



26th September 2019

NOTICE

Re: Trusts (Regulation of Trust Business) Act 2001 – Code of Practice and Statement of Principles (revised)

The Bermuda Monetary Authority (the Authority) is posting for consultation its revised Code of Practice (the Code) issued pursuant to the Trusts (Regulation of Trust Business) Act 2001 (the Act). The Code established duties, requirements and standards to be complied with by trust businesses licenced pursuant to section 12 of the Act, including the procedures and sound principles to be observed by such persons. Failure to comply with provisions set out in the Code will be a factor taken into account by the Authority in determining whether a licenced undertaking is conducting business in a prudent manner, as required by the minimum criteria for licensing. The consultation comments should be received on or before 28 October 2019.

Brief description of the proposed changes

The substantive changes are as follows:

1. Housekeeping amendments were made to sections II and III to add a discussion of the objectives of the Code and the proportionality principle. The formatting of the sections was changed, the paragraphs numbered and references to supplementary documents updated.
2. Paragraph 15 includes the addition of the expectation that all reasonable steps to manage conflicts to prevent damage to clients' interests are taken and that licenced undertakings' conflict of interest procedures are appropriately documented.
3. The Authority expanded the existing requirement in paragraph 17 for licenced undertakings to understand fully the rationale for particular structures upon creation, to also require that this understanding is documented and the business is reviewed for suitability on an ongoing basis, not just at inception.

4. Paragraphs 22 to 25 now require licenced undertakings who are holding client money to segregate all client funds from their own funds and to have well documented recordkeeping practices that allow client funds to be clearly identified at all times. Client money is also defined in paragraph 23.
5. The Authority outlined its expectation in paragraph 26 that a licenced undertaking arrange its records in such a way as to allow a timely response to requests.
6. The Authority confirmed in paragraph 27 that it will not allow the use of corporate directors on the board of a licenced trust business.
7. Paragraph 28 confirms that the Authority expects the entire board is ultimately responsible for the compliance function and is aware of the role of the board in ensuring a robust regulatory compliance function is maintained.
8. The Authority outlined its expectations regarding how a licenced undertaking may demonstrate adequate physical presence in Bermuda in paragraphs 30 and 31.
9. The Authority has not taken the step of requiring independent directors for trust undertakings that have shareholder controllers who also sit as directors; however, paragraph 32 requires that the undertaking must demonstrate in their risk management frameworks that the risk of undue influence on the board's actions is mitigated.
10. The Authority outlined in paragraph 33 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.
11. Paragraphs 38 and 39 were added to address the expectation that policies and procedures are implemented by the licenced trust undertaking to ensure recordkeeping practices and systems keep records accurate and accessible, and protect them from the risk of loss, theft, unauthorised access or destruction.
12. Further to the Notice issued by the Authority in February 2018, paragraph 40 defines material cybersecurity incidents, and reiterates the expectation that such incidents are logged and reported promptly to the Authority.
13. The Authority confirmed in amendments to paragraphs 41 and 42 that staff must receive the necessary supervision appropriate to their roles. The need for up to date staff training and development logs is also highlighted.
14. Additional requirements were made in paragraph 43 for trust businesses to enhance recruitment practices for all employees both at initial hiring and on an ongoing basis.

15. Paragraph 46 was amended to ensure the details of any complaint will be documented in writing and that the complaints handling procedure will be transparent.
16. The Authority's expectation that the board continues to exercise appropriate oversight of the risk management process is confirmed in paragraph 48.
17. Paragraphs 49 and 50 were added to establish requirements regarding the form and content of advertisements.
18. Paragraph 51 was amended to add the requirement that the licenced status of the trust business should be displayed on the licensee's website, if one is maintained.
19. Finally, the list of significant developments which the Authority expects licenced undertakings to proactively bring to its attention was expanded in paragraph 53.

The Authority is also posting for consultation its revised Statement of Principles (SoP) issued pursuant to the Act. The SoP acts as an indication to licenced trust businesses as to the standards and considerations the Authority will use in determining the matters set out in sections III, IV and V.

Brief description of the proposed changes

The substantive changes are as follows:

1. The SoP was updated 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 which replaced it. Additionally, Part 4 and Part 5 of the SoP were deleted as all information pertaining to these matters can be found in the 2018 Enforcement Guide.
2. Further amendments were made to the SoP to account for the 2014 changes made to the minimum criteria for licensing contained in the First Schedule to the Act. The key addition was the interpretation of paragraph 1A of the First Schedule - Corporate Governance. Deletions were required for the criteria that were removed as they were addressed in the interpretation of paragraph 1A and refer to items that were repealed. Additionally, more explanation of the Authority's supervisory activities and processes was added for the information of licensees. Finally, all paragraphs were renumbered.
3. The Authority's expectation that shareholder controllers of licenced undertakings 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 is outlined in paragraph 25. The expectation that the licenced undertaking notify the Authority immediately if they become aware of material concerns regarding the suitability of the shareholder controller is also outlined in paragraph 26.

4. Additions were made to the explanation of considerations that the Authority takes into account when determining if a licenced undertaking is prudently run. The list provided in paragraph 35 is by no means exhaustive, but is intended to give clarity on some of the factors routinely considered by the Authority.
5. The Authority removed the list of types of insurance cover to be held in order to allow firms to determine what cover is appropriate for their business; however, paragraph 45 confirms that professional indemnity insurance will continue to be required at a minimum.
6. The Authority added paragraphs 46 to 49 expanding the requirement to maintain adequate liquidity and outlining the assets that would be considered liquid in the Authority's assessment.
7. The Authority's expectations that the business is conducted ethically, honestly and by appropriately skilled, experience and knowledgeable staff are outlined in paragraphs 52 to 56.



BERMUDA MONETARY AUTHORITY

TRUSTS (REGULATION OF TRUST BUSINESS) ACT 2001

CODE OF PRACTICE

SEPTEMBER 2019

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I. INTRODUCTION

1. This Code of Practice (the Code) is made pursuant to section 7 of the Trusts (Regulation of Trust Business) Act 2001 (the Act). Section 7 requires the Bermuda Monetary Authority (the Authority) to publish in such a manner as it thinks fit a Code providing guidance as to the duties, requirements, procedures, standards and sound principles to be observed by persons carrying on trust business. This Code should be read in conjunction with the Statement of Principles and Statement of Principles & Guidance on the Exercise of Enforcement Powers (the Enforcement Guide) issued under section 6 of the Act.

II. OBJECTIVES

2. The objectives of this Code are to provide guidance to licenced undertakings as to the standards required under the Act and other financial services legislation, as well as to the best practice in the industry.
3. This Code shall be interpreted in light of the above objectives so as best to give effect thereto. The Act provides that every licenced undertaking shall in the conduct of its business have regard to any Code of Practice issued by the Authority.
4. The Authority expects licenced undertakings to comply with the letter and the spirit of this Code. Where the Authority has concerns about compliance with the Code, it will bring its concerns to the attention of the licenced undertaking, and take account of the comments and representations of the undertaking as well as, where relevant, its willingness to make appropriate changes to conduct or practice.

III. PROPORTIONALITY PRINCIPLE

5. The Authority appreciates that trust businesses have varying risk profiles arising from the nature, scale and complexity of their business, and that those trust businesses with higher risk profiles would require more comprehensive governance and risk management frameworks to conduct business in a sound and prudent manner.
6. Accordingly, the Authority will assess the undertaking's compliance with the Code in a proportionate manner relative to its nature, scale and complexity. These elements will be considered collectively, rather than individually (e.g. an undertaking could be relatively small in scale, but carry out extremely complex business and therefore would still be required to maintain a sophisticated risk management framework).

- a) Nature includes the relationship between the client entity and the undertaking or characteristics of the service provided (e.g. managed trust company relationships)
 - b) Scale includes size aspects such as volume of business conducted or size of the balance sheet in conjunction with materiality considerations
 - c) Complexity includes organisational structures and ease of information transmission
7. In assessing the existence of sound and prudent business conduct, the Authority will have regard for the appropriateness of provisions of the Code in relation to their application to a particular undertaking taking into account the undertaking's nature, scale and complexity, and the Authority's prudential objectives.
8. Holders of a limited trust business licence in particular, should be mindful of the proportionality principle in establishing a sound governance, risk management and internal controls framework, and complying with provisions of the Code, and should be guided by this section in documenting their compliance with the Code.
9. The proportionality principle, discussed above, is applicable to all sections of the Code regardless of whether the principle is explicitly mentioned.

IV. APPLICATION

10. The Code applies to all holders of trust business licences issued pursuant to section 11 of Act. The Code is of general application and seeks to take account of the wide diversity of undertakings that may be licenced. The Code may be revised from time to time. However, before the Authority makes a material change to the Code, section 7(3) of the Act requires it to first publish a draft of the proposed changes and to consider any representations made to it regarding the contents of the draft.
11. Every undertaking licenced under the Act in Bermuda is expected to have regard to the Code as may be amended from time to time. The Code is not a statement of the law and in particular does not affect a licenced undertaking's obligations under trust or common law. Failure on the part of a licenced undertaking to comply with the provisions of this Code is not in and of itself an offence but is taken into account by the Authority in determining whether or not the business is being conducted in a prudent manner as required by paragraph 5 of the First Schedule to the Act. Persistent failure by licenced undertakings to abide by the provisions of the Code is likely to result in formal action.

V. CLIENT DUE DILIGENCE

12. Licenced undertakings must have procedures in place to ensure that proper, risk-based due diligence is carried out before a decision is made to act for any new client. At a minimum, licenced undertakings need to be able to comply with The Proceeds of Crime Act 1997, the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 and the Anti-Terrorism (Financial and Other Measures) Act 2004, together with any other relevant legislation that may come into force from time to time.
13. To ensure compliance with these requirements, licenced undertakings must have adequate policies and procedures in place to confirm that they know the identity of each settlor, protector and custodian on an ongoing basis, and to the fullest extent possible the identity of the beneficiaries. They must also verify the source of all assets introduced, to satisfy themselves that they are not of illicit origin.

VI. INTEGRITY & ETHICS

14. A licenced undertaking must conduct its business with integrity at all times and should not attempt to avoid or contract out of its responsibilities under this Code. It must exercise its fiduciary duties prudently and competently and, subject to the terms of the trust, consider the rights of all classes of beneficiaries when making decisions affecting the administration of the trust. It should invest, distribute or otherwise manage each trust's assets in accordance with the law and the trust deed. It must deal fairly with all clients (as defined in section 2 of the Act) and seek to ensure that they are not misled as to the service being provided, and the duties and obligations of the service provider. A licenced undertaking should treat the interests of beneficiaries as paramount (subject to any legal obligations to other persons or bodies) and should always act with due care, skill and diligence. Subject to the terms of the trust, it should also act impartially between beneficiaries, while having regard to its legal and contractual obligations.

VII. CONFLICTS OF INTEREST

15. A licenced undertaking must have regard at all times to its legal obligations with regard to conflicts of interest. A licenced undertaking must have clearly documented and established policies and procedures to manage or avoid situations in which conflict of interest arises between trusts administered by the undertaking or between the licenced undertaking's business, and that of the beneficiaries of a trust. Similarly and unless authorised to do so, the licenced undertaking should not enter into transactions in which it has a material interest, without first disclosing it to the relevant parties. Where conflicts of interest do arise, the licenced undertaking must keep

adequate records of such conflict. Further, conflicts must be addressed by ensuring all reasonable steps to manage conflicts to prevent damage to clients' interests are taken. Licenced undertakings need to exercise particular care and attention when taking on discretionary trust business to ensure that they are able to exercise appropriate independent discretion.

VIII. TRUST CREATION

16. When establishing a trust, a licenced undertaking should familiarise itself with the objects of the trust and satisfy itself that the trust is being established for a lawful purpose. It should also ensure that the settlor has access to all appropriate information, including relevant independent professional advice where necessary. In order to adequately perform its fiduciary and other duties, a licenced undertaking must ensure that it has a complete understanding of the trust deed in each case and must seek legal or other advice where necessary. The licenced undertaking also has a responsibility to ensure that trust property is brought properly under its control.

17. In addition to their client due diligence obligations, undertakings are expected to have a documented policy on new client engagements or acceptances, having regard to their assessment of the quality, nature and scale of the services involved and the ability of the undertaking to provide the services in question. Undertakings need to ensure that they document and understand fully the rationale for particular structures, and to be comfortable that the business is suitable on an ongoing basis. These standards also apply *mutatis mutandis* in relation to any trust business delegated to the licenced undertaking by another trustee. In such cases, the licenced undertaking must have full knowledge of the trust arrangements and must retain in its files copies of all the records pertaining to trust business introduced directly to the trust company. A licenced undertaking should not act as agent for others in the management of trust assets unless it is satisfied that the trustee is subject to professional standards equivalent to its own.

IX. DISCLOSURE OF INFORMATION

18. Licenced undertakings should observe any obligation of confidentiality that may apply in respect of information communicated by persons concerned with trusts (e.g. settlors, protectors, enforcers and beneficiaries and their professional advisers) unless the licenced undertaking is given relevant consent to disclose information, is required by applicable law to disclose information or gives information in accordance with the terms of the trust instrument or in the ordinary course of the administration of the trust. In maintaining the confidentiality owed to those persons to whom the undertaking has responsibility, the licenced undertaking should take particular care not to mislead third parties as to the beneficial ownership or origin of trust assets.

19. Employees, partners, officers, directors and other persons who have access to confidential information of the licenced undertaking and the trusts it administers should be advised in writing upon their engagement, and reminded periodically thereafter by the licenced undertaking of confidentiality issues.

X. INTERNAL MANAGEMENT CONTROLS

Powers of Investment

20. The responsibility of the licenced undertaking is to invest and manage or arrange for the investment and management of the funds of the trust in light of the purposes, terms, distribution requirements and other circumstances of the trust and, where appropriate, in accordance with applicable law.
21. Subject to any enlargement or restriction of a trustee's powers of investment set out in the trust instrument or by law:
- a) a trustee may invest or otherwise apply trust property in the purchase or acquisition of property of any kind whether or not income-producing, and whether for the purpose of receiving an appropriate total return from income and capital appreciation, controlling or limiting risk or benefiting persons interested in any way whatsoever in the income produced by trust property or for a mixture of such purposes
 - b) in so investing or otherwise applying trust property, a trustee shall act as a prudent investor would by considering the purposes, terms, distribution requirements and other circumstances of the trust, and by exercising reasonable care, skill and caution
 - c) in determining whether a trustee has acted in accordance with the above, any decision to invest or otherwise apply trust property shall be evaluated in the context of trust property as a whole, and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust

Segregation of Funds and Treatment of Client Money

22. A licenced undertaking must ensure that trust funds are kept, at all times, separately from those of the licenced undertaking. Further, they must ensure that trust funds are not co-mingled with funds from another trust unless the necessary consents have been obtained, or a contrary intention is shown in the trust instrument, documentation provided as appropriate setting out the terms on which that money is held, and full records are available at all times which confirm the beneficial ownership of the pooled monies.
23. Client money includes all monies held, received on behalf of, or owed to clients (as defined in

section 2 of the Act) by the licenced undertaking. At all times, a licenced undertaking must maintain up to date and accurate records to show the monies it received, held or paid on account of its clients, and must clearly distinguish monies comprising each trust fund from one another and from the licensee's own monies. These records should be reconciled at least monthly or more frequently according to the licenced undertaking's own internal controls.

24. A licenced undertaking must have documented and established policies, systems and controls over the use of client money and the operation of client money accounts. Particularly, the undertaking must have internal controls to ensure that remittances of client monies adhere to a suitable procedure to prevent misuse of client funds. Where client money is being used to pay the undertaking's own fees, such transfers should only be made in accordance with the fee agreement in place or with the trust deed. The client money policies, systems and controls must be reviewed at least annually.

25. A licenced undertaking which also holds a corporate service provider business licence issued by the Authority pursuant to section 11 of the Corporate Service Provider Business Act 2012 (the CSP Act), may utilise the same client account for all of its clients, provided that the Client Money requirements of the Code of Practice issued pursuant to section 7 of the CSP Act are also followed. The Authority expects that each licenced undertaking that is a separate legal entity will operate its own client money accounts.

Prompt and Timely Execution

26. A licenced undertaking should deal effectively and in a timely manner with all requests from those persons to whom the undertaking is responsible or accountable, having previously sought and obtained such consents or approvals as may be necessary, and should arrange its records in such a way as to allow a timely response.

Board Practices

27. A licenced undertaking that is a company must ensure that the board of directors should be solely comprised of individuals; corporate directors are not considered appropriate.

28. All directors should understand the board's collective duty to ensure that robust arrangements for regulatory compliance are maintained. The board is ultimately responsible for the compliance function and should ensure that they are provided with sufficient regular information regarding all legal and regulatory compliance activities to allow them to rectify any deficiencies in the undertaking's compliance framework.

29. For the purpose of satisfying the physical presence requirement pursuant to section 4B of the

Act, directors should have due regard to the location:

- a) Where strategic and operational decision-making occurs
- b) Where the trust business is carried on
- c) Where meetings of the board, partners or management occur
- d) Where directors, controllers or employees reside

30. In order to determine if a licenced undertaking has sufficient nexus to Bermuda, the Authority will take into consideration the location of the aforementioned activities vis-a-vis the nature, scale and complexity of the business. As such, it is expected that minutes will be kept of all meetings of the board, partners and management that will evidence who was present, all the relevant strategic and operational decisions taken at the meeting and where the meeting was held. Where the licenced undertaking is part of a group structure, and particularly if the parent company is not a Bermuda licenced entity, the board of the licenced undertaking must demonstrate it has evaluated the group level decisions or practices to ensure that they do not put the licenced undertaking in breach of Bermuda laws or regulations.
31. It is understood that a licenced undertaking might reasonably require the holding of some meetings or operations outside of Bermuda, or the inclusion of directors, controllers or employees not resident in Bermuda. This is acceptable provided all persons located outside Bermuda remain available to the Authority when required, access is facilitated where necessary by the licenced undertaking and the record-keeping provisions of this Code are followed.
32. The board of directors has a key role in assessing the risks to the undertaking's business and should at all times remember the duty they owe to the company. This is especially key in companies where directors may also be shareholders, as this will limit the level of external scrutiny of any actions of the board. While the Authority has not taken the step of requiring independent directors, the company must appropriately manage any risk of undue influence on the board's actions.

Delegation

33. The board of directors or partners of a licenced undertaking are responsible for the proper exercise of its fiduciary powers, and ensuring that the licenced undertaking has documented policies, procedures and other arrangements in place. In discharging this responsibility, the board of directors or partners may delegate the exercise of such of the licenced undertaking's fiduciary powers as it may consider proper to such directors, partners, officers, employees or committees as deemed necessary for the running of the business. The board or partners retain ultimate responsibility for delegated functions and must clearly document the functions being delegated. When doing so, decisions should align with authorisation, and signing powers outlined in the undertaking's policies and procedures.

34. A licenced undertaking should have regard to the trust instrument, the law and any internal procedures as appropriate with regard to the delegation of its duties and/or the granting of powers of attorney, and delegate only in accordance therewith.
35. In certain instances undertakings holding a limited trust licence will be required to make arrangements for a company holding an unlimited trust licence to manage either all or a portion of the assets of the trusts for which they act as trustee. These arrangements must be documented in a suitable management agreement between the parties. This should provide, to the fullest extent possible, for the administrative functions of the individual trustee to be delegated to the licenced trust company. The licenced trust company must have responsibility for administering the assets and maintaining records of the trust pertaining to the administration of the assets; for preserving and maintaining the trust assets; and for managing the investments and providing for the custody of the assets.

Competent and Effective Management

36. A licenced undertaking should have effective management, and systems that are commensurate with the scale and complexity of the trust business to be undertaken. It must also have appropriate management resources to control the affairs of the licenced business, including ensuring compliance with legal obligations and standards under the Code.

Accounting and other Record Keeping

37. Licenced undertakings must keep and preserve appropriate records in Bermuda which will at least include such records as are appropriate for their functions, as required by any applicable law, and as will enable the provision of information to persons interested in trusts and entitled to the information on a timely basis. This should include the identity of co-trustees, custodians, the settlor, protector, enforcer and, where appropriate, the principal beneficiaries, their personal circumstances, residence and a copy of the trust instrument, minutes of all decisions taken by trustees, other trust documents and trust accounts or records which would enable trust accounts to be drawn up. The licenced undertaking should hold title to the trust assets in its own name or through appropriate custodians or nominees. Where custodians or nominees are appointed to hold assets, the licenced undertaking should ensure that the requirements under paragraphs 33 34 and 35 are complied with. Financial records must be maintained so as to permit a thorough and satisfactory supervisory activity, and to permit the performance of trust audits as pre-arranged.
38. All records required to be maintained by a licenced undertaking must be accurate and kept

current. In addition, where the licenced undertaking is responsible for maintaining records of account for the trusts administered, the accounting records should disclose with accuracy the transactions and commitments of the trusts. All such records must be maintained in line with the laws applicable to each structure or for a minimum period of five years from the end of the transaction or cessation of the business relationship in cases where such law is silent.

39. In order to protect all records from the risk of loss, theft, unauthorised access, alteration or destruction, a licenced undertaking must establish and maintain documented policies and procedures to ensure:
- a) Adequate security and safe-keeping of hard copy records
 - b) Suitable storage and back up for electronic records
 - c) Privacy of all records
 - d) Timely accessibility in Bermuda of any records it maintains in hard copy or electronic format
40. A licenced undertaking must maintain a log of all cybersecurity incidents, together with details of actions taken to resolve them. The Authority expects all licenced undertakings to report any material cybersecurity incident to the Authority in a timely fashion. Material cybersecurity incidents are generally those that:
- a) Lead to a significant loss of data, or the availability or control of IT systems
 - b) Affect a large number of customers or clients or
 - c) Result in unauthorised access to, or installation of malicious software on, the licenced undertaking's information and communications systems

Adequate Personnel

41. A licenced undertaking must have available suitable numbers of staff who are appropriately trained and competent to discharge its fiduciary duties effectively. It should ensure that the responsibilities and authority of each member of staff are clear and appropriate to his or her qualifications and experience, and that staff receive the necessary training appropriate for their roles. An undertaking shall establish procedures to ensure the adequate supervision of staff in their dealings with clients and the management of client structures.
42. A licenced undertaking must formulate and keep up to date logs for staff training and development. Staff must be provided with on-the-job training on the undertaking's internal policies, procedures and controls. The undertaking should ensure that adequate training is provided specific to the roles and responsibilities that staff members perform. Such training should be provided on an ongoing basis, including training on its AML/ATF responsibilities.

43. A licenced undertaking should maintain a high standard of recruitment practices to ensure the probity and competence of all directors, partners and employees. As such, a licenced undertaking should have documented policies and procedures to consider any publicly available information pertaining to regulatory censure, professional reprimands or censure, discipline or public criticisms and the criminal record of a prospective employee. Once an employee has been hired, the licenced undertaking should have regard to continually monitor employee fitness and probity.

Adequate Systems and Controls

44. A licenced undertaking should ensure that it has in place systems, controls, policies and procedures, to ensure that staff perform their duties in a diligent and proper manner. It is important that staff understand and comply with the established policies and procedures, including those dealing with new business acceptance, distributions of trust assets, investment reviews, confidentiality, conflict of interest and staff training. The Authority also expects the undertaking to have in place a documented business interruption recovery plan dealing with all of its critical functions. The Authority would also expect an undertaking to occupy premises suitable for the purpose of conducting its business.

Fees and Remuneration

45. A licenced undertaking must agree a clear fee structure with each relevant person in advance of taking on an appointment and ensure that the fees charged are transparent at all times. Licenced undertakings should also ensure that adequate notice is given before any material change in the fee structure is introduced.

Complaint Procedures

46. A licenced undertaking should ensure their complaints handling process is transparent. When complaints are made, the licenced undertaking should ensure that complaints are properly handled and addressed on a timely basis. A licenced undertaking should ensure that a record of the details of the complaint including the licenced undertaking's response and any action taken as a result is maintained in writing.

Risk Management Framework

47. A licenced undertaking must implement an appropriate risk management framework commensurate with the scale and risk profile of its business, its objectives, structure, operations, processes, services and assets.

48. Risk identification and management forms a part of any business and as such the Authority

expects the licenced undertaking to have an appropriate risk control framework in place for the benefit of its stakeholders. This includes ensuring that the board (or similar) exercises appropriate oversight of the risk management process to ensure it continues to align with the risk appetite and risk tolerance set by the board.

Advertising

49. The Authority expects a licenced undertaking to demonstrate a high level of responsibility in the advertisement of all of its services. In particular, a licensee must have due regard to Bermuda's reputation and ensure that the manner in which it advertises its services does not violate any local or international laws.
50. The form and content of advertisements must:
- a) Be clear and ethical
 - b) Not violate any standards of prudence and fairness and
 - c) Not promote any breach of the Act or other local or international laws

XI. DISCLOSURE OF LICENSING BODY

51. A licenced undertaking should ensure that its licenced status is published on its website, if it maintains one, and is disclosed in all advertisements and correspondence. The following wording is suggested:
- “Licenced to conduct Trust Business by the Bermuda Monetary Authority.”

XII. COOPERATION WITH REGULATORY AUTHORITIES

52. A licenced undertaking is expected to deal openly and in a spirit of co-operation with the Authority, and any other relevant regulatory authorities.
53. Licenced undertakings should alert the Authority to any proposal to extend their business materially and, in particular, if it is proposed to undertake non-trust business within the licenced entity. Undertakings should also be proactive in alerting the Authority to any significant developments relevant to its business such as:
- a) Its staffing
 - b) Its systems and controls environment
 - c) Any material insurance claims for damages arising from acts, omissions or breaches of professional duty
 - d) Its involvement in criminal proceedings either in Bermuda or abroad
 - e) The amalgamation with or acquisition of another firm

- f) The sale of the trust business
- g) Any material cybersecurity incidents or
- h) Issues affecting its ability to meet or continue meeting the minimum licensing criteria or other breaches of expected standards of behaviour

(In this regard the Authority would draw the attention of licenced undertakings to sections 13, 24, 34, and 35 of the Act.)



BERMUDA MONETARY AUTHORITY

TRUSTS (REGULATION OF TRUST BUSINESS) ACT 2001

STATEMENT OF PRINCIPLES

SEPTEMBER 2019

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I. INTRODUCTION

1. This Statement of Principles (the Principles) is made pursuant to section 6 of the Trusts (Regulation of Trust Business) Act 2001 (the Act) which requires the Bermuda Monetary Authority (the Authority) to publish in such manner as it thinks fit Principles in accordance with which it is acting or proposing to act:
 - a) In interpreting the minimum criteria specified in the First Schedule to the Act and the grounds for revocation specified in section 16
 - b) In exercising its power to grant, revoke or restrict a licence
 - c) In exercising its power under section 11A(2)(a) to grant a permit to the licensee of a limited trust licence to hold trust assets in excess of thirty million dollars
 - d) In exercising its power to obtain information, reports and to require production of documents and
 - e) In exercising other enforcement powers
2. The Principles are of general application and seek to take account of the wide diversity of undertakings that may be licenced under the Act, and of the prospect of institutional and market changes. Notwithstanding, there is likely to be a need for the Principles to be revised and developed over time. If the Authority makes a material change in the Principles, section 6(2) of the Act provides that the change is to be published or a revised version of the Principles issued. The Principles should be read in conjunction with any Guidance Notes which are issued pursuant to section 5(2) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (SEA Act 2008); and in accordance with section 49M of the Proceeds of Crime Act 1997 (POCA 1997), and section 12O of the Anti-Terrorism (Financial and Other Measures) Act 2004 (ATFA 2004), and section 7(2) of the Act.
3. This document is also to be read in conjunction with the Statement of Principles & Guidance on the Exercise of Enforcement Powers (the Enforcement Guide). The Enforcement Guide, also made pursuant to section 6 of the Act, sets out the Principles in accordance with which the Authority acts or proposes to act in exercising its formal enforcement powers set out under the relevant Acts¹. Where there are any differences in relation to use of these powers between the Enforcement Guide and the Principles, then the content of the Enforcement Guide will prevail.

II. EXPLANATION FOR THE STATEMENT OF PRINCIPLES

4. The Principles, along with the Enforcement Guide, are relevant to the Authority's decisions on whether to licence an undertaking (company, partnership or individual) or to revoke or restrict a licence once granted. The principles set out in both documents encapsulate the

¹ In the case of licenced undertakings this is the Act, the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 ("SEA"), and the Bermuda Monetary Authority Act 1969 ("BMA Act")

minimum standards the Authority considers when conducting its supervision of undertakings. The functions of trust business supervision include monitoring and verifying the ongoing compliance of undertakings with these minimum standards, other obligations imposed under the Act, the undertaking's own policies and procedures, and compliance with Anti-Money Laundering/Anti-Terrorist Financing requirements².

5. Section III of the Principles considers the interpretation of each of the licensing criteria in the First Schedule of the Act. Section IV sets out the considerations relevant to the Authority's exercise of its discretion to grant a licence. Section V sets out the principles underlying the exercise of the Authority's power to obtain information and reports and to require the production of documents.
6. The Principles include references to various policy and guidance papers issued by the Authority from time to time. Copies of the relevant material are available from the Authority's website www.bma.bm.
7. If there are concerns in the course of supervision of licenced undertakings, the Authority will consider what steps should be taken to address the issue and where appropriate, it will seek remedial action by persuasion and encouragement. Where persuasion and encouragement fail, the Authority may look to stronger measures to ensure compliance. The process by which the Authority may take enforcement action is set out in the Enforcement Guide.
8. The Enforcement Guide generally sets out the principles of enforcement which underpins the Authority's decisions to use any formal enforcement power. It also clarifies the circumstances where the Authority may decide to impose restrictions on a licence (section 15 of the Act), including in cases of urgency (section 19), or ultimately revoke a licence (section 16).
9. It is most likely that the Authority would exercise its powers to restrict or revoke a licence, in the context of the enforcement process. The Authority may also exercise its discretion to utilise such powers in a supervisory context (e.g. to impose additional reporting requirements or where an institution ceases operations or conducts limited scope business). These powers might also be used to protect the interests of the public in connection with an external threat unconnected with the undertaking's conduct in accordance with section 20 of the Act.

² These requirements are set out in the Proceeds of Crime Act 1997, the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (SEA) and the relevant Regulations.

III. FIRST SCHEDULE: MINIMUM CRITERIA FOR LICENSING

Introduction

10. Before an undertaking may be granted a licence the Authority has to be satisfied that all the criteria in the First Schedule of the Act are (or are capable of) being fulfilled by the applicant. Once licenced, all undertakings are subject to ongoing assessment against the criteria for licensing by means of the Authority's continuing supervision and regulation. Undertakings are required to submit, at intervals determined by the Authority, financial and other information about their business.
11. The Act sets out the framework of minimum criteria for licensing to be met and complied with by licenced trust businesses. These criteria are interpreted and applied in the context of the particular circumstances of individual undertakings, and developments in the sector generally. The Authority ensures adherence to the criteria through the following supervisory activities:
 - a) Periodic and occasional regulatory reports as determined by the Authority in accordance with the Act and any related regulations, rules, guidance notes or codes
 - b) Detailed prudential discussions with the undertaking's senior management as required
 - c) Routine compliance visits made to the undertaking's premises
12. The Authority shall determine the frequency of supervisory activities using a risk-based approach considering the nature, scale, complexity and risks undertaken by the undertaking and the conduct of its business.
13. Where a licenced undertaking becomes aware of breaches or potential breaches, it is expected that the undertaking will alert the Authority forthwith so that any necessary remedial action can quickly be agreed upon. Similarly, the undertaking must alert the Authority to any proposed material change in its business. This will allow the Authority to assess whether the changes impact the undertaking's ability to fulfil the minimum licensing criteria.
14. This part of the Principles sets out the Authority's interpretation of the statutory licensing criteria.

First Schedule Paragraph 1: "Controllers and Officers to be fit and proper persons"

Controllers and Officers

15. This paragraph provides that every person who is or is to be a controller or officer (as defined in section 2 of the Act; officers are defined as including persons appointed as directors, secretaries or senior executives) of an undertaking is to be a fit and proper person

to hold that position. With regard to an individual who is, or is to be, a controller or officer, the relevant considerations include whether the person has relevant experience, sufficient skills, knowledge and soundness of judgment properly to undertake and fulfil their particular duties and responsibilities. The standards required of persons in these respects will vary considerably, depending on the precise position held by the person concerned. Thus, a person could be fit and proper for one position but not be fit and proper for a position involving different responsibilities and duties. The diligence with which the person is fulfilling or is likely to fulfil those duties and responsibilities is also considered, so that the Authority can assess whether the person does or will devote sufficient time and attention to them.

16. The Authority sees the standards as being particularly high in the case of those persons with primary responsibility for the conduct of an undertaking's affairs, taking into account the nature and scale of the undertaking's business.
17. In assessing whether a person has the relevant competence, 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 appropriate qualifications and training. As to soundness of judgment, the Authority looks to the person's previous conduct and decision-taking.
18. The probity of the person concerned is very important. It is essential that a person with responsibility for the conduct of trust business is of high integrity. In contrast to the fitness elements of this criterion, which reflects an individual judgment relating to the particular position that the person holds or is to hold, the judgment of probity reflects much more of a common standard, applicable irrespective of the particular position held.
19. Specifically, the Authority takes into account the person's reputation and character. It considers, inter alia, whether the person has a criminal record, or convictions for fraud or other dishonesty which would clearly be particularly relevant. The Authority also gives particular weight to whether the person has contravened any provision of trust, banking, insurance, investment or other legislation designed to protect members of the public against financial loss, due to dishonesty, incompetence or malpractice. In addition, it 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. In addition to compliance with statutory provisions, the Authority also considers a person's record of compliance with various non-statutory codes, in so far as they may be relevant to the licensing criteria and to the interests of clients and potential clients.
20. The Authority also takes into consideration whether the person has been censured or disqualified by professional or regulatory bodies, e.g. Society of Trust and Estate Practitioners, The Bermuda Bar Association, The Institute of Chartered Accountants of

Bermuda, The Bermuda Stock Exchange, The Association for Investment Management and Research, The Institute of Chartered Secretaries and Administrators, The Institute of Directors or corresponding bodies in other jurisdictions.

21. While any evidence of relevant past misconduct needs to be taken into consideration, the Authority recognises that lapse of time, and a person's subsequent conduct, are factors which may be relevant in assessing whether the person is now fit and proper for a particular position.
22. Once an undertaking is licenced, the Authority has continuing regard to the performance of the person in the exercising of his or her duties. Imprudence in the conduct of an undertaking's business, or actions which have threatened (without necessarily having damaged) the interests of clients or potential clients, will reflect adversely on the competence and soundness of judgment of those responsible. Similarly, failure by an undertaking to conduct its business with integrity and professional skills will reflect adversely on the probity, and/or competence and/or soundness of judgment of those responsible. This applies whether the matters of concern have arisen from the way the persons responsible have acted or from their failure to act in an appropriate manner. The Authority takes a cumulative approach in assessing the significance of such actions or omissions – that is, it may determine that a person does not fulfil the criterion based on several instances of such conduct, which if taken individually, may not lead to that conclusion.

Shareholder Controllers

23. Shareholder controllers, as defined by sections 4(5) and 4(6) of the Act, may hold a wide variety of positions in relation to an undertaking, and the application of the fit and proper criterion takes account of this. The key consideration is the likely or actual impact on the interests of clients and potential clients of a person holding the particular position as controller. This is viewed in the context of the circumstances of the individual case, and of the particular position held. The general presumption is that the greater the influence on the undertaking, the higher the threshold will be for the controller to fulfil the criterion. Thus, for example, higher standards will generally be required of a majority shareholder controller (i.e. one owning 50 per cent or more of the shares of an undertaking) compared with a shareholder controller owning 10 per cent.
24. In considering the application of the criterion to shareholder controllers or persons proposing to become such controllers, the Authority considers two main factors. First, it considers what influence the person has or is likely to have on the conduct of the affairs of the undertaking. If the person does, or is likely to, exercise a close control over the business, the Authority would look for evidence that he/she has the probity and soundness of judgment, and relevant knowledge and skills for running an undertaking. On the other hand, if the shareholder does not, or is not likely to, influence the directors and management of the undertaking in relation to the detailed conduct of the business, it would not be necessary

to require such a level of relevant qualities and experience. The Authority also considers in this context whether there could be conflicts of interest arising from the influence of the shareholder on the undertaking—this could, for example, arise from the closeness of his/her links with another company.

25. The second consideration is whether the financial position, reputation or conduct of the shareholder controller or prospective shareholder controller has damaged, or is likely to damage, the undertaking through ‘contagion’ which undermines confidence in that undertaking. For example, if a holding company or a major shareholder were to suffer financial problems, it could damage confidence of clients or potential clients in the stability or financial integrity of the licenced undertaking. Generally, the higher the shareholding, the greater the risk of ‘contagion’ if the shareholder encounters financial difficulties. For this reason, a shareholder must be able to demonstrate to the undertaking and the Authority their sources of wealth and source of funds. The risk of contagion is not, however, confined to financial weakness. Publicity about illegal or unethical conduct by a holding company or another member of the group may also damage confidence in the undertaking.
26. A licenced undertaking is expected to notify the Authority immediately if they become aware of material concerns regarding the suitability of a shareholder controller.
27. In the case of a controller who ‘directs’ or ‘instructs’ a shareholder controller, similar considerations apply to those relevant to assessing the fulfilment of the criterion in relation to shareholder controllers. In other words, the standards that an indirect controller needs to satisfy are likely to be at the minimum of the standards also required of the person who is indirectly controlled.
28. Where a person is a controller by virtue of ‘directing’ or ‘instructing’ the board of an undertaking, the standards required are high. The controller has to have the probity and relevant knowledge, experience, skills and diligence for running an undertaking. The qualities required are those that are also appropriate for the board of directors of an undertaking.

First Schedule Paragraph 1A: "Corporate Governance"

29. This paragraph provides that the undertaking shall implement corporate governance policies and processes as the Authority considers appropriate given the nature, scale, complexity and risk profile of the undertaking.
30. In the case of a undertaking which is a company or partnership, the business should be effectively directed by such number of individuals as the Authority considers appropriate given the nature, scale, complexity and risk profile of the undertaking. The Authority recognises that standards of good corporate governance may differ between undertakings according to the size and complexity of their respective businesses. At a minimum, the

Authority expects there to be qualified individuals appointed to the board or acting as partners, who can apply informed and independent judgment to the overall governance of the undertaking.

31. In the case of an undertaking which is a company, the directors should include such number (if any) of non-executive directors, as the Authority considers appropriate. The number will depend on the circumstances of the undertaking and the nature, scale, complexity and risk profile of the undertaking.
32. The Authority considers that non-executive directors can play a valuable role in bringing an outsider's independent perspective to the running of the business, and to ensure proper challenge to the executive directors and other management. The Authority sees non-executive directors as having an important role as members of an undertaking's audit committee or in performing the role that such a committee would otherwise perform.

First Schedule Paragraph 5(1): "business to be conducted in a prudent manner"

33. Paragraph 5, sub-paragraphs 1 and 7 make it clear that there is a general requirement for undertakings to conduct their business in a prudent manner. It is the overall responsibility of the board, partners and senior management of an institution to ensure that there is effective control over the entire business and that it is conducted prudently. Board members, partners and senior management must understand the underlying risks in the business and be committed to a robust control environment.
34. Sub-paragraphs 2 to 6 set out a number of specific requirements, each of which must be fulfilled before an undertaking may be regarded as conducting its business in a prudent manner.
35. The Act also makes it clear that the specific requirements outlined in sub-paragraphs 2 to 6 are not exhaustive. Accordingly the Authority takes into account a range of other considerations in assessing whether an undertaking is prudently run. These include for example:
 - a) The undertaking's management and corporate governance arrangements (such as, in the case of a company, the composition of the board of directors and the arrangements for the board's overall control and direction of the institution)
 - b) The undertaking's general strategy and objectives
 - c) Anti-Money Laundering/Anti-Terrorist Financing policies and procedures
 - d) Planning arrangements
 - e) Policies on accounting, collections and bad debt
 - f) Ability to maintain adequate liquidity to meet its actual and contingent obligations as they fall due

- g) Recruitment arrangements and training to ensure that the undertaking has adequate numbers of experienced and skilled staff in order to carry out its various activities in a prudent manner and
 - h) The undertaking's procedures for overseeing, managing and monitoring all outsourced activities
36. Particularly close attention is also paid to the arrangements in place for preventing and detecting criminal activities, and for ensuring compliance with the undertaking's legal obligations in preventing money laundering and terrorist financing.
37. Failure by the undertaking to comply with applicable laws in foreign jurisdictions in which the undertaking or its subsidiaries operate may also affect the Authority's assessment of prudent conduct.
38. A licenced undertaking should have policies and procedures to enable it to comply with international sanctions measures in force in Bermuda.

First Schedule Paragraph 5(3): "minimum net assets"

39. A licenced undertaking which is a company, must maintain minimum net assets of at least \$250,000 or such larger amount as the Authority may require. In cases other than companies, the minimum required is \$25,000 or such larger amount as the Authority may require.
40. The Authority needs to have reasonable assurance that adequate net assets are available to support the licenced undertaking. In assessing the capital adequacy of a licenced undertaking, all claims on other members of the group will be deducted. However, this may not apply where claims are on connected entities for which the Authority is able to assess capital adequacy on a group-wide basis. Undertakings are expected to hold their capital and reserves as far as possible in readily realisable form i.e. short-term deposits or high quality marketable assets.
41. Normally, the Authority will accept \$250,000 as adequate to support a company's trust business, provided adequate insurance with a small level of deductible is in place. However, where a licensee faces material additional risks through carrying on other business within the licenced entity, the Authority requires a higher level of capital to be held, commensurate with these additional risks.

First Schedule Paragraph 5 (4) and (5): "adequate accounting and recordkeeping systems"

42. The Authority does not regard an undertaking's records and systems as adequate unless they are such as to enable its business to be prudently managed and the undertaking to comply

with the duties imposed on it by or under the Act. In other words, the records and systems must be such that the undertaking is able to fulfil the various other elements of the prudent conduct criterion, and to identify threats to the interests of clients and potential clients. They should also be sufficient to enable the undertaking to comply with the notification and reporting requirements under the Act. Thus, delays in providing information, or inaccuracies in the information provided, will call into question the fulfilment of the requirement of subparagraphs 5 (4) and 5 (5).

43. The nature and scope of the particular records and systems which an undertaking should maintain should be commensurate with its needs and particular circumstances, so that its business can be conducted without endangering its clients and potential clients. In determining whether an undertaking's records and systems are adequate, the Authority considers its size, the nature of its business, the manner in which the business is structured, organised and managed, and the nature, volume and complexity of its transactions.

First Schedule Paragraph 5(6): “adequate insurance cover”

44. Licenced undertakings face a wide variety of potentially major financial risks in their business. The possibility of many of these risks crystallising is hopefully remote. Rather than requiring undertakings to hold capital against all these risks, the Act requires undertakings to hold adequate insurance cover.
45. In judging the adequacy of insurance cover, the Authority looks to be satisfied that the scope and scale of protection in place is such as to provide reasonable assurance of the ability of the undertaking to continue to trade in the event that it should face either major damage to its infrastructure, or material claims from clients for loss and damage sustained. It is in the first instance for those directing the business of the licenced undertaking to assess the level of risk they face in the business and to determine the extent of coverage appropriate for that business. At a minimum, the Authority would expect this to include professional indemnity insurance. The Authority will review the adequacy of cover in place, having regard to the scale, composition and complexity of the business, and to the size of the deductible in relation to the undertaking's overall capital resources.

First Schedule Paragraph 5 (6A): “adequate liquidity”

46. A licenced undertaking is expected to closely monitor their liquidity position in order to ensure that they are always able to meet their actual and contingent obligations as they fall due. The Authority requires licenced undertakings to maintain minimum liquidity which is equivalent at all times to at least three months' expenditure. Expenditure is based on the latest annual financial statements and is calculated as total revenue less profit before appropriations (or in the case of a licenced undertaking making a loss – plus loss before appropriations.) Monthly expenditure is calculated by dividing annual expenditure by 12.

47. Assets are considered to be liquid if they can be easily converted to cash within a reasonable period of time. The Authority may, to such extent as it thinks appropriate, take into account as liquid assets, in addition to assets of the undertaking, any facilities available to it which in the Authority's view are capable of providing liquidity within a reasonable period. The Authority would classify certain committed standby facilities, for example, as liquid assets.
48. The following assets will generally be considered liquid:
- a) Cash and cash equivalents (i.e. cash, term deposits, marketable securities)
 - b) Prepayments where the period of prepayment is less than three months
 - c) Amounts accrued or receivable with respect to interest on marketable investments
 - d) Unsecured receivables if they are outstanding for less than 30 days
 - e) Receivables arising from sales of investments outstanding for less than 30 days from the contractual settlement date (if the debtor is outstanding for more than 30 days from the contractual settlement date, the amount should be written down to the lower of book value or market value)
 - f) Other receivables arising from trust business outstanding for less than two months (i.e. amounts due from connected companies which are adequately secured and are repayable within 60 days, unsecured amounts due at the request of the company etc.)
49. The following assets are not considered liquid:
- a) All intangible assets
 - b) Any other assets which are not listed above unless otherwise approved in writing by the Authority

First Schedule Paragraph 6: “consolidated supervision”

50. This paragraph requires the Authority to be satisfied, in the case of undertakings which are members of wider groups or have ownership links with other entities, that the structures and relationships are not such as to obstruct the conduct of effective consolidated supervision. The Authority needs to ensure that any risks to an undertaking arising as a result of its membership of a wider group are fully taken into account. The objective, however, is to supervise the undertaking as part of its group and not to supervise all companies in the group.
51. In order to conduct such monitoring and assessment, the Authority may need access to information relating to other parts of the group and to other connected entities. Where there are obstacles to transparency as a result of the particular structure adopted or the location of parts of the group, the Authority needs to satisfy itself that adequate information will be forthcoming, and that the structure and relationships are not such as to cause any other risks to the interests of the undertaking's clients and potential clients.

First Schedule Paragraph 7: “integrity and skill”

52. This paragraph is concerned with the manner in which the business of the licenced undertaking is carried on, and is distinct from the question of whether its controllers and officers are fit and proper persons. The business of an undertaking must be conducted ethically and honestly, and the staff employed by the undertaking must have the skills, experience and knowledge appropriate to the nature and scale of the undertaking.
53. The integrity element of the criterion requires the undertaking to observe high ethical standards in carrying on its business. Criminal offences or other breaches of statute will obviously call into question the fulfilment of this criterion. Particularly relevant are contraventions of any provision made by or under enactments, whether in Bermuda or elsewhere, designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice. Doubts may also be raised if the undertaking fails to comply with recognised ethical standards such as those embodied in various codes of conduct. The Authority considers the seriousness of the breach of the code, to whether the breach was deliberate or an unintentional and unusual occurrence, and to its relevance to the fulfilment of the criteria in the First Schedule, and otherwise to the interests of clients and potential clients.
54. Professional skills cover the general skills which the undertaking should have in conducting its business, for example, in relation to fiduciary responsibilities, establishing and operating systems of internal controls, ensuring compliance with legal and supervisory requirements, and in the standard of the various financial services provided. The level of skills required will vary according to the individual case, depending on the nature and scale of the particular undertaking’s activities. Undertakings are expected, at a minimum, to be in compliance with their respective industry standards in relation to a trust business, where such standards exist. This will assist in ensuring that business is carried out in conformity with the professional standards normally expected of a professional trustee.
55. The Authority would expect trust undertakings to have a number of employees sufficient to carry out the range and scale of the business. The Authority, in determining whether an undertaking has sufficient personnel, will take into account the human resources that the undertaking may draw on through other arrangements, (e.g. outsourcing, secondments, or other similar arrangements), as well as the methods of recruitment to ensure that the licensee employs an adequate number of persons who are fit and proper to perform the duties for which they are employed.
56. A trust undertaking must have appropriate resources in place commensurate with the nature and scale of its activities. The requirement for staff to be suitably qualified and experienced for their responsibilities extends to key roles and those staff must understand their duties and carry them out in a diligent and proper manner and in accordance with the licenced undertaking’s internal systems, policies and procedures.

IV. PRINCIPLES RELATING TO THE GRANTING OF LICENCES

57. To grant a licence under the Act, the Authority needs to be satisfied that all the minimum licensing criteria in the First Schedule are met. In order to be satisfied, the applicant and any other relevant parties must first have provided all the appropriate information requested by the Authority in connection with the application. Even where it is satisfied that the criteria are or can be met, the Authority retains a residual 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 Authority also considers, in exercising its discretion, whether it is likely that it will receive adequate information from the undertaking and relevant connected parties in order to enable it to monitor the fulfilment of the criteria, and to identify potential threats to the undertaking’s clients.
58. In relation to limited trust licences, section 11(3)(a) of the Act restricts an undertaking to holding trust assets not exceeding \$30 million unless the Authority agrees to a higher aggregate amount. In exercising this discretion, the Authority has regard to the Government’s policy approach in the Act, in particular in seeking to promote the use of a trust company structure where a trustee manages material amounts of assets. Where an applicant for a limited trust licence or an existing holder of such a licence subsequently wishes to seek consent for a larger amount than \$30 million of assets to apply to his or her business, an application for a higher figure must be made to the Authority. In considering such an application, the underlying objective of the Authority is to determine the point at which the nature and scale of the applicant’s business will be such as to indicate that a trust company should instead be established for the conduct of business in question. In assessing applications, the Authority has regard to the interaction of a number of factors including: the absolute amount of the assets proposed to be managed; the nature and range of the trust business being carried on; the number of individual trust relationships involved; the variety and complexity of the trust responsibilities which are to be conducted; and the resources that the undertaking has at its disposal. Broadly, other things being equal, the more varied and complex the trust responsibilities being conducted, the more restrictive the Authority’s stance in approving limits greater than \$30 million.

V. POWERS TO OBTAIN INFORMATION AND REPORTS

59. The Authority’s supervisory arrangements for licenced undertakings comprise three principal elements. First, the Authority conducts certain off-site analysis and reviews, based on regular financial and other data received from undertakings. This is supplemented by a regular programme of prudential discussions, during which the Authority interviews senior management on a wide range of relevant issues, including recent and current financial performance, material compliance and control issues and business development and strategy questions. Finally, the Authority conducts routine on-site reviews during which it assesses

an undertaking's ongoing compliance with aspects of the licensing criteria and, in particular, with paragraph 5(2) of the First Schedule to the Act. These reviews of compliance are intended to provide insight into the effectiveness of the internal controls in place and the ability of management to identify, monitor and manage key risks arising from the undertaking's operations. They also provide an opportunity for the Authority to check, through sample testing, that the procedures and practices in place within an undertaking are in practice, enabling it to fulfil the specific obligations imposed by the Proceeds of Crime Act 1997 and the associated Regulations.

60. Supervision, therefore, involves the receipt and analysis of a variety of regular and ad hoc financial and other information from undertakings. The Authority's standard reporting arrangements are kept under review, agreed with undertakings from time to time and amended in the light of developments.
61. Much of the information required by the Authority for its supervision of undertakings is provided pursuant to the Authority's statutory powers in the Act to require relevant information and documents. In addition, the Act stipulates certain matters as being subject to specific statutory reporting requirements – notably, for example, the requirement for an undertaking to submit a certificate of compliance, signed by an officer, certifying that the undertaking has complied with the minimum criteria for licensing and codes of conduct during the year. At the same time, an undertaking that is not a company must also confirm that it has complied with the limitations imposed under or pursuant to section 11(3) of the Act.
62. Section 36 of the Act provides formal powers for the Authority by notice in writing to require from an undertaking such information as it may reasonably require for the performance of its functions under the Act. The section also provides for the Authority to require an undertaking to provide it with a report by its auditor or by an accountant or other person with relevant professional skill on, or on any aspect of, any matter about which the Authority has required or could require the undertaking to provide information under the section. In the case of reports commissioned under section 36(1)(b), the Authority has agreed that they will wherever possible be commissioned from an undertaking's own external auditors. However, in certain circumstances, another professional firm may be used. This would be the case, for example, where a report called for particular technical skills or when the Authority had had previous concerns about the quality or completeness of work conducted by the external auditor.
63. The Authority has also agreed that, as a general rule, it will limit the extent to which it will have recourse to professional reports of this nature. Instead, its general policy is to use its own staff to assess directly through the on-site work described above the adequacy of an undertakings' systems and controls. Nonetheless, where particularly specialised work is required or other special considerations arise, the Authority may have recourse to commissioning a professional report under section 36 of the Act.

64. Section 37 of the Act provides statutory powers for the Authority by notice in writing to require an undertaking to produce relevant documents or information. This power can also be used to obtain relevant documents in the possession of other persons, and also to require information or documents from entities related to an undertaking. Section 38 of the Act provides the Authority with specific powers to enter the business premises of persons on whom notice under sections 36 or 37 has been served for the purpose of obtaining relevant information or documents. The Authority makes routine use of section 36 and section 37 powers when conducting its on-site review visits to licence-holders, in order to deal with any client confidentiality issues that might arise in the course of compliance testing.

VI. CONCLUSION

65. The Principles set out in this statement are of general application, and take account of the wide diversity of trust businesses which may be licenced under the Act and of the prospect of institutional and market changes. Nevertheless, there is likely to be a need for the Principles to be revised from time to time. Accordingly, the Authority will publish a statement of any changes to the Principles and will issue revised versions of the Principles as required.

