the Authority requires a higher level of capital to be held, commensurate with these additional risks.

2.8 First Schedule Paragraph 5 (4) and (5): “adequate accounting and record-keeping systems”

- 2.8.a. The Authority does not regard an undertaking’s records and systems as adequate unless they are such as to enable its business to be prudently managed and the undertaking 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 undertaking is able to fulfill the various other elements of the prudent conduct criterion, and to identify threats to the interests of clients and potential clients. They should also be sufficient to enable the undertaking to comply with the notification and reporting requirements under the Act. Thus, delays in providing information, or inaccuracies in the information provided, will call into question the fulfillment of the requirement of sub-paragraphs 5 (4) and 5 (5).
- 2.8.b. The nature and scope of the particular records and systems which an undertaking should maintain should be commensurate with its needs and particular circumstances, so that its business can be conducted without endangering its clients and potential clients. In judging whether an undertaking’s records and systems are adequate, the Authority has regard to its size, to the nature of its business, to the manner in which the business is structured, organised and managed, and to the nature, volume and complexity of its transactions.

2.9 First Schedule Paragraph 5(6): “adequate insurance”

Licensed undertakings face a wide variety of potentially major financial risks in their business although the possibility of many of these risks crystallising is, hopefully, generally remote. Rather than requiring undertakings to hold capital against all these risks, the Act requires undertakings to hold adequate insurance cover.

Relevant types of insurance include the following:

- errors and omissions
- directors and officers liabilities
- fidelity and forgery
- loss of property
- computer crime
- trust real property
- computer damage
- business interruption
- office contents

In judging the adequacy of insurance cover, the Authority looks to be satisfied that the scope and scale of cover in place is such as to provide reasonable assurance of the ability of the undertaking to continue to trade in the event that it

should face either major damage to its infrastructure or material claims from clients for loss and damage sustained. It is in the first instance for those directing the business of the licensed undertaking to assess the level of risk they face in the business and to determine the extent of coverage appropriate for that business. The Authority will review the adequacy of cover in place, having regard to the scale, composition and complexity of the business and to the size of the deductible in relation to the undertaking's overall capital resources.

2.10 First Schedule Paragraph 6 “consolidated supervision”

This paragraph requires the Authority to be satisfied, in the case of undertakings which are members of wider groups or have ownership links with other entities, that the structures and relationships are not such as to obstruct the conduct of effective consolidated supervision. The Authority needs to ensure that any risks to an undertaking arising as a result of its membership of a wider group are fully taken into account. The objective, however, is to supervise the undertaking as part of its group, and not to supervise all companies in the group.

In order to conduct such monitoring and assessment, the Authority may need access to information relating to other parts of the group and to other connected entities. Where there are obstacles to transparency as a result of the particular structure adopted or the location of parts of the group, the Authority needs to satisfy itself that adequate information will be forthcoming and that the structure and relationships are not such as to cause any other risks to the interests of the undertaking's clients and potential clients.

2.11 First Schedule Paragraph 7 “integrity and skill”

2.11.a. This paragraph is concerned with the manner in which the business of the licensed undertaking is carried on and is distinct from the question of whether its controllers and officers are fit and proper persons. It covers whether the undertaking has sufficient personnel with professional skills appropriate to the nature and scale of the business concerned and with adequate knowledge, skill and experience necessary for the prudent management and conduct of the business.

2.11.b. The integrity element of the criterion requires the undertaking to observe high ethical standards in carrying on its business. Criminal offences or other breaches of statute will obviously call into question the fulfilment of this criterion. Particularly relevant are contraventions of any provision made by or under enactments, whether in Bermuda or elsewhere, designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice. Doubts may also be raised if the undertaking fails to comply with recognized ethical standards such as those embodied in various codes of conduct. The Authority has regard to the seriousness of the breach of the code, to whether the breach was deliberate or an unintentional and unusual occurrence, and to its

relevance to the fulfilment of the criteria in the First Schedule and otherwise to the interests of clients and potential clients.

- 2.11.c. Professional skills cover the general skills which the undertaking should have in conducting its business, for example, in relation to fiduciary responsibilities, establishing and operating systems of internal controls, ensuring compliance with legal and supervisory requirements, and in the standard of the various financial services provided. The level of skills required will vary according to the individual case, depending on the nature and scale of the particular undertaking's activities.
- 2.11.d. The Authority would expect trust undertakings to have a number of employees sufficient to carry out the range and scale of the business. The Authority, in determining whether an undertaking has sufficient personnel, will take into account the human resources that the undertaking may draw on through other arrangements, e.g. outsourcing, secondments, or other similar arrangements.

PART 3 Principles Relating to the Granting of Licences

- 3.1 To grant a licence under the Act, the Authority needs to be satisfied that all the minimum licensing criteria in the First Schedule are met. In order to be so satisfied, the applicant and any other relevant parties must first have provided all the appropriate information requested by the Authority in connection with the application. Even where it is satisfied that the criteria are or can be met, the Authority retains a residual 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. The Authority also considers, in exercising its discretion, whether it is likely that it will receive adequate information from the undertaking and relevant connected parties in order to enable it to monitor the fulfillment of the criteria and to identify potential threats to the undertaking's clients.
- 3.2 In relation to limited trust licences, section 11(3)(a) of the Act restricts an undertaking to holding trust assets not exceeding \$30 million unless the Authority agrees to a higher aggregate amount. In exercising this discretion, the Authority has regard to the Government's policy approach in the Act, in particular in seeking to promote the use of a trust company structure where a trustee manages material amounts of assets. Where an applicant for a limited trust licence or an existing holder of such a licence subsequently wishes to seek consent for a larger amount than \$30 million of assets to apply to his or her business, an application for a higher figure must be made to the Authority. In considering such an application, the underlying objective of the Authority is to determine the point at which the nature and scale of the applicant's business will be such as to indicate that a trust company should instead be established for the conduct of business in question. In assessing applications, the Authority has regard to the interaction of

a number of factors including: the absolute amount of the assets proposed to be managed; the nature and range of the trust business being carried on; the number of individual trust relationships involved; the variety and complexity of the trust responsibilities which are to be conducted and the resources that the undertaking has at its disposal. Broadly, other things being equal, the more varied and complex the trust responsibilities being conducted, the more restrictive the Authority's stance in approving limits greater than \$30 million.

PART 4 - Grounds for Revocation of a Licence

- 4.1 Section 16 of the Act sets out the Authority's powers to revoke a licence. This part gives guidance on the Authority's interpretation of the grounds in section 16 of the Act.
- 4.2 The grounds upon which the Authority may take action are widely drawn, enabling the Authority to exercise its powers before a threat to clients may become very great or immediate. As a result, the Authority is able to act, where necessary, before the deterioration in an undertaking's condition is such that there is a serious likelihood that clients will suffer damage. When its powers become so exercisable, the Act gives the Authority wide discretion in determining the action it feels appropriate to safeguard the interests of clients. In particular, it may revoke the licence, apply restrictions to a licence or give directions under section 20 of the Act. The Principles relating to the Authority's exercise of this discretion are described in Part 5.
- 4.3 Section 16(a) provides that the Authority's powers become exercisable if it appears that any of the criteria in the First Schedule is not or has not been or may not be or may not have been fulfilled. The Authority would consider that a criterion 'may not be fulfilled' in circumstances where the evidence available raised a material doubt about whether a criterion is or has been fulfilled.
- 4.4 Under section 16(b) the Authority's powers become exercisable if the undertaking fails to comply with any obligation imposed by the Act (for example, the obligation to provide a certificate of compliance to the Authority under section 35) or by secondary legislation under the Act. Similarly, it covers any failure to comply with requirements imposed by the Authority using its formal powers under the Act (for example a restriction under section 15 or a requirement for information under section 36).
- 4.5 Under section 16(c) the Authority's powers are also exercisable in circumstances in which a shareholder acquires an interest of 50% or more in the licenced undertaking without having received the Authority's prior non-objection, or retains such an interest despite having been served with a notice of objection.
- 4.6 Section 16(d) also provides that the Authority's powers become exercisable if it is provided with false, misleading or inaccurate information by or on behalf of the

undertaking or in connection with an application for a licence by or on behalf of a person who is or is to be an officer or controller. The simple provision of inaccurate information renders the power exercisable. However, in practice, the Authority would not consider exercising its powers under this section unless the inaccuracy was material, or symptomatic of wider prudential concerns.

- 4.7 Finally, section 16(e) also provides for the power to be exercisable when the interests of the clients or potential clients are threatened in any way. Although breaches of the licensing criteria and other matters referred to above cover most of the circumstances which would pose a threat to the interests of clients and potential clients, other sudden external threats unconnected with the undertaking's conduct remain possible – for example as a result of a natural catastrophe or force majeure declaration. This paragraph ensures that the Authority is enabled to act where the interests of clients or potential clients are threatened in any other way, whether by the manner in which the undertaking is conducting or proposing to conduct its affairs or for any other reason.

PART 5 - Principles Relating to Restriction or Revocation of a Licence

- 5.1 Where its powers of formal intervention are exercisable, the Authority seeks, in deciding on the appropriate course of action, to act in the interests of the undertaking's existing and potential clients. As noted above, the Authority's formal intervention powers become exercisable in a wide range of circumstances and a range of alternative courses of formal action are open to the Authority. Where the Authority can have adequate confidence in an undertaking and its management, it is always open to it to seek remedial action by informal means, notably through persuasion and agreement with the undertaking regarding the steps to be taken to return it to compliance. Wherever possible, the Authority seeks to proceed in this manner. Where the Authority can be satisfied that prompt and adequate remedial action will be put into effect, thereby protecting the interests of clients and potential clients, it is generally reluctant to revoke or restrict the licence. However, where the prudential concerns are very serious or where the Authority feels less able to rely on a purely informal approach, it is likely that formal action will be taken.
- 5.2 Where there are serious concerns and there is no reasonable prospect of speedy and comprehensive remedial action, the Authority is likely to consider revocation, even if the threat to clients is not seen as immediate. On the other hand, where formal supervisory intervention holds out good prospects of achieving successful remedial action within an acceptable time-scale, the Authority will not normally wish to revoke a licence. In so far as is consistent with the interests of clients, the Authority will always seek to explore fully the prospects of remedial action.
- 5.3 Section 18 of the Act provides that where the Authority concludes that its powers are exercisable and should be exercised, it must first serve notice of its intention

to act. An undertaking then has a period within which it can make representations, which the Authority needs to consider before issuing a final notice regarding the action to be taken. Where an undertaking remains aggrieved by the Authority's decision, it then has certain rights of appeal.

- 5.4 The circumstances in which a restricted licence rather than revocation is likely to be appropriate are where the Authority considers that the imposition of restrictions may provide effective underpinning to an undertaking's efforts to remedy the situation, and that there is a reasonable prospect that all the relevant criteria will be fulfilled again within a reasonable period. The Authority, therefore, looks for a sound and viable programme of swift remedial action.
- 5.5 On occasion, however, when concerns arise it may also be desirable to impose restrictions as a holding measure to protect clients and potential clients while further information is sought and evaluated.

Cases of urgency

- 5.6 Section 19 of the Act provides for the Authority to impose or vary restrictions with immediate effect (i.e. without serving notice of its intention to act) when it considers it a matter of urgency. Wherever possible, the Authority adheres to the normal notice provisions set out in section 18. However, where it perceives or suspects a serious immediate concern to the interests of clients or potential clients, it considers the need for urgent action. This may also involve circumstances in which it sees it as important for holding action (e.g. to prevent further deterioration of the position) to be taken while fuller information is sought.

PART 6 Power to Obtain Information and Reports

- 6.1 The Authority's supervisory arrangements for licensed institutions comprise three principal elements. First, the Authority conducts certain off-site analysis and review, based on regular financial and other data received from undertakings. This is supplemented by a regular programme of prudential discussions, during which the Authority interviews senior management on a wide range of relevant issues, including recent and current financial performance, material compliance and control issues and business development and strategy questions. Finally, the Authority conducts routine on-site reviews during which it assesses an undertaking's ongoing compliance with aspects of the licensing criteria and, in particular, with paragraph 5(2) of the First Schedule to the Act. These reviews of compliance are intended to provide insight into the effectiveness of the internal controls in place and the ability of management to identify, monitor and manage key risks arising from the undertaking's operations. They also provide an opportunity for the Authority to check, through sample testing, that the procedures and practices in place within an undertaking are in practice enabling it to fulfil the specific obligations imposed by the Proceeds of Crime Act and Regulations.

- 6.2 Supervision, therefore, involves the receipt and analysis of a variety of regular and ad hoc financial and other information from undertakings. The Authority's standard reporting arrangements are kept under review, agreed with undertakings from time to time and amended in the light of developments.
- 6.3 Much of the information required by the Authority for its supervision of undertakings is provided pursuant to the Authority's statutory powers in the Act to require relevant information and documents. In addition, the Act stipulates certain matters as being subject to specific statutory reporting requirements – notably, for example, the requirement for an undertaking to submit a certificate of compliance, signed by an officer, certifying that the undertaking has complied with the minimum criteria and codes of conduct during the year. At the same time, an undertaking which is not a company must also confirm that it has complied with the limitations imposed under or pursuant to section 11(3) of the Act.
- 6.4 Section 36 of the Act provides formal powers for the Authority by notice in writing to require from an undertaking such information as it may reasonably require for the performance of its functions under the Act. The section also provides for the Authority to require an undertaking to provide it with a report by its auditor or by an accountant or other person with relevant professional skill on, or on any aspect of, any matter about which the Authority has required or could require the undertaking to provide information under the section. In the case of reports commissioned under section 36(1)(b), the Authority has agreed that they will wherever possible be commissioned from an undertaking's own external auditors. However, in certain circumstances, another professional firm may be used. This would be the case, for example, where a report called for particular technical skills or when the Authority had had previous concerns about the quality or completeness of work conducted by the external auditor.
- 6.5 The Authority has also agreed that, as a general rule, it will limit the extent to which it will have recourse to professional reports of this nature. Instead, its general policy is to use its own staff to assess directly through the on-site work described above the adequacy of undertakings' systems and controls. Nonetheless, where particularly specialized work is required or other special considerations arise, the Authority may have recourse to commissioning a professional report under section 36.
- 6.6 Section 37 of the Act provides statutory powers for the Authority by notice in writing to require an undertaking to produce relevant documents or information. This power can also be used to obtain relevant documents in the possession of other persons; and also to require information or documents from entities related to an undertaking. Section 38 of the Act provides the Authority with specific powers to enter the business premises of persons on whom notice under sections 36 or 37 has been served for the purpose of obtaining relevant information or

documents. The Authority makes routine use of section 36 and section 37 powers when conducting its on-site review visits to licence- holders, in order to deal with any client confidentiality issues that might arise in the course of compliance-testing.