



# **BERMUDA MONETARY AUTHORITY**

## **CONSULTATION PAPER**

### **AMENDMENTS TO THE THIRD SCHEDULE OF THE BANKS AND DEPOSIT COMPANIES ACT 1999**

**21 AUGUST 2020**

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## **I. EXECUTIVE SUMMARY**

1. The Bermuda Monetary Authority (BMA or Authority) is committed to enhancing its legislative and regulatory frameworks to ensure that they remain appropriate for the financial sectors they govern and provide the legal basis for entities, in these sectors, to continue to operate competitively, prudently and sustainably.
2. The Bermuda Government embarked upon a targeted initiative to diversify the financial services sector to include industries whose core activities embrace digitisation and technology products and services. Bermuda was a first mover in terms of enacting into law in 2018 a comprehensive regulatory framework tailored for Digital Asset Businesses (DABs). It has been noted that there is an increasing number of jurisdictions implementing DAB frameworks comparable to Bermuda's and actively seeking growth in this sector.
3. To ensure that the DABs interface with Bermuda's financial ecosystem appropriately, the Banks and Deposits Companies Act 1999 (BDCA 1999) was amended in August 2018 to allow restricted banks, under section 14(5)(c), to provide banking services to specified persons in the Third Schedule, including DABs. However, despite many expressions of potential interest, the current legislative framework has proven to be too onerous to effectively support a viable restricted bank model in Bermuda.
4. This consultation paper sets out the immediate term proposals to amend the BDCA 1999 to expand the permitted customer base for a restricted bank so that the restricted bank will have the appropriate critical mass to profitably support its operations in Bermuda.
5. The Authority is considering an amendment to section 7 of the Second Schedule of the BDCA for restricted banks whereby restricted banks may have a lower minimum net asset requirement (or be subject to such amount as the Authority may direct based on the restricted bank's risk profile). This consultation paper does not present any proposals in that regard; however, we wish to receive stakeholders' views on this potentiality.
6. The Authority is also looking at additional policy proposals to enhance the BDCA 1999 to facilitate the development of restricted banks. We are initiating consultation now in relation to the issues addressed in this paper, with future work and consultation to follow.

## **II. INTRODUCTION**

7. Bermuda's financial sector is a complex, interconnected system where any strengths or weaknesses in one area, directly or indirectly influence financial

- entities in other sectors. Bermuda's reputation as an internationally recognised, well regulated financial centre has grown from its ability to effectively develop financial solutions for many global risks, as well as its striving to become a leader in innovative financial services.
8. Recently, the Bermuda Government's efforts to promote Bermuda as the jurisdiction of choice for the provision of FinTech and digital asset services met with tremendous support, paving the way for Bermuda to be the first jurisdiction to establish a comprehensive digital asset business framework.
  9. It soon became clear that the traditional financial services sectors, particularly banking, were adopting a cautious approach to the new DAB sector. As a result, the appetite to provide banking services to this burgeoning sector was limited. Recognising that the growth and development of the innovative financial services sector were contingent on its ability to intermingle with the traditional payments system, the Bermuda Government amended the BDCA 1999 to create a restricted bank category. By way of this amendment, a company granted such a category of licence was able, pursuant to the newly created Third Schedule, to provide banking services to entities operating in Bermuda's digital asset sector and their affiliates.
  10. Over time, an assessment has revealed that the policy approach adopted in the Third Schedule of the BDCA 1999 has not produced the intended outcome. As such, it has been difficult to attract financial institutions willing to set up as restricted banks in Bermuda. The customer base is restricted to those providing digital asset services from Bermuda (and their affiliates). Only a few currently qualify to be customers, making this an unprofitable business model. Failure to address this issue in a timely manner risks Bermuda's first-mover advantage and opportunity to become a major digital asset services centre, given the growing number of jurisdictions that are implementing comprehensive DAB frameworks to target this sector.
  11. Concomitantly, the Authority received feedback that there are Bermuda persons (both natural and body corporate) who are unable to access banking services in Bermuda primarily due to traditional banks' de-risking exercise. Financial exclusion threatens the financial stability of any economy, hinders sustainable business development and creates unintended consequences of an underground economy within a country.
  12. Financial inclusion has received commitment from several international bodies such as the G20, the World Bank and the Basel Committee on Banking Supervision (BCBS). Financial inclusion "means that individuals and businesses have access to useful and affordable financial products and services that meet their needs – transactions, payments, savings, credit and insurance – delivered in a responsible and sustainable way. Being able to have access to a transaction account is a first

- step toward broader financial inclusion since a transaction account allows people to store money, and send and receive payments.”<sup>1</sup>
13. The BCBS also issued a [guidance paper](#) on applying the *Core Principles for Effective Banking Supervision* to take into account the important policy objective of financial inclusion<sup>2</sup>. The guidance paper notes that financial inclusion promotes “safety, soundness and integrity in the financial system.”<sup>3</sup>
  14. Some of the targeted strategies to promote the objectives of financial inclusion involve:
    - a. Strengthening competition and access to financial services, which includes non-traditional service providers and non-banks
    - b. Modernising the retail payment system
    - c. Diversifying financial services, which includes savings, remittances and credit services
    - d. Protecting financial consumers
  15. The Authority is assessing these areas, which require extensive policy analysis, stakeholder engagement, legal and regulatory changes, and cooperation with Government to establish the appropriate supporting infrastructure. In the interim, the Authority proposes to allow restricted banks the ability to offer banking services to persons who are unable to access basic banking services from the traditional banks as described under section 14(5)(a)(i) to (iii) of the BDCA 1999.
  16. The proposed amendments to the BDCA 1999 are intended to expand the customer base for restricted banks to attain the necessary critical mass to operate viably in Bermuda:
    - a. To allow restricted banks to provide banking services to overseas customers
    - b. To allow restricted banks to provide banking services to persons in Bermuda who are unable to access basic banking services from the traditional banks as described under section 14(5)(a)(i) to (iii) of the BDCA 1999. It is not intended to allow restricted banks to be in competition with traditional banks as it relates to persons who are ordinarily resident in Bermuda
  17. Currently, section 7 of the Second Schedule of the BDCA 1999 requires banking institutions, including restricted banks, to have minimum net assets of not less than \$10 million at the time when the licence is granted. Restricted banks must also comply with, inter alia, the Minimum Criteria for Licensing and Basel III requirements, as set out in the [Rule](#) published in November 2017. While the Authority is not proposing to amend the requirement for restricted banks at this

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<sup>1</sup> <https://www.worldbank.org/en/topic/financialinclusion/overview#1>

<sup>2</sup> Guidance on the application of the Core Principles for Effective Banking Supervision to the regulation and supervision of institutions relevant to financial inclusion September 2016.

<sup>3</sup> Ibid, page 1

time, we wish to garner views on amending the minimum net asset requirement for restricted banks.

### **III. AMENDMENTS TO THE THIRD SCHEDULE OF THE BDCA 1999**

#### **Expanding the customer base**

18. The Authority proposes to amend the Third Schedule to the BDCA 1999 to expand the list of specified persons whereby restricted banks would have the ability to provide banking services to a wider customer base. This expanded customer base will not include Bermuda residents and entities that are already customers of local Bermuda banks. It will instead encompass Bermuda persons and entities who are unable to access basic banking services (specifically those outlined in section 14(5)(a)(i) to (iii)) from financial institutions licensed under section 14(5)(a) of the BDCA 1999. It should be noted that restricted banks will be required to receive written proof that the individuals or entities in question are unable to maintain or establish an account with a bank licensed under section 14(5)(a) before they can offer banking services to such Bermuda persons.
19. The proposed expansion of the Third Schedule would include specified persons such as:
  - a. Overseas clients
  - b. Casinos licensed under the Casino Gaming Act 2014
  - c. Bermuda residents and businesses unable to access services (specifically those outlined in section 14(5)(a)(i) to (iii)) from financial institutions licensed under section 14(5)(a)

### **IV. CONCLUSION**

20. The Authority is continuing its review of the banking regulatory framework and will consult with stakeholders over time. In the interim, the proposed changes acknowledge the interconnected nature of the financial services market and that regulatory frameworks must be constructed and work cohesively to ensure that the financial economy is growing while maintaining financial stability.
21. The proposed changes are intended to deliver a robust and credible risk-based oversight regime for the restricted banking sector, which the Authority recognises to be integral to the success of Government's efforts to develop the digital asset sector, diversify the economy and promote economic growth.
22. The views of stakeholders and other interested persons on the proposals set out in this paper are invited. The Authority requests that you consider the following questions:
  - a. Should the Authority expand the scope of the customer base for restricted banks? If yes, what should the scope include?

- b. Should the minimum net asset amount, at the time of licensing remain at \$10 million for restricted banks? If not, please propose an amount with a corresponding rationale for the proposed figure.
  - c. Should restricted banks be asked to comply with Basel III requirements?
23. Comments should be sent to the Authority, addressed to [policy@bma.bm](mailto:policy@bma.bm) no later than 18 September 2020.

BR /2020

BANKS AND DEPOSIT COMPANIES ACT 1999

[ ]

BANKS AND DEPOSIT COMPANIES  
(RESTRICTED BANKS) ORDER 2020

The Minister of Finance, in exercise of the powers conferred upon him by sections 14 (3) and 14 (5C) of the Banks and Deposit Companies Act 1999 and acting on the advice of the Bermuda Monetary Authority, makes the following Order—

Citation

1. This Order which amends the Second and Third Schedules to the Banks and Deposit Companies Act 1999 (the “Order”), may be cited as the Banks and Deposit Companies (Restricted Banks) Order 2020.

**Amends Third Schedule**

2. The Third Schedule to the Act is amended—

(a) in paragraph 1 by inserting the following new paragraphs after paragraph “(f)” —

“(g) is licensed as a casino under the Casino Gaming Act 2014;

(h) is a client that is not ordinarily resident, incorporated, registered or formed in Bermuda;

(i) is a person ordinarily resident or incorporated, registered or formed in Bermuda that has provided evidence to the institution of its inability to secure any of the services under section 14 (5) (i) to (iii) provided by an institution under section 14 (5) (a).”;

(b) by inserting the following new paragraph after paragraph 1—

“(1A) For the purposes of paragraph 1 (i), the evidence to be provided by any person to an institution, shall be prescribed by the Authority and shall



be in such form and comprise such information and documents as the Authority deems appropriate.”

- (c) in paragraph 2 by inserting in the appropriate alphabetical order the following definition—

““casino” has the meaning given in section 2 of the Casino Gaming Act 2014”.

Made this            day of            2020

Minister of Finance