

CORPORATE SERVICE PROVIDER BUSINESS ACT 2011

Explanatory Memorandum

Introduction

The Authority issued a consultation paper relating to the regulation of corporate service providers. The objective is to provide a regime for prudential oversight of the business of corporate service providers. To effect this level of regulatory oversight, the attached Bill has been prepared which mirrors the regulatory powers vested in the Authority to supervise other regulated entities including investment business and trustees.

I. Summary of Proposed Corporate Service Provider Business Act 2011 (the “Bill”)

1. Section 8. Definition of corporate service provider is aimed to capture both legs of the activity in question, company and partnership formation *and* the provision of administrative and secretarial services. There is scope for the Minister to extend or limit the ambit of the Bill.
2. The Bill specifically addresses the “professional Director” who provides only his own services as a Director and is excluded from the operation of the Bill.
3. Section 8 makes it an offence to carry on the activities without a license. It is expected the Bill will come into force in January 2012 with a transitional provision, providing that any entity which is currently carrying out that activity has 12 months to become licensed.
4. Section 9 permits the exemption of various activities or individuals from the operation of the Bill. This was included as a mechanism to ensure against unintended consequences, given the range of activities captured by the Bill. Exemptions which the Authority is considering are in relation to licensed entities who provide corporate services to their own clients. The Authority is also proposing an exemption for a corporate service provider who only provides services to members of the group of which it is a member.
5. Section 13 relates to fees which will be prescribed under the Bermuda Monetary Authority Act 1969. There is a proposed fee schedule set out in the Second Schedule. The proposal is to calculate a fee based on a flat rate of \$20 per entity which the CSP services.

6. The First Schedule, which provides for the minimum criteria to be met by licensees and in particular criteria 5, which underpins the regulatory concept of the Bill.

The balance of the Bill contains, broadly, the standard regulatory provisions which were contained in other regulatory Acts as well as new enforcement powers which will be incorporated into all of the regulatory regimes. Specifically, civil penalties, public censure, prohibition orders and injunctive powers are the additional enforcement powers which the Authority will seek to have included in its various regulatory Acts over the next 6 months.

II. Exchange Control (Transitional Amendments)

Changes to the existing exchange control regime under the Exchange Control Act 1972 and the Exchange Control Regulations 1973 (the “Regulations”) to put into effect deemed consent by the Controller for companies which engage licensed corporate service providers.

Two approaches are under active consideration:

- (i) To expand the Notice to the Public of June 2005 (the “General Permission”) pursuant to section 41 of the Regulations and to include a general permission for share issuances and transfers by companies administered by licensed corporate services providers;
- (ii) For the Controller of Foreign Exchange to issue an exemption under section 37 of the Regulations to exempt companies that are administered by a licensed corporate services provider from the obligation to obtain from the Controller permission for share issuances and transfers.

III. Consequential Amendments to Companies Act 1981 and various Partnership Acts

In addition to the consequential amendments to the Authority’s governing act and the AML/ATF legislation set out in the Second Schedule to the Bill, there will also need to be consequential amendments made to the Companies Act 1981, the Companies (Forms) Rules 1982 Schedule (Rule 2) which is the Form No. 1, the Exempted Partnerships Act 1992 and the Limited Partnership Act 1883 to reflect the revised registration process of companies and partnerships.

Comments on the bill are invited. Responses should be sent to policy@bma.bm.