



BERMUDA MONETARY AUTHORITY

GUIDANCE NOTES

FUND ADMINISTRATION PROVIDER BUSINESS ACT 2019 - INFORMATION FOR PROSPECTIVE APPLICANTS

OCTOBER 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-fund-administration>

I. INTRODUCTION

1. These Guidance Notes have been issued by the Bermuda Monetary Authority (Authority and BMA) to provide information for prospective applicants regarding the statutory provisions of Part 2 of the Fund Administration Provider Business Act 2019 (the Act) and the supervisory process 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, 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 and in exercising its power to obtain information, reports and to require production of documents.

II. REGULATORY SCOPE

4. The Act's requirements are the statutory basis for regulating fund administration provider business in Bermuda. The Act provides for a licensing regime for any person carrying on fund administration provider business as defined by the Act, in or from within Bermuda.
5. Section 2 of the Act defines fund administration provider business as providing one or more of the following services to an investment fund:
 - a. Applying the subscription monies received by a fund in accordance with its constitution and its prospectus
 - b. Processing the issue, conversion and redemption of units of a fund
 - c. Applying the income of a fund in accordance with its constitution and its prospectus
 - d. Calculating the net asset value of the units, and their issue, conversion and redemption price
 - e. Maintaining the accounts of a fund
 - f. Distributing to the participants of a fund, all dividends or other distributions which may from time to time be declared and paid by it on units in a fund
 - g. Any other services or activities that the Minister, acting on the advice of the Authority, may specify by notice published in the Gazette
6. Section 4 of the Act states that a person carries on fund administration provider business in or from within Bermuda where that person provides any of the services described in section 2(2) to an investment fund and-
 - a. Occupies a place of business in Bermuda

- b. Makes it known that he may be contacted at an address in Bermuda -
 - i. Through promotional or marketing materials or information
 - ii. By way of advertising
 - iii. By use of letterhead or website
 - iv. Through contractual or other legal arrangements
 - c. Otherwise is determined by the Authority to be holding himself out to the public as engaging in or carrying on fund administration provider business in Bermuda on a continuing basis
 - d. Discharges in Bermuda the duties of a fund administrator, the discharge of which constitute the carrying on by such person of fund administration provider business in Bermuda under an order made under section 4 (2) of the Act.
7. Section 4 of the Act further states that the Minister acting on the advice of the Authority may make an order specifying the circumstances in which a person is to be regarded for the purpose of this section as:
- a. Carrying on fund administration provider business in Bermuda
 - b. Not carrying on fund administration provider business in Bermuda
8. Prospective applicants should refer to the applicable provisions of the Act to familiarise themselves with the requirements. If there is any uncertainty, in this regard prospective applicants are encouraged to contact the Authority to seek clarification.

III. APPLICATIONS

9. 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 fund administration provider or its officers to operate within the terms of the licence.
10. An application for a licence under the Act may be made by a local or exempted companies incorporated under the Bermuda Companies Act 1981 (the Companies Act) or an Overseas (Permit) Companies authorised by the Minister of Finance under the Companies Act to conduct business in Bermuda. Applications for a licence may be made by Partnerships formed under the Partnership Act 1902 or the Exempted Partnerships Act 1992; and by Overseas Partnerships permitted by the Minister of Finance to conduct business in Bermuda; and by other unincorporated entities or by individuals conducting fund administration provider business, as defined, in or from within Bermuda.
11. In assessing applications, the Authority considers the interaction of a number of factors, including the nature and scale of the fund administration business being

carried on; the number of individual relationships involved; the variety and complexity of the responsibilities, which are to be undertaken, and the resources that the fund administration provider has at its disposal.

12. All applications for a licence must be made using the Fund Application form and accompanied by such fees as may be 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 I of these Guidance Notes and is also available in electronic form on the Authority’s website.
13. Along with the Fund Application form, pursuant to section 9(2) of the Act, an applicant must submit a business plan setting out the nature and scale of the fund administration business that is to be carried out. The details to be included in this plan are set out in Appendix IV. The minimum criteria for licensing require controllers/officers to be fit and proper persons; for business to be conducted in a prudent manner; for fund administration providers to observe proper corporate governance policies and processes with the necessary integrity and skill; and for full cooperation where there is consolidated supervision. These minimum criteria for licensing are subject to certain minor differences between companies, partnerships and individuals. The Statement of Principles, published under the Act, should be consulted for more details on these differences.
14. The Authority also requires that an applicant submit completed Institutional and/or Personal Questionnaires (set out in Appendices II and III respectively) as applicable. Questionnaires are required from each controller, director and senior executive (as defined in section 3 of the Act) responsible for the applicant’s business.
15. In considering an application for a fund administration provider 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 matters the Authority considers relevant to the application
 - c. Seek additional information from the applicant
 - d. Visit the applicant to review the proposed premises and files pertaining to the business that it is proposed to conduct in 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 that it considers relevant in relation to the application
16. The Authority will not grant a licence unless it is satisfied that the minimum criteria for licensing are met or are capable of being met by the applicant. However, even when it is so satisfied, the Authority always retains the 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.

17. The Act imposes no time limit within which the Authority must reach a decision in respect of an application. In practice, the Authority seeks to deal as promptly as possible with applications. The time required to complete its initial enquiries may vary, however, depending on the nature of the issues, which may arise, and the difficulty or otherwise in obtaining any additional information, which may be necessary. Generally, the Authority would not expect an application to remain outstanding in excess of three months; and in most cases, the timetable will be appreciably less.

IV. SUPERVISORY PROCESS

18. 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 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

19. The Authority's supervision of fund administration provider business involves regular discussions with the senior management of licensed firms, together with receipt and review of statutory certifications and regular compliance visits to the fund administration provider's premises. In addition, the Authority uses thematic reviews to assess the control, oversight and monitoring activities of regulated entities over emerging and high-risk matters.

20. While the Act provides certain supervisory powers for the Authority to require information from licensed fund administration providers, 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 supervision, which is required. However, this route will normally be used only exceptionally, when the nature of the specific business may call for particular skills in order to conduct a more comprehensive review of the risks involved in the business or where particular concerns or difficulties may have arisen in the Authority's normal on-site work.

Reporting Requirements

23. The Act requires that, on an annual basis, each fund administration provider submit a Statement of Compliance to the Authority confirming that it has complied with the minimum criteria for licensing requirements and all codes of practice issued by the Authority under section 7 of the Act. A company that fails to provide the Statement of Compliance as required by section 30 or give the particulars as required by section 30(b) is guilty of an offence. A copy of the compliance certificate FA Form 4 appears at Appendix V and is available in electronic form on the Authority's website.
24. The Act requires each fund administration provider to submit its annual financial statements to the Authority within four months of its financial year-end.
25. The Act makes it clear that, unless a licensed company maintains minimum net assets of \$50,000, it shall not be regarded as conducting its business in a prudent manner. Licensed fund administration providers are expected to closely monitor their net asset position and to alert the Authority in the event of a breach or expected breach.
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 change in key personnel
 - b. Instances of legal action against the undertaking involving the risk of material financial cost or reputational damage
 - c. Requests for information or assistance in relation to ongoing inquiries by a foreign regulatory body
 - d. Material changes in the business undertaken, including any proposal to undertake non-fund administration provider business
27. Where the Authority finds reason to doubt the completeness or accuracy of information provided to it in its routine supervision, the Authority will consider the use of the statutory powers in the Act enabling it to require additional documents or information. Depending on the seriousness of the Authority's concerns, it may also have recourse to other information and intervention powers provided in the Act – for example, the appointment of persons to investigate under section 52.
28. Where the Authority in the course of its supervision identifies breaches of the Act, the Authority will consider legal or regulatory action. The Authority would normally seek remedial action by the licensed fund administration provider before resorting to the use of its enforcement powers. In circumstances where such actions fail to remedy identified deficiencies or where the alleged breaches are so serious as to warrant the immediate exercise of enforcement powers, then the

Authority would not hesitate to do so.

Prudential Visits

29. As part of its routine supervisory activities, the Authority conducts regular prudential meetings with the 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. Alternatively, telephone interviews may be used in some instances.

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), as well as the processes that management have put into place to monitor and control key risks in the business. On-site supervision involves structured visits to an undertaking's offices where, typically, the Authority interviews a range of management and staff and reviews a selection of individual client files. On-site visits will usually be scheduled on a rolling basis. However, the frequency of on-site visits will also reflect the Authority's assessment of the degree of risk in the business and the effectiveness of the undertaking's personnel, systems and controls for monitoring risk. In exceptional cases (i.e. where the Authority has material concerns) the Authority may conduct a visit at short, or even without, notice. There will not usually be a need for a separate off-site prudential discussion in a year when a fund administration provider is scheduled for an on-site visit, unless significant recommendations emanate from the on-site visit. The Authority's Anti-Money Laundering/Anti-Terrorist Financing (AML/ATF) 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 ten 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 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.