

## **MONEY SERVICE BUSINESS REGULATIONS 2007**

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**BERMUDA MONETARY AUTHORITY ACT 1969**

**1969 : 57**

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The Minister of Finance, in exercise of the power conferred by section 20AA(2) of the Bermuda Monetary Authority Act 1969, makes the following Regulations:

#### **Citation**

1 These Regulations may be cited as the Money Service Business Regulations 2007.

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### **Interpretation**

2 In these Regulations —

“controller” has the meaning given in section 7(3) of the Investment Business Act 2003 as it applies to companies;

“chief executive” means a person who, either alone or jointly with one or more persons, is responsible under the immediate authority of the directors for the conduct of the business of the company;

“licensed company” means a company licensed under regulation 6 to carry on money service business;

“minimum criteria” means the minimum criteria set out in the Schedule;

“money service business” has the meaning given in section 20AA(1) of the Bermuda Monetary Authority Act 1969;

“officer” includes a director, secretary or senior executive of the company by whatever name called;

“senior executive” means a person (other than a chief executive) who, under the immediate authority of a director or chief executive of the company —

- (a) exercises managerial functions; or
- (b) is responsible for maintaining accounts or other records of the undertaking.

### **Restriction on carrying on money service business without a licence**

3 (1) Except as otherwise provided under these Regulations, a person shall not carry on, or purport to carry on, money service business in or from Bermuda unless that person is licensed under regulation 6.

(2) A person not otherwise exempted under regulation 4 who carries on money service business without being in possession of a licence is guilty of an offence and liable on summary conviction to a fine of \$50,000.

### **Exemption**

4 These Regulations shall not apply to an institution licensed under the Banks and Deposit Companies Act 1999.

### **Application for a licence**

5 (1) An application for a licence shall be made to the Authority in such manner as the Authority may direct and shall be accompanied with —

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- (a) a business plan setting out the nature and scale of the business which is to be carried on by the applicant;
- (b) such other information as the Authority may reasonably require for the purpose of considering the application; and
- (c) the application fee.

(2) An application may be withdrawn by notice in writing to the Authority at any time before it has determined the application, but in any such case no application fee shall be refunded to the applicant.

### **Grant and refusal of application for a licence**

6 (1) Subject to this regulation, the Authority may on an application duly made in accordance with regulation 5, and after being provided with all such information as it may reasonably require, grant or refuse the application for a licence.

(2) The Authority shall not grant an application unless —

- (a) the applicant is a company incorporated in Bermuda or elsewhere; and
- (b) it is satisfied that the minimum criteria are fulfilled with respect to the applicant.

(3) It shall be a condition of every licence issued under these Regulations that the licensee shall not hold client monies or any other client assets.

### **Fees**

7 A licensed company shall pay such fees as may be prescribed under the Bermuda Monetary Authority Act 1969 —

- (a) on the grant of the licence; and
- (b) on or before 30 April in every year after the year in which the licence was granted.

### **Form, display and registration of licences**

8 (1) A licence shall be in such form as the Authority may determine.

(2) A licensed company shall at all times keep the licence on display in Bermuda at its principal place of business.

(3) The Authority shall publish in the Gazette a notice of every grant of a licence under these Regulations.

(4) The Authority shall cause to be compiled and maintained a register containing, in respect of each licence, such particulars as it may determine.

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### **Notification of change of director, senior executive and controller**

9 (1) A licensed company shall give written notice to the Authority of the fact that any person has become or has ceased to be a director, senior executive or controller of the company.

(2) A notice required to be given under paragraph (1) shall be given within a period of fourteen days after the day on which the company becomes aware of the relevant facts.

### **Statement of compliance**

10 A licensed company shall, within four months from the end of its financial year, submit to the Authority —

- (a) a statement confirming that it has, with respect to the preceding financial year, complied with the requirements of these Regulations; and
- (b) (where it has failed to comply with any such requirement within such period), a statement setting out the particulars of the breach.

### **Offences**

11 A licensed company that —

- (a) holds client monies or other client assets in breach of a condition of its licence imposed by virtue of regulation 6(3);
- (b) fails to display a licence as required by regulation 8(2);
- (c) fails to give notice to the Authority of a change in director, senior executive or controller as required by regulation 9(1);
- (d) fails to give such notice within the period required by regulation 9(2);
- (e) fails to submit a statement as required by regulation 10(a) or (b);
- (f) fails to submit such a statement before the end of the period specified in regulation 10; or
- (g) fails to give the particulars required by regulation 10(b);

is guilty of an offence and is liable on summary conviction to a fine of \$30,000.

### **Surrender of licence**

12 (1) A licensed company may surrender its licence by notice in writing to the Authority.

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(2) A surrender shall take effect on receipt of the notice by the Authority or, if a later date is specified in the notice, on that date.

(3) A surrender of a licence shall be irrevocable unless it is expressed to take effect at a later date and before that date the Authority by notice in writing allows the surrender to be withdrawn.

### **Directions to protect interests of clients**

13 (1) Subject to regulation 15, the Authority may give a licensed company directions in writing under this regulation.

(2) Directions under this regulation shall be such as appear to the Authority to be desirable for safeguarding the interests of the licensed company's clients or potential clients and, without prejudice to the generality of the foregoing, may in particular —

- (a) require the licensed company to take certain steps or to refrain from adopting or pursuing a particular course of action;
- (b) impose restrictions on the scope of its business in a particular way;
- (c) require the licensed company to remove any of its controllers or officers.

(3) A direction under paragraph (1) shall be given by notice in writing and may be varied by a further direction; and a direction may be revoked by the Authority by a notice in writing to the licensed company concerned.

### **Revocation of licence**

14 (1) Subject to regulation 15, the Authority may revoke the licence of a licensed company if the Authority is satisfied that —

- (a) any of the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the licensed company;
- (b) the licensed company has failed to comply with any provision of these Regulations or is carrying on business in a manner not authorised by its licence;
- (c) the licensed company has failed to comply with any requirement or contravened any prohibition imposed on it by a direction under regulation 13;
- (d) the Authority has been provided with false, misleading or inaccurate information by or on behalf of the licensed company 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 of the licensed company.

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### **Notice of direction or revocation of licence**

15 (1) Where the Authority proposes to give a direction under regulation 13 or revoke a licence under regulation 14 the Authority shall give to the licensed company concerned written notice of its intention to do so.

(2) A notice under paragraph (1) shall state the ground or grounds on which the Authority intends to act and give particulars of the company's rights under paragraph (4).

(3) Where the ground for a proposed revocation is that it appears to the Authority that the criterion in paragraph 1 of the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, the Authority shall give that person a copy of the notice mentioned in paragraph (1), together with a statement of their rights under paragraph (4).

(4) A licensed company or the person referred to in paragraph (3), which is given notice under paragraph (1) may make representations in writing to the Authority within the period of twenty-eight days beginning with the day on which the notice was given (or such other longer period as the Authority may allow).

(5) After giving a notice under paragraph (1) and taking into account any representations made under paragraph (4), the Authority shall decide whether —

- (a) to proceed with the action proposed in the notice; or
- (b) to take no further action.

(6) The Authority shall give the company written notice of its decision and, except where the decision is to take no further action, the notice shall state the reasons for the decision.

(7) A notice under paragraph (6) shall be given within the period of twenty-eight days beginning with the day on which the Authority shall have received from the licensed company representations pursuant to paragraph (4), or if no such representations have been received by the Authority, within the period of fifty-six (56) days beginning with the day on which the notice under paragraph (1) was given; and if no notice under paragraph (6) is given within that period, the Authority shall be treated as having at the end of that period given a notice under that paragraph to the effect that no further action is to be taken.

(8) The Authority shall publish in the Gazette, in such form as it thinks fit, notice of every revocation of a licence under these Regulations.

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### **Winding up on petition from the Authority**

16 (1) The Authority may present a petition to the Supreme Court for the winding up of a company which —

- (a) has been licensed under these Regulations but its licence has been revoked; or
- (b) is carrying on, or has carried on, money service business in contravention of any provision of these Regulations.

(2) On such a petition, the Court may wind up the company if it is of the opinion that it is just and equitable that the company be wound up or the firm dissolved.

(3) Part XIII (Winding Up) of the Companies Act 1981 shall apply to the winding up of a company under this section.

### **False documents or information**

17 (1) Any person who, for any purposes of these Regulations—

- (a) issues a document, or supplies information, which is false or misleading in a material respect; or
- (b) signs a document which is false or misleading in a material respect; or
- (c) takes part in the preparation or issue of a document, or the supplying of information, which is false in a material respect,

commits an offence and is liable on summary conviction to a fine of \$50,000 or to imprisonment for two (2) years or to both

(2) It shall be a defence for a person charged with an offence under paragraph (1) to prove—

- (a) if an individual, that he had no knowledge of the false or misleading character of the document or information, and took every reasonable precaution to ensure its accuracy; and
- (b) if not an individual, that every person acting on its behalf had no such knowledge, and took every such reasonable precaution, as aforesaid.

### **Offences by companies**

18 (1) Where an offence under these Regulations committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any officer of the company, or any person who was purporting to act in any such capacity, they, as well as the company, shall be guilty of that offence and be liable to be proceeded against and punished accordingly unless such

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person shows that he took all reasonable steps to avoid the commission of an offence.

(2) Where the affairs of a company are managed by its members, paragraph (1) shall apply in relation to the acts and defaults of a member in connection with their functions of management as if they were a director of the company.

### **Transitional**

19 A company which, on the day of commencement of these Regulations is carrying on money service business may continue to carry on such business without a licence under these Regulations —

- (a) for a period not exceeding twelve months beginning with that date; and
- (b) if within that period application is made for a licence, until that application is disposed of or withdrawn.

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### **SCHEDULE**

**(regulation 6)**

#### MINIMUM CRITERIA FOR LICENSING

##### **Controllers and officers to be fit and proper persons**

1. (1) Every person who is, or is to be a controller or officer of the licensed company is a fit and proper person to hold the particular position which they hold or are to hold.

(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, and to the diligence with which they are fulfilling or likely to fulfil those responsibilities.

(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 any 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 or oppressive or otherwise improper (whether lawful or not) or which otherwise reflect discredit on their method of conducting business;
- (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.

##### **Business to be conducted in prudent manner**

2. [1] The licensed company conducts, or, in the case of a company which is not yet carrying on money service business, will conduct its business in a prudent manner.

(2) In determining whether a licensed company is conducting its business in a prudent manner, the Authority shall take into account any failure by the licensed company to comply with the provisions of these Regulations and other provisions of law.

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(3) A licensed company shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain minimum net assets of \$50,000.

(4) A licensed company 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.

(5) A licensed company shall not be regarded as conducting its business in a prudent manner unless it has effected a policy of insurance to cover risks inherent in the operation of its business of an amount commensurate with the nature and scale of the company's operations.

(6) Subparagraphs (2) to (5) are without prejudice to the generality of subparagraph (1).

Made this 16<sup>th</sup> day of January, 2007

Minister of Finance