



BERMUDA MONETARY AUTHORITY

GUIDANCE NOTES

TRUSTS (REGULATION OF TRUST BUSINESS) ACT 2001

INFORMATION FOR PROSPECTIVE APPLICANTS

APRIL 2020

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APPENDICES to this Guidance Note can be found on the BMA website at:
<https://www.bma.bm/document-centre/reporting-forms-and-guidelines-trust>

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 Trusts (Regulation of Trust Business) Act 2001 (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.
3. It should be noted that the Authority has also published a Statement of Principles and a Code of Practice, as provided for under the Act. The Statement of Principles provides guidance on the Authority's approach in interpreting the minimum criteria and in exercising its power to grant, revoke or restrict a licence, exercise its power to obtain information and reports, and require production of documents. The Code of Practice provides guidance on the duties, requirements, procedures, standards and sound principles to be observed by persons carrying on trust business. Copies of both these documents can be found on the Authority's website (www.bma.bm).

II. REGULATORY SCOPE

4. The Act's requirements are the statutory basis for regulating trust business in Bermuda. The Act provides a licensing regime for any person or entity, unless otherwise exempted, carrying on trust business, as defined by the Act, in or from within Bermuda.
5. Section 9(3) of the Act defines trust business as: the provision of the services of a trustee as a business, trade, profession or vocation.

III. APPLICATIONS

6. It should be noted that compliance with the provisions of the Companies Act is not part of the regulatory oversight of the Authority. Compliance with those obligations is a matter for the Registrar of Companies. It may become relevant to the Authority if issues arise under the Companies Act that are so significant or frequent that they call into question the general competence of the licensed trust provider or its officers to operate within the terms of the licence.
7. An application for an unlimited licence under the Act may be made by local or exempted companies incorporated under the Companies Act 1981 (the Companies Act) and by Overseas (Permit) Companies authorised by the Minister of Finance under the Companies Act to conduct business in Bermuda. Applications for a limited trust licence may be made by Partnerships formed under the Partnership Act 1902 or the Exempted Partnerships Act 1992; by Overseas Partnerships permitted by the Minister of Finance to conduct business in Bermuda; and by other unincorporated entities or individuals conducting trust business, as defined, in or from within Bermuda.

8. **An unlimited licence** authorises the licensee to carry on trust business and to solicit business from the public generally.
9. **A limited licence** does not allow the holder to act as sole trustee and restricts it 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 trust company structures where trustees manage 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 their business, an application for a higher figure must be made to the Authority.
10. In considering such applications, 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 the business in question. In assessing applications, the Authority considers 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 out; 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 will be in approving limits greater than \$30 million.
11. All applications for a trust licence, whether limited or unlimited, must be made using T Form 1 and accompanied by such fees as prescribed under the Bermuda Monetary Authority Act 1969 (refer to the "Fees" section of the Authority's website: www.bma.bm). A copy of the application form is in Appendix 1 and is available in electronic form on the Authority's website. The Authority is available to applicants, together with their professional advisors, to discuss the application process and the minimum licensing criteria.
12. Along with T Form 1, pursuant to section 11(6) of the Act, an applicant must submit a statement setting out the nature and scale of the trust business that is to be carried out (i.e. a detailed business plan). The details which are to be included in this statement are set out in Appendix 2. The minimum licensing criteria are the same for both limited and unlimited licensees : controllers/officers to be fit and proper persons, business to be conducted in a prudent manner (e.g., adequate insurance); trust undertakings to observe proper corporate governance policies and processes with the necessary integrity and skill, etc.--subject to certain minor differences between companies, partnerships and individuals (e.g., different level of minimum net assets required to be maintained); and full cooperation where there is consolidated supervision. There are also certain related differences in the Act's requirements (e.g., limited licensees are not subject to the requirement to produce audited financial statements). The Statement of Principles, published under the Act, should be consulted for more details on these differences.
13. The Authority also requires that an applicant submit, as appropriate, completed Personal or Institutional Questionnaires (Appendix 3 and 4). Questionnaires are required from each Shareholder/Controller, director and officer (as defined in sections 2 and 4 of the Act).
14. In considering an application for a trust business licence, the Authority may:
 - a) Carry out any enquiries which 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 is proposed 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
 - f) Take into account any other information which it considers relevant in relation to the application
15. The Authority will not grant a licence unless satisfied that the minimum licensing criteria are met or are capable of being met by the applicant. However, even when so satisfied, the Authority always retains discretion to not 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.
16. The Act imposes no time limit within which the Authority must reach a decision in respect to an application. In practice, the Authority always seeks to deal with applications as promptly as possible. The time required to complete its initial enquiries may vary, depending on the nature of the issues which may arise and the difficulty 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; and in most cases, the timetable will be appreciably less.

IV. SUPERVISORY PROCESS

17. The Authority uses a risk-based framework to conduct its supervisory programme, which enables the Authority to:
- Carry out the responsibilities placed on the Authority by various Acts in an effective and efficient manner
 - Allocate resources to the most pertinent risk areas
 - Observe and adhere to international best practices while monitoring and responding to external developments, taking into consideration the nature of the Bermuda market
18. Supervision enables and requires judgments to be made about the nature of a trust undertaking's business, the quality of its management, the effectiveness of its controls and compliance frameworks, the fairness of its treatment of customers and the sufficiency of its financial viability standing. 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 trust businesses involves regular discussions with the senior management of licensed firms, together with scrutiny of financial information on the undertaking's performance, receipt and review of statutory certifications and regular compliance visits to the undertaking's premises. Additionally, the Authority uses thematic reviews to assess the control, oversight and monitoring activities of regulated entities regarding emerging and high-risk matters.
20. While the Act provides certain supervisory powers for the Authority to require information from undertakings, the Authority expects undertakings to voluntarily and routinely provide the information necessary for its supervision.

21. When concerns arise about the completeness or timeliness of such information, the Authority may decide to utilise its formal powers to require information.
22. 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 regulation 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 fuller review of the risks involved in the business or where particular concern or difficulties may have arisen in the Authority's normal on-site work.

Reporting Requirements

23. The Act requires that companies holding unlimited trust licences provide the Authority with audited financial information on an annual basis, submitted no later than four months after the end of their financial year.
24. Standard financial information (financial statements and liquidity analysis) is required from undertakings quarterly. All undertakings must submit the relevant information within 21 business days of each calendar quarter. The form that such liquidity analysis report should take can be found in Appendix 6 and is also available on the Authority's web site (www.bma.bm).
25. The Act also requires that, on an annual basis, each licensed trust undertaking submit a Certificate of Compliance to the Authority confirming it has complied with the minimum criteria for licensing requirements and all Codes of Practice issued by the Authority, and in the case of an undertaking which is not a company, the limitations imposed by section 11(A)] (1) and (2) of the Act). A company that fails to provide the Certificate of Compliance as required by section 35 or give particulars by section 35(2) is guilty of an offence. The form that such a Certificate should take can be found on the Authority's website.
26. In addition to the above reporting requirements, the Authority would expect undertakings to be open and proactive, and advise the Authority of any significant developments when, or before, they occur. Matters that would be considered significant developments include, but are not limited to, the following:
 - a) Any breach of minimum capital adequacy and liquidity or expectation that a breach may be likely
 - b) Any change in key personnel
 - c) Instances of legal action against the undertaking for breach of fiduciary responsibilities, involving the risk of material financial cost or reputational damage
 - d) Requests for information or assistance in relation to ongoing inquiries by a foreign regulatory body
 - e) Details of any cybersecurity incidents
 - f) Details of any material claims payable for any insurance policies in force
 - g) Material changes in the business undertaken, including any proposal to undertake non-trust related business

27. Where the Authority finds reason to question 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 (e.g., the appointment of persons to investigate under section 39).
28. Where the Authority in the course of its supervision identifies breaches of the Act, the Authority will consider legal or regulatory actions. The Authority would normally seek remedial action by the licensed undertaking 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, the Authority would not hesitate to do so.

Prudential Visits

29. As part of its routine supervisory activities, the Authority conducts regular prudential meetings with undertaking's senior management; this is in addition to the thorough off-site and on-site assessments and analysis that it undertakes in relation to regulated entities. These meetings ensure that the Authority maintains detailed monitoring of industry developments via building relationships with key management, as well as identifying any specific corporate issues.
30. Topics for discussion may include: corporate strategic initiatives and other significant company developments; internal control issues; matters of concern to management or the Authority; and follow up areas of concern previously identified.
31. Prudential discussions can take place at the Authority's offices or at the undertaking's own premises.

On-site Programmes

32. The purpose of on-site supervision is to enable the Authority to review compliance with policies and procedures (e.g., record keeping, segregation of assets, etc.), 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 when, typically, the Authority interviews a range of management and staff, and reviews a selection of individual trust files. The frequency of on-site visits will 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 for the interests of clients or about the financial position of the trust undertaking), the Authority may conduct a visit at short (or even without) notice. There will not usually be a need for a separate off-site prudential discussion in a year when a licensed undertaking is scheduled for an on-site visit unless significant recommendations emanate from the on-site visit. The Authority's Anti-Money Laundering and Anti-Terrorist Financing Department, pursuant to their AML remit, may accompany the Prudential team during a Prudential on-site.
33. The Authority will normally write to a licensed undertaking approximately eight to 10 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 is specific to the scope of each on-site visit, but would generally include the business plan, management reports, and policies and procedures relating to the undertaking's corporate governance, compliance and risk management

practices.

34. 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.