



BERMUDA MONETARY AUTHORITY

GUIDANCE NOTES

MONEY SERVICE BUSINESS ACT 2016

DECEMBER 2016

TABLE OF CONTENTS

I.	INTRODUCTION	3
II.	REGULATORY SCOPE	3
III.	APPLICATIONS	4
IV.	SUPERVISORY PROCESS	5
	Reporting Requirements	6
	Off-Site Supervision	7
	On-Site Supervision	7
	Consolidated Supervision	8
APPENDIX 1 –	APPLICATION FORM	
APPENDIX II –	QUESTIONNAIRE FOR SHAREHOLDER CONTROLLER	
APPENDIX III –	QUESTIONNAIRE FOR SENIOR EXECUTIVES	
APPENDIX IV –	BUSINESS PLAN	
APPENDIX V –	CERTIFICATE OF COMPLIANCE	
APPENDIX VI –	STATISTICAL REPORT	

I. INTRODUCTION

1. These Guidance Notes have been issued by the Bermuda Monetary Authority (the “Authority”) to provide information for prospective applicants regarding the statutory provisions of the Money Service Business Act 2016 (the “Act”) and the supervisory process which the Authority will apply.
2. The Authority’s Guidance is of general application and seeks to take account of the wide diversity of undertakings that may be licensed under the Act. The Guidance will be kept up-to-date and revised versions published from time to time. The Authority cannot provide definitive interpretation of the provisions of the Act, since that is the prerogative of the Courts. However, the Authority, in administering the Act is prepared to offer its own views on the meaning of provisions.
3. It should be noted that the Authority has also published a Statement of Principles, as provided for under the Act. The Statement of Principles and Code of Practice provide guidance on the Authority's approach in interpreting the minimum criteria and in exercising its power to grant, revoke or restrict a licence and in exercising its power to obtain information, reports and to require production of documents.

II. REGULATORY SCOPE

4. The Act’s requirements are the statutory basis for regulating money service business in Bermuda. The Act provides for a licensing regime for any person or entity (unless otherwise exempted) engaging in money service business as defined by the Act, either in or from within Bermuda.
5. A money service business, as defined by section 2(2) of the Act, is a business that provides any or all of the following money service business activities 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 drafts, money orders or traveller’s cheques for cash;
 - d. payment service business;
 - e. operating a bureau de change whereby cash in one currency is exchanged for cash in another currency.
6. Institutions licensed under the Banks and Deposit Companies Act 1999 are exempted from this Act.
7. The Act is designed to capture persons 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 (e) 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 Act. 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 Act. Examples of such ancillary

services include the cashing of hotel guests' personal cheques or redemption of guests' traveller'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.

III. APPLICATIONS

8. An application for a licence under the Act may be made by local or exempted companies incorporated under the Companies Act and by Overseas (Permit) Companies authorised by the Minister of Finance under the Companies Act 1981 to conduct business in Bermuda. Applications for a licence may be made by Partnerships formed under the Partnership Act 1902 or the Exempted Partnerships Act 1992; and by Overseas Partnerships permitted by the Minister of Finance to conduct business in Bermuda; and by other unincorporated entities or by individuals conducting corporate service provider business, as defined, in or from within Bermuda.
9. In assessing applications, the Authority considers the interaction of a number of factors including: the nature and scale of the money service business being carried on; the number of individual relationships involved; the variety and complexity of the responsibilities which are to be undertaken and the resources that the money service provider has at its disposal. A proposal to outsource some or any of the money service provider's functions would require the specific and prior approval of the Authority.
10. All applications for a money service business licence must be made using the Application Form in Appendix I of these Guidance Notes (also available in electronic form on the Authority's website) and accompanied by such fees as prescribed under the Bermuda Monetary Authority Act 1969 (refer to the "Fees & Penalties" section of the Authority's website: www.bma.bm).
11. Along with the Application Form, pursuant to section 10(2) of the Act, an applicant must submit a detailed business plan setting out the nature and scale of the money service business that is to be carried on. The details to be included in this plan are set out in Appendix IV. The minimum licensing criteria require controllers/officers to be fit and proper persons; for business to be conducted in a prudent manner; for money service businesses to observe proper corporate governance policies and processes with the necessary integrity and skill; and for full cooperation where there is consolidated supervision. These minimum licensing criteria are subject to certain minor differences between companies, partnerships and individuals. The Statement of Principles, published under the Act, should be consulted for more details on these differences.
12. The Authority also requires that an applicant submit as appropriate a completed Questionnaire for Shareholder Controller and Questionnaire for Senior Executives (Appendix II and III). Questionnaires are required from each shareholder/controller, director and officer (as defined in sections 2 and 3 of the Act).
13. 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 (the “AML Regulations”).

14. The name, contact details and relevant qualifications of the appointed Reporting Officer should be provided in accordance with AML Regulation 17.
15. In considering an application for a money service business licence, the Authority may:
 - a. carry out any enquiries that 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 the Authority considers relevant to the application;
 - c. seek additional information from the applicant;
 - d. visit the applicant to review proposed premises and files regarding business that it proposes to transfer into 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 which it considers relevant in relation to the application.
16. The Authority will not grant a licence unless satisfied that the minimum criteria are met or are capable of being met by the applicant. It must be stressed that even when satisfied the Authority retains discretion to refuse an application.
17. The Act imposes no time limit within which the Authority must reach a decision on an application. In practice the Authority always seeks to deal as promptly as possible with applications. The time required to complete its initial enquiries may vary 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 in excess of three months.

IV. SUPERVISORY PROCESS

18. Supervision enables and requires judgments to be made about the nature of a money service business, the quality of its management, the effectiveness of its controls and compliance, the fairness of its treatment of clients and about its financial viability. In order for the Authority to make these judgments, it needs to keep under review information from a range of sources.
19. The Authority’s supervision of money service businesses involves regular discussions with the senior management of licensed firms, together with receipt and review of statutory certifications and regular compliance visits to the money service business’ premises. While the Act provides certain supervisory powers for the Authority to require information from licensed money service businesses, the Authority expects undertakings to provide voluntarily and routinely the information necessary for its supervision.
20. When concerns arise about the completeness or timeliness of such information, the Authority may decide to utilise its formal powers to require information.

21. The Act also enables the Authority to commission reports on an undertaking's business from an accountant or other person with relevant professional skills. Use of this provision can offer an alternative means of conducting part of the on-site element of supervision which is required. However, this route will normally be used only exceptionally, when the nature of the specific business may call for particular skills in order to conduct a more comprehensive review of the risks involved in the business or where particular concerns or difficulties may have arisen in the Authority's normal on-site work.

Reporting Requirements

22. The Act requires that an undertaking holding a money service business licence annually provide a certificate to the Authority confirming that it has complied with all the statutory requirements, (i.e.: minimum licensing criteria). The form that such certificates should take can be found in Appendix V of these Guidance Notes and is also available in electronic form on the Authority's website. The Authority also requires the completion of the Statistical Report, which can be found in Appendix VI of these Guidance Notes and is also available in electronic form on the Authority's website, within 28 days of each calendar quarter end, as permitted under section 69 of the Act.

23. In addition to this reporting, the Authority should be notified immediately of any significant developments relating to an undertaking. Matters that should be reported include, but are not limited to, the following:

- a. any change in key personnel;
- b. instances of legal action against the undertaking involving the risk of material financial cost or reputational damage;
- c. requests for information or assistance in relation to ongoing inquiries by a foreign regulatory body; and
- d. material changes in the business undertaken, including any proposal to undertake a new product in the business.

24. The Authority expects undertakings to be open and proactive in ensuring that the Authority is kept informed of material developments when, or before, they occur. Where the Authority finds reason to doubt the completeness or accuracy of information provided to it in its routine supervision, the Authority will consider the use of the statutory powers in the Act enabling it to require additional documents or information. Depending on the seriousness of the Authority's concerns, it may also have recourse to other information and intervention powers provided in the Act – for example, the appointment of persons to investigate under section 52.

25. Where the Authority in the course of its supervision identifies breaches of the Act, the Authority will consider legal or regulatory action. The Authority would normally seek remedial action by the licensed money service business before resorting to the use of its enforcement powers. In circumstances where such actions fail to remedy identified deficiencies or where the alleged breaches are so serious as to warrant the immediate exercise of enforcement powers, then the Authority would not hesitate to do so.

Off-Site Supervision

26. Regular prudential meetings provide an opportunity for the Authority to discuss with senior management the development of the money service business, including past performance and future strategies for the business. Prudential meetings are scheduled adopting an internal risk-based approach. Ad hoc meetings will also take place to discuss important interim developments or concerns.
27. Topics raised in the discussion are likely to include:
- a. planned changes to business strategies;
 - b. material operational changes, changes in advisors, key staff members, etc.;
 - c. internal control issues;
 - d. disaster recovery planning;
 - e. staff training;
 - f. adequacy of policies and procedures manuals;
 - g. number of clients; and
 - h. types of business and the client distribution across those types.
28. Prudential discussions can take place at the Authority's offices or at the undertaking's own premises. Alternatively, telephone interviews may be used in some instances.

On-Site Supervision

29. The purpose of on-site supervision is to enable the Authority to review compliance with policies and procedures (e.g. record keeping), as well as the processes that management have put into place to monitor and control key risks in the business. On-site supervision involves structured visits to an undertaking's offices where, typically, the Authority interviews a range of management and staff and reviews a selection of individual client files. A review of compliance with "know your client" and record keeping requirements relating to the Proceeds of Crime Act forms part of all of the Authority's visits. On-site visits will usually be scheduled on a rolling basis. However, the frequency of on-site visits will also reflect the Authority's assessment of the degree of risk in the business and the effectiveness of the undertaking's personnel, systems and controls for monitoring risk. In exceptional cases (i.e. where the Authority has material concerns) the Authority may conduct a visit at short or even without notice. There will not usually be a need for a separate off-site supervisory discussion in a year when an undertaking is scheduled for an on-site visit.
30. The Authority will normally write to a licensed undertaking approximately four to six weeks ahead of a visit, requesting pre-visit information and providing more details regarding how the Authority intends to structure the visit. The pre-visit information requested would generally include:
- a. current organisation charts or similar information detailing senior management positions and staff in the main business areas, together with any new or amended job descriptions and reporting lines for key personnel;

- b. documented policies and procedures relating to high level control of the money service business, including copies of any forms referred to therein;
- c. the risk register and any risk management document or risk statement pertaining to business risk;
- d. the disaster recovery plan and the results of any testing thereof;
- e. a list of the authorised signatories and the corporate resolution or other document which lays out the signing authority for transacting money service business;
- f. the most recent business plan;
- g. the staff training log;
- h. the Directors and Officers register and the shareholder register of the licence-holder; and
- i. A copy of any client acceptance and/or account opening documentation.

31. While the Act provides powers for the Authority to formally require the production and submission of such information as it may reasonably require, on-site visits are normally conducted without recourse to formal powers.

Consolidated Supervision

32. Although the Authority licenses specific individuals or entities, it also needs to consider relationships with any wider group to which an entity may belong or with other persons closely linked to the money service business, which may have implications for the licensed undertaking. The Authority reviews these aspects in the course of its routine supervision. Where relevant, the Authority may also agree to take on a wider role of consolidated supervisor of a money service business and related institutions.