

## **DECISION NOTICE**

Date: 12<sup>th</sup> March 2009

To: Appleby, Conyers Dill & Pearman, Cox Hallett Wilkinson, FairIsle Management Limited, Association of Bermuda Insurers and Reinsurers (“ABIR”) and AMS Limited

From: Mrs. Cyralene Benskin- Murray, Assistant Director, Legal Services and Enforcement

Subject: **Enhancement to Bermuda Corporate Registration Process Regime**

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### General

1. The Bermuda Monetary Authority (the “Authority”) extends its thanks to all persons who reviewed and responded to its Consultation Paper of 19 December 2008 (the “Paper”) in relation to the enhancement of the existing corporate registration process (“CRP”). After thorough review and consideration of all submissions the Authority has decided to retain and enhance the CRP process by implementing an e-filing system and an additional payment system.

### E-filing enhancement proposal

2. To remain within its mandate as a leading financial services regulator, and to ensure that its CRP is efficient, competitive and consistent with international best practices, the Authority will implement an e-filing regime. The Authority is of the view, that this will be a key measure in promoting and preserving Bermuda’s reputation as a quality international financial centre.
3. The introduction of an e-filing regime is expected through the leveraging of technology, to reduce the delays attributable to the existing process of manual review of paper documents. Further, the implementation of an e-filing framework is expected to result in greater efficiency in the processing of incorporation and share transfer applications and permit a more timely registration of corporate entities.
4. Additionally, the Authority has taken into consideration that through e-filing the CRP process can be improved without fundamental change of approach or substantive legislative changes.

5. The Authority believes that such framework would assist Bermuda greatly by providing features and benefits to Bermuda's corporate registration system currently enjoyed by other corporate registration frameworks examined, namely increased speed of registration and a low reputational risk.

#### Alternative framework not recommended at this time

6. Upon review of all CSP responses, the Authority advises that due to no clear consensus from Industry in relation to: (i) licensing; (ii) what the CSP regulatory regime should look like; or (iii) whether an alternative regime should be established; the Authority shall proceed to implement an e-filing system as most respondents thought it generally beneficial. Also, in light of the continuing development of the AML framework in Bermuda, with the implementation on new requirements on lawyers not yet finalized and discussions on the potential treatment of CSPs not yet commenced, it would appear premature to develop a CSP licensing regime.
7. The Authority is open to reviewing the position on implementing alternative arrangements, including delegated responsibilities to CSPs, at a later date. We propose to review the position in 2011 with a view to implementing possible changes in 2012. In light of the extensive debate on this issue in recent years and as part of the current consultation exercise, the continuing development of the AML framework, and the need to ensure that e-filing arrangements are in place for a sufficient amount of time to demonstrate their benefit, the Authority believes that any earlier review would be inappropriate.
8. The Authority notes that one of the impediments to making progress on this issue has been a continuing lack of consensus within the legal and CSP community as to the best alternative to the current arrangements. We therefore, invite interested stakeholders to use the intervening period to come together to develop workable alternative proposals which command a reasonably broad consensus and which might be presented as a recommendation to the Authority and Ministry of Finance. Given recent developments in global financial markets and high-profile cases of financial crime, the Authority continues to believe that any alternative arrangements must be robust in ensuring rigorous review of new incorporations.

#### Timeline for implementation

9. Timelines established for the implementation of the e-filing project as follows:
  - Conduct industry consultation: Quarter 1 – 2009;
  - System development and testing: Quarter 2 – 2009; and
  - Launch of e-filing system: Quarter 3 – 2009.

## Conclusion

10. The Authority is pleased to assist Industry and the jurisdiction in general in this next phase of the evolution of Bermuda as a modern financial centre, and stands ready to consult with firms in connection with using and adapting as required, their systems to take advantage of e-filing capabilities.