



**BERMUDA MONETARY AUTHORITY**

**BANKING, TRUST & INVESTMENT DEPARTMENT**

**GUIDANCE NOTES**

**MONEY SERVICE BUSINESS REGULATIONS 2007**

**INFORMATION FOR PROSPECTIVE APPLICANTS**

February 2011

## **TABLE OF CONTENTS**

	Page No.
<b>1.0 Introduction</b>	4
<b>2.0 Regulatory Scope</b>	4
<b>3.0 Applications</b>	4
<b>4.0 Controllers &amp; Officers to be Fit and Proper Persons</b>	6
<b>5.0 Business to be conducted in a Prudent Manner</b>	6
<b>6.0 Supervisory Process</b>	8
6.1 Reporting Requirements	8
<b>APPENDIX 1 – Application Form (MSB Form 1)</b>	
<b>APPENDIX 2 – Business Plan</b>	
<b>APPENDIX 3 – Institutional Questionnaire (MSB Form 2)</b>	
<b>APPENDIX 4 – Personal Questionnaire (MSB Form 3)</b>	
<b>APPENDIX 5 – Statement of Compliance (MSB Form 4)</b>	
<b>APPENDIX 6 - Statistical Report (MSB Form 5)</b>	

## 1.0 INTRODUCTION

These Guidance Notes have been issued by the Bermuda Monetary Authority (the “Authority”) to provide information for prospective applicants regarding the provisions of the Money Service Business Regulations 2007 (“the Regulations”) and the supervisory process that the Authority will apply.

## 2.0 REGULATORY SCOPE

The Regulations provide for a licensing regime for any company engaging in money service business as defined by the Bermuda Monetary Authority Act 1969 (“the Act”), either in or from Bermuda.

Part IVA, Section 20AA (1) of the Act defines money service business as “... the business of providing any of the following services to the general public -

- (a) money transmission services;
- (b) cashing cheques which are made payable to customers and guaranteeing cheques;
- (c) issuing, selling or redeeming money orders or traveller’s cheques for cash;
- (d) issuing credit or debit cards, or otherwise providing means of electronic payment;
- (e) intermediating means of payment over the internet;
- (f) operating a bureau de change whereby cash in one currency is exchanged for cash in another currency.”

Institutions licensed under the Banks and Deposit Companies Act 1999 are exempted from the Regulations. (Regulation 4)

The Regulations are designed to capture companies that are in the business of providing money services namely the provision by way of business of any one or more of the services set out in paragraphs (a) to (f) above. If a company was established for the purpose of carrying on money service business or if it has held itself out as being in the business of money services, then it requires a licence under the Regulations. However, where a company provides any of those services as an ancillary service to its clients and does not levy a separate charge, the Authority is not likely to treat such an activity as being within scope of the Regulations. Examples of such ancillary services include the cashing of hotel guests’ personal cheques or redemption of guests’ traveler’s cheques, or the cashing of customer cheques by a retailer.

If there is any uncertainty or concerns in this regard prospective applicants are encouraged to contact the Authority to determine whether they are required to submit an application.

Prospective applicants should refer to the applicable provisions of the Regulations to familiarise themselves with their requirements. In addition, applicants proposing to conduct services that involve foreign currency transactions should be mindful of the provisions of the Exchange Control Act 1972 and the Regulations, and where necessary seek the necessary consents there under.

### **3.0 APPLICATIONS**

An application for a licence under the Regulations may be made by a Local or Exempted Company incorporated under the Bermuda Companies Act 1981 (the “Companies Act”) or an Overseas (Permit) Company licensed by the Minister of Finance under the Companies Act to conduct business in Bermuda.

An application for a licence must be made in the form directed by the Authority and accompanied by such fees as may be prescribed under the Bermuda Monetary Authority Act 1969 (refer to the ‘Fees & Penalties’ section of the Authority’s website, [www.bma.bm](http://www.bma.bm) ). A copy of the application Form 1 can be found in Appendix 1 and is also available in electronic form on the Authority’s web site ([www.bma.bm](http://www.bma.bm)).

An applicant must submit a business plan setting out the nature and scale of the money service business that is to be carried on. The details which are to be included in this business plan are set out in Appendix 2 and are also available in electronic form on the Authority’s web site ([www.bma.bm](http://www.bma.bm)).

The Authority also requires that an applicant submit completed Institutional and/or Personal Questionnaires (Forms 2 and 3 set out in Appendices 3 and 4) as applicable. Questionnaires are required from each shareholder/controller, director and officer (as defined in section 7(3) of the Investment Business Act 2003) responsible for the applicant’s business.

Anti-Money Laundering and Anti-Terrorist Financing policies and procedures should form part of all applications to ensure compliance with the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008.

In considering an application for a money service business licence, the Authority may:

- a) carry out any enquiries which it considers appropriate (e.g. approaching other regulators);
- b) ask the applicant, or any specified representative of the applicant, to attend a meeting with the Authority to answer questions and explain any matter(s) the Authority considers relevant to the application;
- c) seek additional information from the applicant;

- d) visit the applicant to review the proposed premises and files pertaining to the business that it is proposed to conduct in the licensed entity;
- e) request any information furnished by the applicant to be verified in such manner as the Authority may specify; and
- f) take into account any other information that it considers relevant in relation to the application.

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 always 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.

The Regulations impose 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. Generally, the Authority would not expect an application to remain outstanding for a period in excess of 3 months; and in most cases the timetable will be appreciably less.

#### **4.0 Controllers & Officers to be Fit and Proper Persons**

The Authority reviews the background of the proposed roles of each controller and officer as defined.

In assessing whether a person has the relevant competence, probity, 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 suitable qualifications and training.

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 banking, insurance, investment, trust, or other legislation designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice.

Further, the Authority 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. 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.

A licensed company is required to give written notice to the Authority of any change of director, senior executive and controller. Regulation 9(2) provides that notice shall be given within a period of fourteen days after the day on which the company becomes aware of the relevant fact. A company that fails to give the required notice is guilty of an offence and liable upon summary conviction to a fine of \$30,000.00. The Authority conducts a complete review of such persons to determine whether they are fit and proper for their roles.

## **5.0 Business to be conducted in a Prudent Manner**

Paragraph 2(1) of the Schedule provides that 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. Any failure by the licensed company to comply with the provisions of these Regulations and other provisions of law will be taken into account in determining whether the money service provider is conducting its business in a prudent manner.

Money service providers are expected to closely monitor their net asset position and paragraph 2(3) of the Schedule makes it clear that, unless a licensed company maintains minimum net assets of \$50,000, it shall not be regarded as conducting its business in a prudent manner.

The Authority expects the licensed company to exhibit proper transparency in its dealings with clients and potential clients and to act at all times with due skill, care and diligence. Terms of business, including fees and commissions for its different services should be prominently displayed, and any changes promptly brought to the attention of customers to ensure that there is no misunderstanding with regard to transaction charges and other fees. Companies are also expected to disclose to the public in any advertisements, stationery (whether printed or electronic) that they are licensed to conduct money service business by the Bermuda Monetary Authority. Companies are also expected to display their licence at all times at their principal place of business. A company that fails so to display its licence is guilty of an offence and is liable on summary conviction to a fine of \$30,000.00.

The Authority also reviews the accounting and other records as well as the systems of control in place within a licensed company in order to ensure that the minimum licensing criteria are complied with. As a licensed institution, a money service business is also required to comply with the Proceeds of Crime Act 1997 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008. 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.

The duty of vigilance includes verification; recognition and reporting of suspicious transactions; keeping of “know your client records” and delivering the appropriate Anti Money Laundering training to all staff. The licensed company must ensure that

its procedures enable it to determine and verify the true identity of customers requesting their services. Copies of photo identification such as a driver's licence or passport should be retained in compliance with the Proceeds of Crime Act 1997 and relevant guidance notes and codes. The Authority encourages companies to put in place appropriate procedures to minimise the risk of abuse especially, where appropriate, standard rules with regard to maximum individual transaction sizes that may be collected for its different money services and strict requirements around their ability to collate and aggregate individual transactions that may form part of a larger transaction and may be intended to avoid standard limits or reporting requirements.

Money Service providers may face a range of potentially major financial risks in their business and paragraph 2(5) of the Schedule stipulates that a licensed company must hold adequate insurance coverage in order to meet the criterion of conducting business in a prudent manner. Relevant types of insurance include the following: errors and omissions/professional indemnity; directors' and officers' liabilities; fidelity and forgery; loss of property; computer crime; computer damage; business interruption; office contents. The Authority will review the adequacy of cover in place, having regard to the scale, composition and complexity of the business.

A licensed money service provider should organise and control its operations in a responsible manner and ensure that it has in place well-defined procedures to enable the company to comply with all regulatory requirements. Employed staff must be suitable, adequately trained and properly supervised.

## **6.0 SUPERVISORY PROCESS**

Supervision is intended to assist the Authority to assess the ongoing financial viability of a money service provider, the fitness and propriety of its management, the prudent conduct of its business and its compliance with the Regulations.

The Authority's supervision of money service businesses involves regular meetings with the senior management of licensed firms, together with scrutiny of financial and statistical information in connection with the institution's business activities and periodic compliance visits to the institution's premises. A review of compliance with "know your customer" and record keeping requirements, in relation to the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, forms part of all of the Authority's visits.

These visits are normally conducted by agreement and at a mutually agreed time. However, in exceptional cases where the Authority has material concerns for the interests of clients or about the financial position of the money service provider, 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 it with all relevant information and documents without its having routine recourse to legal powers as provided under the Section 20A of the Bermuda Monetary Authority Act 1969.

## 6.1 Reporting Requirements

The Regulations require that, on an annual basis, each money service provider submit a Statement to the Authority confirming that it has complied with the minimum criteria or indicating any failure to do so and that it has observed the limitation imposed pursuant to Regulation 6(3). Regulation 6(3) provides that “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.” A company that fails to provide the Statement as required by Regulation 10(a) or give the particulars as required by Regulation 10(b) is guilty of an offence and is liable on summary conviction to a fine of \$30,000.00. A copy of the compliance certificate Form 4 appears at Appendix 5 and is also available in electronic form on the Authority’s web site ([www.bma.bm](http://www.bma.bm)).

Client Money is defined under the Investment Business (Client Money) Regulations 2004, and relates to money in any currency which, in the course of carrying on business, a service provider holds (whether in Bermuda or elsewhere) in respect of an agreement entered into, or to be entered into, with or for a client. If money is immediately due and payable to a Money Service provider by way of agreed fees or commissions for its own account or is not held in a client bank account then that money is not client money. A company that fails to observe the limitation imposed pursuant to Regulation 6(3) is guilty of an offence and is liable on summary conviction to a fine of \$30,000.00.

The Regulations require a licensed money service provider to ensure that any monies belonging to clients are kept segregated from the assets of their business: they should be kept in separate bank accounts, clearly labeled as client money. The objective is to ensure that, in the event of the insolvency of the service provider, client money is protected from the threat posed by insolvency or liquidation of the licensed entity.

Routine statistical reports must be submitted to the Authority within twenty-one (21) business days of each calendar quarter, in a form prescribed by the Authority. Statistical information should be recorded according to the type of service provided, and include details of numbers of transactions, monetary values, and commissions charged as well as any purchases of foreign currency using Bermuda dollars. A copy of the statistical report Form 5 appears at Appendix 6 and is also available in electronic form on the Authority’s web site ([www.bma.bm](http://www.bma.bm)).

The Authority expects the Money Service Provider 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, make significant changes to key aspects of its operations, systems of controls, as well as any breaches in the requirements and expected standards of behaviour.