



BERMUDA MONETARY AUTHORITY

CONSULTATION PAPER

**THE CORPORATE SERVICE PROVIDER BUSINESS
AMENDMENT ACT 2019**

3 JUNE 2019

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Licensed institutions and other interested parties are invited to submit their views on the proposals set out in this paper. Comments should be sent to the Authority and addressed to policy@bma.bm no later than 21 June 2019.

I. INTRODUCTION

1. The Bermuda Monetary Authority (the Authority) has undertaken to enhance its oversight of corporate service provider (CSP) business as part of the ongoing development of Bermuda's regulatory oversight of this sector. The purpose of this Consultation Paper is to set out the Authority's proposal to amend the CSP business regulatory framework to reflect global best practice.
2. The Authority proposes to enhance its regulatory framework to reflect greater regulation of CSPs by making amendments to the Corporate Service Provider Business Act 2012 (the Act) and the associated Code of Practice and the Statement of Principles issued pursuant to the Act.
3. The Authority also takes this opportunity to make other legislative amendments that are intended to facilitate the efficient administration of the Act including minor changes regarded as housekeeping matters.
4. The amendments to the Act (the Bill) will generally cover the following areas:
 - a. Amend section 4 to require licenced corporate service providers to maintain a physical presence in Bermuda
 - b. Remove sections 4(1)(b) and 4 (2)
 - c. Remove the reference in section 12 to the fee prescribed for inspection of the register
 - d. Amend section 21 so that the Authority must approve the surrender of a licence prior to the surrender coming into effect
 - e. Introduce in section 55A the power for the Authority to modify prudential standards or requirements for reporting
 - f. Insert in section 55B a provision regarding the segregation and treatment of client funds

II. PROPOSED AMENDMENTS TO THE ACT

Physical Presence

5. Currently, Section 4 of the Act defines the carrying on of corporate service provider business in Bermuda but does not define the minimum physical presence a licensee must maintain on the Island. The Authority proposes to add the requirement that licenced CSPs must demonstrate, and continue to demonstrate, adequate physical presence in the jurisdiction. Sections 4(1)(b) and 4(2) will be removed to facilitate this.
6. Every licenced undertaking shall be required to maintain a physical presence in Bermuda and, in determining whether the licenced undertaking complies with this requirement, the Authority shall consider, inter alia, factors such as where the

strategic and operational decision making of the licenced undertaking occurs; the location where the corporate service provider business of the undertaking is carried out; the residence of the directors, controllers or employees of the licenced undertaking and the location of board of directors, partners or management meetings.

Authority to approve the surrender of a licence

7. The Authority is proposing to amend section 21 so that the Authority must approve the surrender of a licence prior to the surrender coming into effect in order to ensure an orderly wind down or transfer of the business and to protect clients' interests during this process.

Segregation of Funds and Treatment of Client Money

8. The Authority proposes to establish a requirement in the Act for licenced undertakings who are holding client money to segregate all client funds from the funds of the licenced undertaking and have well-documented record keeping practices that allow client funds to be clearly identified.

Other proposed amendments

9. The Authority also proposes to make other amendments to the Act that are general in nature and are intended to improve the application of certain provisions. Other changes are administrative in nature and include:
 - a. Remove the reference in section 12 to the fee prescribed for inspection of the register
 - b. Add section 55A to allow the Authority to exempt an undertaking from complying with any prudential standard or to modify any such standard or requirement

III. PROPOSED AMENDMENTS TO THE ORDER

10. The Authority proposes to amend its oversight regime to require CSPs who are seeking to be exempted from licensing pursuant to the Act to have to apply for an exemption and to declare annually that they continue to qualify for exemption. This will require the Minister to amend the existing exemption Order process to provide for persons to notify the Authority of their exempted status and to re-notify annually.

IV. PROPOSED AMENDMENTS TO THE CODE OF PRACTICE

11. The Authority is proposing to amend section X of the Code to clarify the manner outlined by the Authority for CSPs to enhance recruitment practices for all employees both at initial hiring and on an ongoing basis. Licenced undertakings shall produce and update procedures as required to consider any criminal records, regulatory or public censure, and any professional reprimands or formal censures of employees or potential employees.
12. The Authority proposes to clarify its expectations as to the manner in which a CSP seeks to avoid or disclose conflicts of interest.
13. Additionally, CSP businesses must demonstrate in their risk management frameworks that they can manage the risks posed by the shareholder controller.
14. The Authority will further outline the matters which boards and senior managers should consider regarding functions delegated by the board or partners and their collective responsibility for ensuring legal and regulatory compliance, particularly with the provisions of the Act.
15. The Authority will confirm that it will not allow the use of corporate directors on the board of a licensed corporate service provider. The intent is not to prevent CSPs from offering this service to their clients, but rather to reinforce that their own board must be comprised solely of individuals.
16. The Authority will further outline the factors which will be considered in determining that a CSP can demonstrate ongoing physical presence in Bermuda, as required in the Act, taking into account the different types of CSPs which are licenced.
17. Moreover, the Authority proposes to clarify the manner in which policies and procedures are implemented by the licenced CSP to ensure adequate, accurate and accessible record keeping practices and systems.
18. The Authority proposes to clarify the manner in which CSPs hold funds on behalf of a client. Specifically, the Act now requires that a CSP must segregate all client funds from the licensee's own funds and must have well-documented record keeping practices that allow client funds to be clearly identified and prevent misuse of client funds.
19. The Authority also proposes that in addition to the existing provisions, CSPs should clarify the basis of fee structures in the client agreement, and specify conditions for the termination of the agreement.

20. Section X of the Code will be enhanced to ensure details of any complaint will be documented in writing, details maintained and that the complaints handling procedure will be shared with clients.
21. The Authority proposes to ensure that the advertising and communications practices engaged in by CSP businesses, are ethical, fair and prudent and not in violation of any local or international laws. No element of any practice should promote the breach of any local or international law and should not risk bringing the reputation of Bermuda as a financial centre into disrepute, as outlined in the minimum criteria for licensing.

V. PROPOSED AMENDMENTS TO THE STATEMENT OF PRINCIPLES

22. The Authority proposes to ensure that shareholder controllers of a CSP business are able to demonstrate their source of wealth to the business and to the Authority, both upon the acquisition of shares and on an ongoing basis. This will enhance the fit and proper evaluation of shareholders in order to ensure the financial soundness of the licensee.
23. The Authority added clarification of the expectations regarding the insurance cover to be held.
24. The Authority confirmed that when assessing whether business is being conducted in a prudent manner it would have regard for the CSP's procedures for overseeing, managing and monitoring all outsourced activities.
25. Housekeeping amendments were made to some of the explanations provided to bring them more in line with the Statements of Principles in other regimes.
26. The Authority proposes to remove references to the 2012 Statement of Principles on the Use of Enforcement Powers and replace them with references to the 2018 Enforcement Guide – Statement of Principles & Guidance on the Exercise of Enforcement Powers.

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3. Amends section 12
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7. Commencement

WHEREAS it is expedient to amend the Corporate Service Provider Business Act 2012 to make new provision for a requirement for physical presence to be demonstrated in Bermuda by all licensed undertakings; and the introduction of requirements to amongst other things, require: to introduce a power to enable the Authority to restrict surrender of a license; require licensed undertakings holding client funds to segregate such funds from its own funds; provide a power to make prudential rules; and for purposes connected with and incidental to those matters:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Corporate Service Provider Business Act 2012 (the "principal Act"), may be cited as the Corporate Service Provider Business Amendment Act 2019.

Amends section 4

2 Section 4 of the principal Act shall be amended by—

- (a) deleting subsection (1)(b); and
- (b) deleting and replacing subsection (2) as follows—

“(2) Every licensed undertaking shall maintain a physical presence in Bermuda, satisfying the requirements of subsection (2A).

(2A) The corporate service provider business of the licensed undertaking must be directed and managed from Bermuda and in determining whether the licensed undertaking complies with this requirement, the Authority shall consider, inter alia, the factors set out in subsection (2B).

(2B) The factors referred to in subsection (2A) are the location—

- (a) where the strategy and operational decisions of the licensed undertaking occurs;
- (b) where the corporate service provider business is carried on by the licensed undertaking;
- (c) of the residences of the directors, controllers or employees of the licensed undertaking;
- (d) of where meetings of the board of directors, partners or management of the licensed undertaking occur.”.

Amends section 12

3 Section 12 of the principal Act shall be amended by deleting subsection (4).

Amends section 21

4 Section 21 of the principal Act is amended by deleting and replacing subsections (2) and (3) as follows—

“(2) A surrender shall take effect on the date of the giving of approval by the Authority—

- (a) once it is satisfied that all matters relating to the corporate service provider business of the licensed undertaking have been prudently administered; or
- (b) the corporate service provider business has been transferred to another corporate service provider.

(3) The surrender of the license shall be irrevocable unless the Authority by notice in writing allows it to be withdrawn.”.

Inserts section 55A and 55B

5 The principal Act is amended by inserting the following after section 55—

“Authority may exempt or modify prudential standards or requirements

55A (1) The Authority may where it has made a determination [or on application from a licensed undertaking] exempt it from the requirement to comply with any prudential standard or requirement applicable to it under this Act or modify any such prudential standard or requirement.

(2) In granting an exemption or modification under this section the Authority may impose such conditions on the exemption or modification as it considers appropriate.

(3) The Authority shall not grant an exemption or modification unless it is satisfied that it is appropriate to do so having regard to the nature, scale and complexity of the licensed undertaking.

(4) The Authority may revoke an exemption or vary any modification granted under this section and shall serve notice on the licensed undertaking of its proposal to revoke its approval and the reason for the proposal.

(5) A licensed undertaking serviced with a notice under subsection (4) may within a period of 28 days from the date of the notice, make written representations to the Authority and where such representations have been made, the Authority shall take them into account in deciding whether to revoke its approval.”.

Separation of client funds

55B A licensed undertaking holding client funds shall—

- (a) hold such funds separately from its own funds; or funds held in respect of any other business; and
- (b) maintain such books of account and other records such that client money may be readily identified at any time.”.

6 Consequential amendments

Schedule 1 which makes consequential amendments to the Bermuda Monetary Authority Act 1969 has effect.

Commencement

7 This Act shall come into operation on such day as the Minister may appoint by notice published in the Gazette, and the Minister may appoint different days for different provisions.

DRAFT

AMENDMENTS TO THE BERMUDA MONETARY AUTHORITY ACT 1969

The Bermuda Monetary Authority Act 1969 is amended in the Fourth Schedule by inserting—

- (a) under PART B **“Corporate Service Provider Business Act 2012”** after paragraph 3—

“4 Application to modify or be exempted from Rules or a return under section 55A []”.

- (b) under PART C **“Corporate Service Provider Business Act 2012”** after paragraph 3—

“4 Application to modify or be exempted from Rules or a return under section 55A \$[]”.

CORPORATE SERVICE PROVIDER BUSINESS AMENDMENT ACT 2019

EXPLANATORY MEMORANDUM

This Bill makes provision for the enhancement of existing requirements and the introduction of requirements to amongst other things, require physical presence to be demonstrated in Bermuda by all licensed undertakings; require licensed undertakings holding client funds to separate such funds from its own funds; introduce a power to enable the Authority to restrict surrender of a license; and for purposes connected with and incidental to those matters.

Clause 1 provides for a citation of the Bill.

Clause 2 seeks to amend section 4 of the principal Act to embed physical presence requirements to be complied with by all licensed undertakings.

Clause 3 seeks to amend section 12 of the principal Act to delete reference to subsection (4) to reflect the current practice of the Authority which is to list all licensing undertakings on the Authority's website.

Clause 4 is proposed to be amended to provide the Authority with the power to object to a notice of surrender under section 21 until all matters relating to client matters have been administered to the satisfaction of the Authority; or the business has been transferred to another corporate service provider.

Clause 5 proposes to insert a new section 55B to introduce a requirement for licensed undertakings to separate client funds from their own funds.

Clause 6 makes provision for consequential amendments to the Bermuda Monetary Authority Act 1969.

Clause 7 makes provision for the commencement of the provisions of the Bill.